

Name of Distribution Licensee

Vol I

Request for Qualification

for

**Tariff Based Bidding Process for Procurement of Power
on Long Term Basis by Setting up Power Stations at
where location or Fuel is not specified**

**(As per Guidelines for Determination of Tariff by Bidding
Process for Procurement of Power by Distribution
Licensee)**

Long Term Procurement (more than 7 years)

Standard Bid Documents

Issued by

**Office of
Address**

Name and address of Distribution Licensee

Request for Qualification (RFQ) for supply of power to Name of the Distribution Licensee in the Name of State State (India).

This RFQ document along with Annexures as per Index is issued to -

M/s. _____

NOTES:

1. This document is not transferable.
2. Though enough care has been taken while issuing the RFQ documents, the Bidder should satisfy himself that documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received by this office from any Bidder within ten days from the date of issue of bid documents to him, then this office shall consider that the bid documents complete in all respects have been received by the Bidder.

Name of the issuing officer

Place:

Date:

REQUEST FOR QUALIFICATION NOTIFICATION

Name of the Distribution Licensee

An invitation for supply of power on long-term basis.

Name of the Distribution Licensee invites proposals from generators and traders to supply minimum A¹ MW and maximum B MW of power at the generator switch yard bus-bar or any other delivery point. Bidder should have adequate financial capability with a Free Cash Flow from Business Operation² of Rs. 0.20 [x] Crore.

Technology: The Bidder is free to choose any technology i.e. Gas turbines (Open/combined cycle), Diesel generator sets, Conventional coal fired boiler and turbo-generator, Hydro Plant etc. If the Bidder is a Trading Company it should be able to demonstrate that it has tied up Generation Capacity for the term of the PPA.

Commencement of supply: The Bidder shall have to commence supply by aa³ months from the signing of the PPA, with a notice period of 3 months. However, within the stipulated time frame, no additional weightage shall be given for early commencement.

Fuel: The choice of fuel and its transportation would be left to the discretion of the Bidders. The Bidders would assume complete responsibility to tie up the fuel linkage and the infrastructural requirements for fuel transportation and storage.

Clearances, consents and permits⁴: The Bidder shall be responsible for obtaining all the necessary clearances, consents and permits required for completion and operation of the project over the tenure of PPA.

Purchase of power: Name of the Distribution Licensee would retain dispatch rights over the contracted capacity of the generating station, which has been allocated to it during the term of the PPA. The term of the PPA shall be of z⁵ years.

Tariff: The tariff shall be payable in Indian Rupees. Bidders shall quote the tariff as per the structure, which will be mentioned at RFP stage.

RFQ document: Interested parties can collect the RFQ document containing the Model PPA proposed to be entered into with the successful Bidder, along with the detail information required to be submitted by the Bidder, in person against a non-refundable payment of Rs. y⁶ in the form of a Demand draft in favor of "Name of the Distribution Licensee". The draft should be submitted in the (address) and the RFQ document could be collected accordingly. The bid documents will be available for sale on all working days between 10.00 hrs and 16.30 hrs⁷ during the following dates. Any correspondence/query should be forwarded to the above address. The timetable for the bid process is as follows:

| Date | Event |
|--------------------------|--|
| T ₀ | Commencement of Sale of RFQ documents |
| T ₀ +15 days | Last date of Sale of RFQ documents |
| T ₀ + 60 days | Submission of Responses of RFQ |
| T ₀ + 90 days | Short listing based on responses and issuance of RFP |
| T ₀ +150 days | Bid clarification, conferences etc. |
| T ₀ +180 days | Final clarification and revision of RFP |
| T ₀ +360 days | Technical and Price Bid Submission |
| T ₀ +390 days | Short listing of Bidder and issue of LOI |
| T ₀ +425 days | Signing of Agreement |

If any of the dates mentioned above is declared a public holiday, the deadline will be the next working day. The RFQ documents are not transferable.

Office of Telephone No. Fax no.....

¹ Each Distribution Licensee shall specify this minimum to be supplied in MW at the delivery point. The minimum capacity should be 5 MW or 1% of B MW; whichever is greater. (B is the maximum capacity to be procured)

² Free Cash Flow from Business Operation is calculated by subtracting from the average Cash flow of last three years, one eighth of the outstanding debt (as mentioned in the last Financial Statement)

³ Need to be decided by the Distribution Licensee and should be more than 48 months.

⁴ The responsibility of clearances for transmission network and evacuation of power can be either of Distribution Licensee or the Bidder and the same shall be mentioned by the Distribution Licensee in the Bidding documents

⁵ The PPA Term will be decided by each Distribution Licensee and it should be greater than seven (7) years besides the construction period

⁶ To be decided by each Distribution Licensee at the time of issuance of the Bid document

⁷ Time frame mentioned above is only indicative and each Distribution Licensee may like to put its own time frame at the time of issuance of the bid document

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1. INTRODUCTION

1.1.1.1 Name of the Distribution Licensee, (hereinafter referred to as Procurer) acting through the Name of the Office, Address, wishes to invite bids for purchase of power on a long-term basis.

1.1.1.2 The intent of this bid document is to identify generators or traders for supply of B MW of power for a period of z⁸ years starting from the signing of PPA. The successful Bidders shall enter into a Power Purchase Agreement (PPA) as detailed out in the Draft Power Purchase Agreement forming the part of this document.

1.1.1.3 Brief introduction of the Procurer and the purpose of procurement of power

1.1.1.4 Accordingly, Procurer seeks to select competent, experienced and capable party or a consortium of parties (hereinafter referred to as "Bidder") who have the necessary financial strength for supply of power on a long-term basis. Procurer invites responses from companies either as sole Bidder or in the form of a consortium for supply of power.

1.1.1.5 In case a Bidder plans to set up a new plant to meet Procurer requirements, Procurer is not specifying any location or choice of fuel for the plant.

1.1.1.6 The Bidders may submit responses for supply of power at generator switchyard bus or any other delivery point, with contracted capacity being not less than A⁹ MW

1.1.1.7 All Bidders are required to submit information in accordance with the guidelines set forth in this bid document. Bidders should provide information sought herein in order to satisfactorily establish their competence and suitability for executing the project.

1.1.1.8 The contracted power shall be sold only to the Procurer as per the terms and conditions of a Power Purchase Agreement (PPA). The Draft PPA is attached in Annexure 3. Procurer would retain dispatch rights over the capacity of the generating station, during the term of the PPA, which has

⁸ The PPA Term will be decided by each Procurer and it should be greater than the sum of the period between PPA signing and Scheduled Commercial Operation Date of the plant; and seven (7) years. It is advisable to go for PPA term coinciding with the life of the project. The expected life project is estimated to be 15 years for gas/liquid fuel based projects, 25 years for coal based projects and 35 years for hydro projects

⁹ Each Procurer shall specify this minimum capacity to be supplied in MW at the delivery point. The minimum capacity should be 5 MW or 1% of B MW (B is the maximum capacity to be procured); whichever is greater

been allocated to it by the Bidder under this Bid. Post expiry of the term of the PPA, Procurer and Bidder reserve the right to extend the term of the agreement after mutual discussions.

- 1.1.1.9 The Bid offer should be valid not less than six (6) months from the last date of submission of bid in line with the RFP.

2. INFORMATION AND INSTRUCTION TO BIDDERS

2.1 Qualifying Criteria

- 2.1.1.1 The terms used in this document have the same meaning as defined in the Power Purchase Agreement (PPA) provided in Annexure 3.
- 2.1.1.2 Bidders or its promoters should have adequate financial capability.
- 2.1.1.3 The Bidding Company or Bidding Consortium must have a minimum Free Cash Flow from Business Operation of Rs. 0.20 [x] Crore. The Free Cash Flow from Business Operation should be calculated by subtracting from the average Cash flow of last three years, one eighth of the outstanding debt (as mentioned in the last Financial Statement).
- 2.1.1.4 The Bidder shall submit a comfort letter from a fuel supplier for fuel linkage at the time of submission of proposal in response to RFP.
- 2.1.1.5 In case Bidding Company is a Trader, it needs to identify the Generator from which the power will be supplied and shall submit the necessary documentary proof for the same at the time of submission of proposal in response to RFP.

2.2 Purchase of power by Procurer

- 2.2.1.1 Procurer plans to procure power to the extent of B MW. The power can be delivered at the generator switchyard bus-bar or any other delivery point. The Normative Availability or Normative Capacity Index¹⁰ required to be met by the Bidder on an annual basis shall be 80%¹¹. The Normative Availability should align to the Minimum Offtake Guarantee of the Procurer.

2.3 Collection of RFQ document

- 2.3.1.1 The Bidders can collect the RFQ document in person against payment of Rs.()¹² in the form of a Demand draft in favor of "Name of the Procurer". The draft should be submitted in the office of Name of the Office and collect the RFQ document. The RFQ document will be available for sale on all working days from _____ to _____ between 10.00 hrs and 16.30 hrs¹³.

¹⁰ In case the successful bidder is a Hydro Power Plant, the Procurer may maintain separate Normative Availability and Normative Capacity Index defined for thermal and hydro plant.

¹¹ To be decided by the Procurer in line with the tariff regulations of CERC at the time of preparation of the bid document

¹² To be decided by each Procurer

¹³ Time frame mentioned above is only indicative and each Procurer may like to put its own time frame at the time of issuance of the bid document

2.4 Information Required

2.4.1.1 The information against this RFQ will be submitted by the Bidder as per the annexures attached in this document. The information to be submitted is specified in Chapter 4 (Formats of Application) of this document.

2.4.1.2 *Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures/pamphlets. Non-adherence to formats and/or submission of incomplete information may be grounds for declaring the bid non-responsive. Each format has to be duly signed and sealed by the Bidder.*

2.4.1.3 The Bidder should note that:

- a) If the Bidder deliberately gives wrong information in its response, to create circumstances for the acceptance of its bid, Procurer reserves the right to reject such bid and/or cancel the award, if made.
- b) Responses submitted by the Bidder shall become the property of Procurer and Procurer shall have no obligation to return the same to the Bidder.

2.5 Submission of proposal by consortium of generators/ trader and generators

2.5.1.1 In case of bids submitted by a consortium:

2.5.1.1.1 The submitted proposal must mention the lead member and the lead member should designate one person to represent the consortium in its dealings with Procurer. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitment on behalf of the consortium, etc.

2.5.1.1.2 The submitted proposal shall contain a Joint Deed Agreement entered into between the consortium members, clearly indicating the responsibilities of each consortium member, in the proposed power supply to Procurer. Each member of the consortium shall duly sign the Joint Deed Agreement, making each of the consortium members, individually liable for raising the required funds. In absence of such a document, the bid would not be considered for evaluation and will be rejected.

2.5.1.1.3 The submitted proposal should also contain signed letters (“Letter of Consent”) submitted by each member of the consortium, stating that the entire proposal has been reviewed and each key element of the proposal is agreed to and stating the investment commitment for the envisaged project. Any substantive exception should be addressed in the letter.

2.5.1.1.4 Any other request for change in the membership of the consortium, or in responsibilities, or in equity commitments of any consortium member is allowed, however, such change must be communicated to the Procurer in writing for its approval. Procurer reserves the right to cancel the Award of project to the consortium, which in its opinion adversely affects the consortium strength and doesn't meet the qualification criterion as mentioned in this document. Accordingly the Bank Guarantee shall be forfeited in such cases.

2.5.1.2 In case of bids submitted by a Bidding company

2.5.1.2.1 The Bidding company should designate one person to represent the Bidding company in its dealings with Procurer. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, etc.

2.5.1.2.2 Bidding Company should provide for the Board Resolution committing atleast Rs. [x] Crore of equity. Any request for change in the promoters of the Bidding company, or in responsibilities, or in equity commitments of any promoters is allowed, however, such change must be communicated to Procurer in writing for its approval. Procurer reserves the right to cancel the Award of project to the Bidding company, which in its opinion adversely affects the Bidding company strength and doesn't meet the qualification criterion as mentioned in this document. Accordingly the Bank Guarantee shall be forfeited in such cases.

2.6 Due dates

2.6.1.1 The Bidder should submit the response so as to reach the following address by 12.30 hrs on _____:

Address of the Office

2.6.1.2 Important deadlines are mentioned below:

| Date | Event |
|---------------------------|--|
| T ₀ | Commencement of Sale of RFQ documents |
| T ₀ + 15 days | Last date of Sale of RFQ documents |
| T ₀ + 60 days | Submission of Responses of RFQ |
| T ₀ + 90 days | Short listing based on responses and issuance of RFP |
| T ₀ + 150 days | Bid clarification, conferences etc. |
| T ₀ + 180 days | Final clarification and revision of RFP |
| T ₀ + 360 days | Technical and Price Bid Submission |
| T ₀ + 390 days | Short listing of Bidder and issue of LOI |
| T ₀ + 425 days | Signing of Agreement |

2.7 Method of submission

2.7.1.1 The responses are to be submitted in an envelope which should be transcribed in the following way;

Envelope superscript -

“Bid for supply of power to Procurer”

“Name of the Office”

“Name of the Bidder _____”

“Bidder Information”

2.7.1.2 This envelope should also contain a covering letter (format as per Annexure 2).

2.7.1.3 *The Bidder has the option of sending his response by registered post or submitting the bid in person so as to reach Procurer at the designated address by the time and date stipulated by Procurer. Responses submitted by telex/telegram/fax shall not be considered under any circumstances. Procurer shall not be responsible for any delay in receipt of the bids. Any response received by Procurer after the deadline for submission of the responses stipulated by Procurer shall not be opened.*

2.7.1.4 *All pages of the response submitted must be initialed by the authorized signatories on behalf of the Bidder.*

2.7.1.5 *The response shall be submitted in 1 original + ___copies¹⁴ (placed in one envelope as mentioned in Article 2.7.1.1). No change or supplemental information to a proposal will be accepted after its submission. Procurer reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the proposal.*

2.7.1.6 If the envelope is not sealed and not marked as per the requirement, Procurer will assume no responsibility for the bid's misplacement or premature opening.

2.8 Preparation cost

2.8.1.1 The Bidder shall be responsible for all the costs associated with the preparation of the response and participation in discussions. Procurer shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

2.8.1.2 Bidders may note that

¹⁴ To be specified by respective Procurer

- **All the information should be submitted in English Language only.**
- **Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.**
- **Responses that are incomplete, which do not substantially meet the requirements prescribed in this RFQ document, will be rejected by Procurer.**
- **Responses containing incomplete information in the specified formats would be liable for rejection.**
- **All pages of the responses submitted must be initialed by the authorized signatories on behalf of the Bidder.**
- **Bidders delaying in submission of additional information or clarifications sought, may be liable for rejection.**
- **If in response to this Request for Qualification, the Bidder makes any claim, which does not reflect the truth or is material misrepresentation of facts, then the bid would be liable for rejection.**
- **Procurer reserves the right to reject all or any of the responses without assigning any reasons whatsoever.**

2.9 Enquiries

Clarifications could be sought from:

| | |
|------------------------------|-------|
| <u>Address of the Office</u> | Off : |
| | Fax : |

3. EVALUATION CRITERIA

3.1.1.1 The bid evaluation process comprises of the following two steps:

1. Step I – Responsiveness check
2. Step II – Bidder evaluation

3.2 Step I - Responsiveness check

3.2.1.1 The Bids submitted by Bidders/ Bidding Consortia shall be initially scrutinized to establish “Responsiveness”. The following conditions shall cause the bid to be deemed “Non-responsive”:

- Responses not received by the due date
- Sufficient information not submitted for the bid to be evaluated and/or information not submitted in specified formats (Annexure 1).
- Bid not signed by authorised signatory and / or sealed in the manner and to the extent indicated in this Invitation for Bids.
- Bid not including the covering letter as per format in Annexure 2.
- Bid submitted by a Bidding Consortium not including the Joint Deed Agreement
- Bid submitted by a Bidding Company not including the Board Resolution
- A firm shall submit only one bid in the same Bidding process, either individually as a Bidder or as a partner of a joint venture or consortium. No firm can be a subcontractor while submitting a bid individually or as a party of a joint venture or consortium in the same Bidding process. A firm, if acting in the capacity of Subcontractor in any bid, may participate in more than one bid, but only in that capacity. A Bidder who submits, or participates in, more than one bid will cause all the proposals in which the Bidder has participated to be disqualified.

3.3 Step II - Bidder evaluation

3.3.1.1 Step II (Bidder evaluation) will be carried out considering the information furnished by Bidders as prescribed under Chapter 4 - Format of Application. This step would involve financial evaluation of the Bidding Company and Bidding Consortium.

3.3.2 Financial Capability

3.3.2.1 The Bidding Company or Bidding Consortium must have a minimum a minimum Free Cash Flow from Business Operation of Rs. 0.20 [x] Crore. The Free Cash Flow from Business Operation should be calculated by subtracting from the average Cash flow of last three years, one eighth of the outstanding debt (as mentioned in the last Financial Statement).

3.3.2.2 If a bid is submitted by a Bidding Company, then only the Financial Parameters of Bidding Company shall be considered. If the Bid is submitted by a Bidding Consortium, then the Bidding Parameters shall be arrived at by multiplying each consortium Member Companies financial parameter by the investment committed. Hence strength of the Bidding Consortium shall be calculated on the basis of Member Companies and each Member Company's strength shall be considered in the ratio of their commitment for investment.

4. FORMAT OF APPLICATION

4.1.1.1 This chapter prescribes formats for submission of information to ensure that information and data collected from each Bidder would be interpreted in a consistent manner. Hence it is required that all Bidders should submit information as per the formats indicated below.

4.2 BIDDER INFORMATION

A. Definitions

i) Bidding company: If the bid for the proposed project has been made by a single company, it has been referred to as a Bidding company.

ii) Bidding consortium: If the bid for the proposed projects has been made by more than one company, then this group of companies has been referred to as a Bidding consortium.

iii) Member company: Each company in consortium has been referred to as a member company.

4.2.1.1 The reference to formats under Bidder information is to the formats attached under Annexure 1. The Bidders are required to provide following information:

4.2.2 Information about the company/consortium

4.2.2.1 For a Bidding Company

1. Last three year's Annual Accounts for the calculation of Free Cash Flow from Business Operations (consisting of unabridged Balance Sheet, P&L account, profit appropriation, Chairman's speech, Auditors report, etc.).
2. The Board Resolution of the Bidding Company committing investment of atleast Rs. [x] Crore

4.2.2.2 In case of bid submitted by a Bidding Consortium

1. Name the lead member of the consortium { as per Annexure 1, Format 1}
2. The role of each consortium member { as per Annexure 1}
3. A Letter of Consent from each Member Company committing a specific investment.
4. A signed Joint Deed Agreement between the consortium members {as per Annexure 4}

5. For each Member Consortium,
 1. Last three year's Annual Accounts for the calculation of Free Cash Flow from Business Operations (consisting of unabridged Balance Sheet, P&L account, profit appropriation, Chairman's speech, Auditors report, etc.).

Checklist for Bidders

The Bidder may use the checklist below to ensure that the bid submitted is complete in all respects.

- Covering Letter
- Joint Deed Agreement between consortium members
- Letter of consent from all consortium members
- Board Resolution
- Initialing of all pages of bid by authorized signatory
- Executive Summary
- Last three year's Annual Accounts of Bidding Company or in case of a Bidding Consortium for each of the Member Companies

Please note that the information requirement prescribed above is the minimum information required from the Bidders. The Bidder may provide additional information to support and supplement the above.

ANNEXURE 1

EXECUTIVE SUMMARY

Format 1: Executive Summary

1.1.a Name of the Bidding Company/Bidding Consortium

1.1.b Name of the Lead Member in the case of a Bidding Consortium

1.2 Details of the Bidding Consortium

| S. No. | Name of the Company | Role Envisaged |
|--------|---------------------|----------------|
| | | |
| | | |
| | | |
| | | |
| | | |

1.3 Details of the contact person

Name

Designation

Company

Address

Phone Nos.

Fax Nos.

E-mail address

Signature _____

For

Bidder's Rubber Seal and Full Address

ANNEXURE 2

DRAFT FORMAT OF COVERING LETTER

DRAFT FORMAT OF COVERING LETTER

Bidder's Name:

Full Address:

Telephone No.:

E-mail address:

Fax / No.:

To

Address of the Office

Sub:- Supply of power on long term basis at the Generator switchyard bus-bar or any other Delivery Point

Ref:- Bid Specification No. CP/ Long Term Power Purchase/ T-1

Dear Sir,

We, the undersigned Bidder having read and examined in detail the RFQ documents for supply of power on long-term basis at the Generator switchyard bus-bar or any other Delivery Point, hereby submit our response.

CONTACT PERSON

Details of contact person as specified in Format 1 are furnished as under:

Name

Designation

Company

Address

Phone Nos.

Fax Nos.

E-mail address

We are enclosing herewith duly signed formats, in 1 original + [] copies as desired by you in your bid document for your consideration.

Dated the _____ day of _____ of 20

Thanking you,

Yours faithfully,

(Signature, Name, Designation and Company's Seal)

Business Address:

ANNEXURE 3

Draft Power Purchase Agreement

Enclosed herewith is the Draft Power Purchase Agreement. The PPA has the terms and conditions under which the Procurer would purchase power

ANNEXURE 4

FORMAT FOR JOINT DEED AGREEMENT

On Non-Judicial Stamp Paper of Appropriate Value)

FORM OF JOINT DEVELOPMENT AGREEMENT BETWEEN

M/S....., M/S.....,

M/S..... AND M/S.....

FOR (-----)

AS PER SECTION 2.5.1.1.2 OF REQUEST FOR QUALIFICATION (RFQ)

BID DOCUMENT NO. (-----)

THIS Joint Development Agreement executed on this..... day of Two thousand..... between M/s..... a company incorporated under the laws of and having its Registered Office at (hereinafter called the "Partner-1", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company incorporated under the laws of and having its Registered Office at (hereinafter called the "Partner-2", which expression shall include its successors, executors and permitted assigns), M/s a Company incorporated under the laws of and having its Registered Office at (hereinafter called the "Partner-3", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company incorporated under the laws of and having its Registered Office at (hereinafter called the "Partner-4", which expression shall include its successors, executors and permitted assigns), *(The Bidder Consortium should list the details of all the Consortium Members)* for the purpose of making a bid and entering into the Power Purchase Agreement(in case of award) to be hereinafter referred to as the Contracts, against Bid Document No. (-----) for (-----) of *[Name of the Distribution Licensee1]* a *[Company/Board]* incorporated under the *[Company's Act, 1956, and having its Registered Office at _____or constituted under Section-5 of the Electricity (Supply) Act,1948]* and *[Name of the Distribution Licensee2]* a *[Company/Board]* incorporated under the *[Company's Act, 1956, and having its Registered Office at _____or constituted under Section-5 of the Electricity (Supply) Act,1948]* (hereinafter called the Procurer).

WHEREAS the Procurer desired to purchase power through an International Competitive Bidding (ICB) process;

WHEREAS, the Procurer had invited Bids for Qualification vide its Bidding Document no (RFQ Document No.)

AND WHEREAS Section 2.5.1.1.2 of the RFQ document stipulates that the Bidders qualifying on the strength of a Bidding Consortium will have to submit a legally enforceable Joint Development Agreement in a format specified by the Procurer wherein the Consortium Members have to commit investment of a specific percentage in the envisaged project.

AND WHEREAS Section 2.5.1.1.2 of the RFQ document also stipulate that a Consortium Member shall provide alongwith the bid, a Joint Development Agreement as per prescribed format whereby the Consortium Members whose strength has been offered for evaluation, undertake to be jointly and severally liable to the Procurer to perform all the obligations under the Contract(s) to be entered into between the Procurer and the Consortium in pursuance inter alia of RFQ/RFP and the Power Purchase Agreement.

AND WHEREAS the bid has been submitted to the Procurer vide proposal no. dtd..... in accordance with the relevant provisions of RFQ.

NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER :

In consideration of the above premises and agreements all the partners in this consortium do hereby mutually agree as follows:

1. In consideration of the Award of the Contract(s) by the Procurer to the Consortium, we the members of the Consortium and partners to the Joint Development Agreement do hereby unequivocally agree that partner (1) (M/s.....), shall act as the Lead Member as defined in the RFQ for self and agent for and on behalf of Partner-2, Partner-3 and Partner-4 (the names of the partners to be filled in here) and further declare and confirm that we shall jointly and severally be bound unto the Procurer for the execution of the Contract and shall be jointly and severally liable to the Procurer for performance of all contractual obligations under the said Contract so as to ensure compliance of the objectives as indicated inter alia in relevant sections of RFQ.
2. The lead member is hereby authorised by the members of Consortium and Partners to the Joint Development Agreement to incur liabilities and receive instructions for and on their behalf It is further understood that the entire execution of the Contract including payment shall be done exclusively by the Lead Member.
3. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the members of the consortium in discharging all their respective obligations towards Procurer under the said Contract. Each Consortium member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged inter alia in para 1 herein above.
4. Subject to the terms of this Agreement, the share of each Member of the consortium in the “issued equity share capital of the Project Company” (if such a company is to be established) shall be in the following proportion: (if applicable)

| Name | Percentage |
|-----------|------------|
| Partner 1 | --- |
| Partner 2 | ---- |
| Partner 3 | ---- |
| Partner 4 | ---- |
| Total | 100% |

5. The Lead Member shall inter alia undertake full responsibility for liaising with Lenders and mobilising debt resources for the Project, ensuring equity contribution by each of the Consortium Members, achieving financial closure on behalf of the Bidding Consortium, and in the event of a shortfall, making good such contribution, as applicable;
6. In case of any breach of any of the terms of said Contract by any of the Consortium Members, the other Consortium Members shall also be liable for the consequences thereof jointly and severally.

7. In the event of Procurer suffering any loss or damage on account of any breach of the Contract, Partner-1, Partner-2, Partner-3 and Partner-4 of these presents do hereby undertake and confirm to jointly and severally make good such loss or damage caused to the Procurer as per the provisions of the Contract, on its demand without any demure, protest and contest. In the event of the Buyer suffering any loss or damage on account of any breach of the Contract(s), partner-1, partner-2, partner-3 and partner-4 of these presents do hereby undertake and confirm to jointly and severally make good such loss or damage caused to the Buyer, on its demand without any demure, protest and contest. It shall, however, not be necessary or obligatory for the Procurer to proceed against Partner (1) to these presents before proceeding against the Partner (2), Partner (3) and Partner (4).
8. It is expressly understood and agreed between the Partners to this agreement that responsibilities and obligations of each of the partners shall be clearly delineated in *Appendix-I to this agreement. It is further agreed that sharing of responsibilities as aforesaid and obligations thereto shall not in any way be a limitation of joint and several responsibilities of the partners under those presents.
9. It is further specifically agreed that the financial liability of each of the partners of this joint development agreement, to the Procurer with respect of any and all claims arising out of breach or non- performance of the Contract(s) shall, however, not be limited in any way so as to restrict or limit the liabilities of either of the partners. All the partners would be jointly and severally liable irrespective of their scope of work or financial commitments.
10. This Joint Development Agreement shall be construed and interpreted in accordance with the Laws of India and courts at [] alone shall have the exclusive jurisdiction in all matters relating thereto and arising thereunder.
11. It is hereby agreed that in case of an award of contract, the partners to this Joint Development Agreement do hereby agree that we shall furnish the Security Deposit in favour of Procurer as stipulated in the bidding documents (RFQ/RFP and Power Purchase Agreement) shall be furnished jointly on behalf of the consortium members in favour of the Procurer.
12. It is further expressly agreed that the Joint Development Agreement shall be irrevocable and shall form an integral part of the Contract and shall remain valid till the term of the Contract unless expressly agreed to the contrary by the Procurer.
13. The Lead Member shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFQ/RFP and for the purposes of the project.

14. It is hereby expressly understood between the partners to this joint development agreement that neither partner may assign or delegate its rights, duties or obligations under the contract except with prior written consent of [Name of the Distribution Licensee].

This Joint Development Agreement

- (a) has been duly executed and delivered on behalf of each Partner hereto and constitutes the legal, valid, binding and enforceable obligation of each such Partner,
- (b) sets forth the entire understanding of the Partners hereto with respect to the subject matter hereof;
- (c) may not be amended or modified except in writing signed by each of the Partners and with prior written consent of [*Name of the Distribution Licensee*]:

IN WITNESS WHEREOF, the partners to the joint development agreement have, through their authorised representatives, executed these present and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

For M/s

(Partner 1)

| | |
|---|--|
| 1. Common Seal of M/s..... have been affixed in my/ our presence pursuant to Board of Directors Resolution dated Signature..... Common Seal of the Company Name | (Signature of the authorised representative) Name..... Designation..... |
|---|--|

For M/s

(Partner 2)

1. Common Seal of
M/s.....
have been affixed in my/
our presence pursuant to
Board of Directors Resolution
dated

.....
(Signature of the authorised
representative)

Name.....

Signature.....

Designation.....

Common Seal of the Company
Name

.....

For M/s
(Partner 3)

1. Common Seal of
M/s.....
have been affixed in my/
our presence pursuant to
Board of Directors Resolution
dated

.....
(Signature of the authorised
representative)

Name.....

Signature.....

Designation.....

Common Seal of the Company
Name

.....

For M/s
(Partner 4)

1. Common Seal of
M/s.....
have been affixed in my/
our presence pursuant to
Board of Directors Resolution
dated

.....
(Signature of the authorised
representative)

Name.....

Signature.....

Designation.....

Common Seal of the Company
Name

.....

Name of Distribution Licensee

Vol II

Request for Proposal

for

**Tariff Based Bidding Process for Procurement of Power
on Long Term Basis by Setting up Power Stations at
where location or Fuel is not specified**

**(As per Guidelines for Determination of Tariff by Bidding
Process for Procurement of Power by Distribution
Licensee)**

Long Term Procurement (more than 7 years)

Standard Bid Documents

Issued by

**Office of
Address**

Name and address of Distribution Licensee

Bid specification for supply of power to Name of the Distribution Licensee in the Name of State (India).

This bid document along with Annexure as per Index is issued to -

M/s. _____

| |
|---|
| <hr/> <hr/> <hr/> <hr/> <p>NOTES:</p> <ol style="list-style-type: none">1. This document is not transferable.2. Though enough care has been taken while issuing the bid documents, the Bidder should satisfy himself that documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received by this office from any Bidder within ten days from the date of issue of bid documents to him, then this office shall consider that the bid documents complete in all respects have been received by the Bidder. <p style="text-align: center;"><u>Name of the issuing officer</u></p> <p>Place:</p> <p>Date:</p> |
|---|

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5. INTRODUCTION

- 5.1.1.1 Name of the Distribution Licensee, (herein after referred to as Procurer) acting through the Name of the Office, Address, wishes to invite bids for purchase of power on a long-term basis.
- 5.1.1.2 The intent of this bid document is to identify generators and traders for supply of minimum A MW and maximum B MW of power for a period of z¹⁵ years. The successful Bidders shall enter into a Power Purchase Agreement (PPA) as detailed out in the Power Purchase Agreement forming the part of this document.
- 5.1.1.3 The Bidders may submit responses for supply of power at generator switchyard bus-bar or any other delivery point, with contracted capacity being not less than A¹⁶ MW.
- 5.1.1.4 All Bidders are required to submit information in accordance with the guidelines set forth in this bid document. Bidders should provide information sought herein in order to satisfactorily establish their competence and suitability for executing the project.
- 5.1.1.5 The contracted power shall be sold only to the Procurer as per the terms and conditions of a Power Purchase Agreement (PPA). The PPA is attached in Annexure 3. Procurer would retain dispatch rights over the capacity of the generating station, during the term of the PPA, which has been allocated to it by the Bidder under this Bid. Post expiry of the PPA, Procurer reserves the right to extend the term of the agreement after mutual discussions.

¹⁵ The PPA Term will be decided by each Procurer and it should be greater than the sum of the period between PPA signing and Scheduled Commercial Operation Date of the plant ; and seven (7) years. It is advisable to go for PPA term coinciding with the life of the project. The expected life project is estimated to be 15 years for gas/liquid fuel based projects, 25 years for coal based projects and 35 years for hydro projects

¹⁶ Each Procurer shall specify this minimum in MW to be supplied in at the delivery point. The minimum capacity should be 5 MW or 1% of B MW; whichever is greater.

6. INFORMATION AND INSTRUCTION TO BIDDERS

6.1 Purchase of power by Procurer

- 6.1.1.1 The terms used in this document have the same meaning as defined in the Power Purchase Agreement (PPA) provided in Annexure 3.
- 6.1.1.2 Procurer plans to procure power to the extent of B MW. The power can be delivered at the generator switchyard bus-bar or at any other delivery point. The Normative Availability or Normative Capacity Index¹⁷ required to be met by the Bidder on an annual basis, for the purpose of calculating incentives, shall be 80%¹⁸.
- 6.1.1.3 Procurer guarantees a minimum offtake of 80% of contracted capacity on annual basis. The detail breakup of minimum offtake depending on the time period is as follows¹⁹:

| Time Period | Minimum offtake at |
|------------------------|------------------------------|
| [] Month to [] Month | ()% of contracted capacity |
| [] Month to [] Month | () % of contracted capacity |

- 6.1.1.4 The capacity charges of the Bidder will be reduced on prorata basis for any annual shortfall in achieving Normative Availability²⁰, in a period. The Bidder shall pay a penalty²¹ at the rate of 20% of the Capacity Charges, in Rs./kWh on the units under shortfall below the Minimum Offtake levels as mentioned in clause 2.1.1.2 and 2.1.1.3. But the above penalty will be levied only if drawl schedule given by the Procurer is more than the actual generation of the Bidder.
- 6.1.1.5 The Procurer shall have the first right of dispatch against the Minimum Offtake Guarantee as detailed in Article 2.1.1.3 and 2.1.1.4.
- 6.1.1.6 (This clause is only in case of State Electricity Boards procuring power) Procurer also reserves the right to assign the PPA in full or in part to the successor entities, post restructuring, in accordance with provisions of

¹⁷ In case the successful Bidder is a hydro power plant, the Procurer may mention separate Normative Availability and Normative Capacity Index defined for thermal and hydro plant.

¹⁸ To be decided by the Procurer in line with the tariff regulations of CERC at the time of preparation of the bid document

¹⁹ The objective here is to take care of the seasonal drop in demand and therefore may be specified by each Procurer as per their respective requirements. This may also be done away with in case its not required by some Procurer

²⁰ Normative capacity index in case of hydro plants

²¹ In case of hydro plants units generated will be calculated taking into account the availability of water i.e. no hydrological risk to the Bidder

Electricity Act 2003, provided the terms and conditions for supply of power does not get affected through such assignment.

6.1.1.7 The successful Bidder shall have to sign the Power Purchase Agreement with Procurer within 60 days from the date of Letter of Award. All charges for preparing the PPA including legal fee, stamp fee etc. shall be borne by the successful Bidder. The PPA shall be signed in three originals, two to be retained by Procurer and one by the Bidder.

6.1.1.8 If the successful Bidder fails to sign the PPA within the stipulated time frame, the same shall constitute sufficient grounds for annulment of the award of the particular project and invocation of Bank Guarantee.

6.2 Specifications for the plant

6.2.1 Size and Location of Sourcing Plants

6.2.1.1 The Bidder must mention the location and size of the plant from where the power is proposed to be sourced for intended sale to the Procurer.

6.2.2 Choice of Fuel and Technology

6.2.2.1 The choice of fuel & mode of transportation shall be decided by the Bidder. The Bidder has to assume full responsibility to tie up the fuel linkage and to set up the infrastructure requirements for fuel transportation and its storage.

6.2.2.2 The project may use any technology i.e. Diesel Generating (DG) sets, Gas Turbines - open cycle/combined cycle, boiler and Turbo-Generator (TG) based coal fired generating stations, Hydro Plants etc. However, the Bidder must clearly indicate the technology, fuel type and fuel source that will be adopted, in its bid.

6.3 Commencement of Supply and Penalty for delay

6.3.1.1 The Bidder shall achieve Scheduled Commercial Operation Date within aa²² months from the signing of the PPA.

6.3.1.2 If supply of power from the plant is delayed beyond the Scheduled Commercial Operation Date as indicated by the successful Bidder at the time of signing of PPA, due to any reason attributable either to the selected

²²Need to be decided by the Procurer and it should be more than 48 months.

Bidder or his contractors, except for Force Majeure conditions (as specified in the PPA), the Bidder shall have the option of supplying the contracted power to Procurer from alternate sources at the agreed tariff or pay an agreed penalty as detailed in Articles 3.5 and 4.6 of Draft PPA enclosed along with the RFQ.

6.3.1.3 If the Bidder is able to supply part of the contracted power earlier than the complete contracted power, he can commence supply earlier for that part / block of capacity. The Bidder however has to declare the same at the time of bid submission. Thus the Bidder can provide a time schedule for commencing supply of the contracted capacity (power supply schedule) to the Procurer. The Bidder will receive payment on the basis of tariff quoted by him if the power supply is in accordance to the agreed schedule in the PPA and where a three months notice has been given to the Procurer in advance for the commissioning of specific unit. But for any other power supplied to Procurer before the scheduled commissioning date the Bidder would receive only the Variable Charges.

6.3.1.4 If the Bidder is able to supply part of the contracted power earlier than the complete contracted power, he can commence supply earlier for that part / block of capacity. The Bidder however has to declare the same at the time of bid submission. Thus the Bidder can provide a time schedule for commencing supply of the contracted capacity (power supply schedule) to the Procurer. The Bidder will receive payment on the basis of tariff quoted by him if the power supply is in accordance to the agreed schedule in the PPA and where a three months notice has been given to the Procurer in advance for the commissioning of specific unit. But for any other power supplied to Procurer before the scheduled commissioning date the Bidder would receive only the Variable Charges.

6.4 Clearances

6.4.1.1 Option 1²³: The Bidder shall be responsible for obtaining all the clearances/ approvals, wherever required, from Central/ State government, and statutory bodies, for the supply of power up to any point in the State Transmission Utility Name²⁴ bus. All expenses for obtaining the clearances/ approvals shall be borne by the Bidder. The payment for the Transmission Charges²⁵ and other related charges for scheduling should be made directly by the Procurer to the CTU/STU/Other Transmission Licensee as per the norms notified by the Appropriate Commissions for computation of these charges.

OR

²³ Based on Procurer's decision any of the two options can be chosen

²⁴ Name of the State Transmission Company of the state of Procurer

²⁵ Inclusive of losses

Option 2: The Bidder shall supply power at the generator switchyard bus or any other delivery point as opted by the Bidder and the responsibility for evacuation of power will be of Procurer. The payment for the Transmission Charges²⁶ and other related charges for scheduling should be made directly by the Procurer to the CTU/STU/Other Transmission Licensee as per the norms notified by the Appropriate Commissions for calculation of these charges.

2.4.1.2 The procurer shall provide details of the inter-connection network as per Annexure 6.

6.5 Tariff Structure²⁷

6.5.1.1 The tariff shall be payable in Indian Rupees only. Bidders shall quote tariff for each year during the term of the PPA, starting from the date of commencement of supply of power. The payment will be made to the successful Bidder on the basis of these quoted values and no further escalation on the same will be provided during the duration of the PPA.

6.5.1.2 Capacity Charge may comprise of:

1. Non-escalable Capacity Charge (Rs./kWh) shall be quoted for each year of the term of the PPA; and
2. Escalable Capacity Charge: Bidder shall quote a Base Year²⁸ charges, based on the normative availability. The escalable charges for the subsequent years shall be computed using the indices mentioned in Annexure 7.

In case the actual availability is less than the normative availability (or Normative Capacity Index for Hydro Plants) as specified in this bid document, Capacity Charges paid shall be reduced on the prorated basis. Moreover there will be a penalty imposed at the rate of 20% of capacity charges (sum of non-escalable and escalable capacity charges) on the units under shortfall as compared to Minimum Offtake Guarantee provided by the Bidder (refer section 2.1). The penalty amount shall be calculated on a cumulative basis within a specific period as mentioned in section 2.1.

Incentive for availability higher than the normative availability shall be []²⁹ paise per unit for the units corresponding to the actual and normative availability.

6.5.1.3 Variable Charges

²⁶ Inclusive of losses.

²⁷ For Hydro Plant, all the tariff components quoted by the Bidder in Rs/kWh should be on the design energy basis and the design energy calculations should be attached along with the quote separately. The Procurer may ask the Bidder to get the design energy figures checked by an identified agency, at the stage of evaluation of the bid.

²⁸ First year of operation

²⁹ The incentive per unit can not be more than 40% of the non-escalable Capacity Charges quoted by the Bidder.

Bidder shall either quote for the Variable Charges in Rs./kWh for each year for the tenure of the PPA or shall quote the base year Variable Charge in Rs./kWh.

If the Bidder has quoted only the base year Variable Charges, the payment of variable charge for subsequent years shall be in accordance with the fuel escalation indices provided by the CERC. The escalation indices in force i.e at the time of submission of bid, shall be considered for the purpose of bid evaluation. The variable charges shall be paid based on scheduled energy.

No variable charges shall be payable for hydro power plant.

6.6 Prebid Conference

6.6.1.1 The Bidder or his official representative is invited to attend pre- bid meeting which will take place at the following address:

Address of the Office

6.6.1.2 Date and time for pre-bid conference shall be as indicated to the Bidders in due course based on the timetable indicated in paragraph 2.9.1.2.

6.6.1.3 The purpose of the meeting will be to clarify any issues regarding the bid process.

6.6.1.4 The Bidder is requested to submit questions in writing or by cable to reach Procurer at the address indicated above one week before the pre-bid meeting. For any questions regarding the deviation/comments on the Draft PPA the Bidder should adhere to the format enclosed in Annexure 8.

6.6.1.5 Record notes of the meeting including the text of the questions raised and responses given will be transmitted to all the purchasers of the bid document. The clarifications that could not be furnished during pre-bid conference will be separately communicated to all the purchasers of the bid document.

6.6.1.6 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

6.7 Amendment of bid document

6.7.1.1 At any time prior to the deadline for submission of bids, Procurer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the bidding documents by an amendment.

6.7.1.2 The amendment shall be notified in writing through a letter or by telex or fax or cable to all prospective Bidders who have purchased the bidding documents and shall be binding on them.

6.7.1.3 In order to afford prospective Bidders reasonable time to take the amendment into account in preparing their bids, Procurer may, at its discretion, extend the deadline for the submission of bids.

6.8 The bidding process

6.8.1 Bid Formats

6.8.1.1 The bids against this Invitation for Bids will be submitted by the Bidder in two volumes -

Volume I - Technical Information separately for each generating station (Annexure 1)

Volume II - Financial Information (Annexure 2)

The information to be submitted for each volume is specified in Chapter 4 (Formats of Application) of this document.

6.8.1.2 *Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures/pamphlets. Non-adherence to formats and/or submission of incomplete information may be grounds for declaring the bid non-responsive. Each format has to be duly signed and sealed by the Bidder.*

6.8.1.3 The Bidder should note that:

- c) If the Bidder deliberately gives wrong information in its bid to create circumstances for the acceptance of its bid, Procurer reserves the right to reject such bid and/or cancel the award, if made.
- d) Bids submitted by the Bidder shall become the property of Procurer and Procurer shall have no obligation to return the same to the Bidder.

6.8.2 Bidder to inform himself fully

6.8.2.1 The Bidder shall make independent enquiry and satisfy himself as to all the required information, inputs, conditions and circumstances and factors that may have any effect on his bid tariff. In assessing the bid it is deemed that the Bidder has inspected and examined the site conditions and its surroundings, examined the laws and regulations in force in India, the transportation facilities available in India, the conditions of roads, bridges, ports, etc. for unloading and/or transporting heavy pieces of material and to have based its design, equipment size and fixed its price taking into account

all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power.

6.8.2.2 In their own interest, the Bidders are requested to familiarize themselves with the Income Tax Act, the Companies Act, the Customs Act and all other related acts and laws prevalent in India. Procurer shall not entertain any request for clarifications from the Bidders regarding such local laws and the conditions. However, Procurer shall direct the Bidder from where they may obtain such assistance provided the request for such assistance is received well in advance. However, non-receipt of such information shall not be a reason for the Bidder to request for extension in opening date of the bid. The Bidder shall understand and agree that before submission of its bid all such factors, as generally brought out above, have been fully investigated and considered while submitting the bid.

6.8.2.3 Procurer shall not permit any change in time schedule or any financial adjustment arising thereof which are based on lack of clear information of such site conditions, laws and regulations and other related information and/or its effect on the tariff quoted in the bid.

6.9 Due dates

6.9.1.1 The Bidder should submit the proposals so as to reach the following address by 12.30 hrs on _____:

Address of the Office

6.9.1.2 Important deadlines are mentioned below:

| Date | Event |
|---------------------------|--|
| T ₀ | Issuance of RFP |
| T ₀ + 60 days | Bid clarification, conferences etc. |
| T ₀ + 90 days | Final clarification and revision of RFP |
| T ₀ + 270 days | Technical and Price Bid Submission |
| T ₀ + 300 days | Short listing of Bidder and issue of LOI |
| T ₀ + 335 days | Signing of Agreement |

6.9.1.3 Note:

- Specific queries seeking clarifications, to be addressed in the pre-bid conference should reach Procurer at least one week before the pre-bid conference.
- Volume I and II would be opened in the presence of one representative from each Bidder, on the same day as the last date of submission of bids at Name & Address of the Office

- The following information from each bid will be read out to all Bidders at time of opening of Volume I and II
 - Name of the Bidding Company / Companies in case of Bidding Consortium (Format 1 of Annexure 1)
 - Plant capacity and proposed delivery points (paragraph 1.2 of Annexure 1)
 - Time schedule for commencement of delivery (Format 2 of Annexure 2)
 - Submission of Bank Guarantee (Annexure 5)
 - Tariff Quote - Capacity Charge and Variable Charge for entire term of PPA (Format 3 of Annexure 1)

6.10 Validity of the Offer

6.10.1.1 The offer shall remain valid for a period of not less than six months from the last date of proposal submission. Procurer reserves the right to reject any proposal which does not meet this proposed validity requirement.

6.10.1.2 In exceptional circumstances, Procurer may solicit the Bidder's consent for an extension of the period of validity. The request and the response thereafter shall be in writing. A Bidder may refuse the request without invoking its Bank Guarantee. A Bidder accepting Procurer's request for validity extension shall not be permitted to modify his bid. The validity of the bank guarantee furnished by the Bidder shall also be suitably extended.

6.10.1.3 Procurer has the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

6.11 Method of submission

6.11.1.1 Various volumes of the bids are to be submitted in separate envelopes. The envelopes should be transcribed in the following way;

First Envelope superscript - "Bidder Name- _____"
"Volume I : Technical Information"

Second Envelope superscript - "Bidder Name _____"
"Volume II: "Financial Information"

6.11.1.2 Apart from Volume I : Technical Information, the first envelope should also contain a covering letter (format as per Annexure 4), and Bank Guarantee (s) (format as per Annexure 5). Bids without Bank Guarantee, shall be rejected.

6.11.1.3 The two envelopes for the bid submitted by Bidders should be packed in a single sealed envelope or a box, with the following superscript

“Bid for supply of power to Procurer”
“Name of the Office”
“Name of the Bidder _____”

6.11.1.4 *The Bidder has the option of sending his bid by registered post or submitting the bid in person so as to reach Procurer at the designated address by the time and date stipulated by Procurer. Bids submitted by telex/telegram/fax shall not be considered under any circumstances. Procurer shall not be responsible for any delay in receipt of the bids. Any bid received by Procurer after the deadline for submission of the bids stipulated by Procurer shall not be opened.*

6.11.1.5 *It may please be noted that the covering letter and Volume I of the bids shall not contain any tariff related information. All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder.*

6.11.1.6 *All volumes shall be submitted in 1 original + ___copies³⁰. No change or supplemental information to a proposal will be accepted after its submission. Procurer reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the proposal.*

6.11.1.7 If the outer envelope is not sealed and not marked as per the requirement, Procurer will assume no responsibility for the bid's misplacement or premature opening.

6.12 Preparation cost

6.12.1.1 The Bidder shall be responsible for all the costs associated with the preparation of the proposal and participation in discussions and negotiations. Procurer shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

6.13 Bank Guarantee

6.13.1.1 Each Bidder shall submit bid accompanied by a refundable deposit of Rs 5 Lakhs per MW of the Contract Capacity bid by the Bidder as Bank Guarantee (as per the format attached in Annexure 5). The Bank Guarantee can be from Nationalized/Scheduled/Foreign Bank with office in India.

³⁰ To be specified by the respective Procurer

6.13.1.2 For unsuccessful Bidders the Bank Guarantee shall be released within 30 (thirty) days of placement of order on selected Bidder.

6.13.1.3 For the successful Bidder the Bank Guarantee shall be increased to 7.5 Lakhs per MW and which shall be further linked to achievement of conditions subsequent as detailed in Article 3 of the PPA. The time period of achieving conditions subsequent is 12 months from the date of signing of the PPA.

6.13.1.4 In case the conditions subsequent are not met by the envisaged time, the Procurer can either increase the time period to achieve the specific conditions subsequent without imposing any penalty looking at the reasons for delay or encash and appropriate in their favour as liquidated damages an amount equivalent to 20 % of the Bank Guarantee for delay of each month or part thereof, as the case may be, except in the case of Force Majeure. The bank guarantee (s) shall be valid upto the envisaged Scheduled Commercial Operation Date of the project.

6.13.1.5 The Bank Guarantee can be invoked on account of (but not limited to) the following:

- Failure of Bidder to complete any of the conditions subsequent within one year from the signing of the PPA.
- Penalties to be paid by the Bidder for delayed Entry into Commercial Operation
- Any Bidder Event of Default, as detailed in PPA

6.13.1.6 ***Bidders may note that***

- ***Language of the bids shall be English only.***
- ***Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.***
- ***Bids that are incomplete i.e. which do not substantially meet the requirements prescribed in this bid document and which do not submit the Bank Guarantee; will be rejected by Procurer.***
- ***Bids containing incomplete information in the specified formats would be liable for rejection.***
- ***All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder.***
- ***Bidders delaying in submission of additional information or clarifications sought, may be liable for rejection.***
- ***If in response to this proposal, the Bidder makes any claim, which does not reflect the truth or is material misrepresentation of facts, then the bid would be liable for rejection.***
- ***Procurer reserves the right to reject all or any of the proposals without assigning any reasons whatsoever.***
- ***Procurer reserves the right to restrict the capacity of power supply awarded to a Bidder, on the account of (but not limited to) the following:***
 - ***The technical strength of the Bidder***

- ***Distribution of the risk of relying on fewer number of Bidders for required capacity addition***

6.14 Settlement of Disputes

6.14.1.1 Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by the Appropriate Commission as provided under section 79 or 86 of the Electricity Act, 2003 and the Appropriate Commission may refer the matter to Arbitration as provided in the said provision read with section 158 of the said Act

6.15 Enquiries

Clarifications could be sought from:

| | |
|------------------------------|-------|
| <u>Address of the Office</u> | Off : |
| | Fax : |

7. EVALUATION CRITERIA

7.1.1.1 The bid evaluation process comprises of the following four steps:

3. Step I – Responsiveness check
4. Step III - Technical evaluation of bids
5. Step IV - Financial evaluation of bids
6. Step V - Bidder selection

7.2 Step I - Responsiveness check

7.2.1.1 The Bids submitted by Bidders/ Bidding Consortia shall be initially scrutinized to establish “Responsiveness”. The following conditions shall cause the bid to be deemed “Non-responsive”:

- Bid not received by the due date
- Sufficient information not submitted for the bid to be evaluated and/or information not submitted in specified formats as mentioned in Annexure 1 and Annexure 2
- Bid not signed by authorised signatory and / or sealed in the manner and to the extent indicated in this Request for Proposal.
- Bid not accompanied by a valid Bank Guarantee as specified in this Request for Proposal
- Bid not including the covering letter as per format in Annexure 4
- Bid not including the comfort letter from the fuel supplier for fuel linkage
- In case the Bidder is a Trading Company, the necessary documentary proof for identifying the Generator is not been submitted

7.3 Step II - Technical Evaluation of Bids

7.3.1.1 Step II (technical evaluation of bids) will be carried out based on information furnished under Volume I, by Bidders as prescribed under Chapter on Format of Application.

7.3.1.2 The evaluation would be based on the assessment of the following parameters:

- Bidder quoting for more than the minimum contracted capacity to be bid, as specified in the Article 1.1.1.3
- Ability of the Bidder/ Bidding Consortium to meet Procurer’s schedule for commencement of Power Supply as specified in Article 2.3.1.1
- Ability of the Bidder/ Bidding Consortium to ensure uninterrupted Power Supply.
- Ability of the Bidder for fuel linkage

7.3.1.3 Bids qualifying on Step I and Step II, would qualify for evaluation in Step III.

7.4 Step III - Financial Evaluation of Bids

7.4.1 General

7.4.1.1 Step III (financial evaluation of bids) will be carried out based on information furnished under Volume II.

7.4.1.2 This Step would entail the evaluation of quoted tariffs and the analysis of the scheduled time of completion, risk sharing pattern, etc.

7.4.1.3 The bids would be compared on the basis of quoted tariff parameters. For the purpose of evaluation, “year” shall mean period beginning April 1 in a calendar year and ending on March 31 in the subsequent calendar year.

7.4.1.4 The Bidder would submit the different components of tariff in the manner specified in Format 3 of Annexure II

7.4.1.5 The bid submitted above would be processed in the following manner to arrive at the nominal tariff for each year

7.4.2 Variable Charges (Rs/kWh):

7.4.2.1 The Bidder shall quote Variable Charges as either:

7.4.2.2 Variable Charges for each year in the term of the PPA. The same shall be used for evaluation of the bidder; or

7.4.2.3 Variable charge for the base year. The evaluation of the Bidder shall be based on the escalation rate applicable for different fuels as provided in the table below:

| Fuel Proposed | Escalation Rate by the Bidder ³¹ |
|---------------------------|---|
| Coal (Indian or Imported) | |
| Domestic Gas | |
| R-LNG | |

³¹ As notified by CERC at the time of issue of RFP document

No variable charge shall be quoted by Bidders proposing to supply power from Hydel plants.

7.4.3 Capacity Charge (Rs / kWh):

7.4.3.1 Capacity Charges shall consist of Non-escalable charge and Escalable charge.

7.4.3.2 Non-escalable Capacity Charge (Rs./kWh) based on normative availability³²: This component has to be quoted as firm figure for each year over the term of the PPA, after the start of commercial operation of the plant.

7.4.3.3 Escalable Capacity Charge (Rs./kWh) based on normative availability: The Bidder shall quote the Base Year Escalable Capacity Charges. The Escalable Capacity Charges along with an indices linked escalable rate, as mentioned in Annexure 7, will be payable to the Bidder in the duration of the PPA, after the start of commercial operation of the plant.

7.4.3.4 If the ratio of minimum and maximum Capacity Charges quoted for any year is less than 0.7³³, then the bid shall be rejected and shall not be evaluated further. At the evaluation stage to check whether Bidder's have met this condition, an escalation of 4%³⁴ will be taken over Base Year Escalable Capacity Charges.

7.4.4 Transmission/ Wheeling Charges (Rs / kWh):

7.4.4.1 For the purpose of evaluation of bid normative wheeling charges³⁵ will be taken, from the generating plant feeder end or any other delivery point to the State Transmission Utility Network. Normative wheeling charges³⁶ i.e. Interregional or regional charges of the CTU, should be calculated as per the prevailing norms laid down by the Appropriate Commission, as mentioned in the Electricity Act 2003.

7.4.4.2 The above three tariff parameters (Variable Charges, Capacity Charges and Transmission Charges) would be summed up to arrive at the nominal tariff (per unit) for each year. For arriving at Escalable Capacity Charges and Transmission Charges for each year of the term of the PPA; and where only

³² Normative availability shall be aligned to the level specified in the tariff regulations of the CERC prevailing at the time of the bid process. For Hydro Plant, all the tariff components quoted by the Bidder in Rs/kWh should be on the design energy basis and the design energy calculations should be attached along with the quote separately. The Procurer may ask the Bidder to get the design energy figures checked by an identified agency, at the stage of evaluation of the bid.

³³ To avoid excessive front loading or back loading during the term of the contract

³⁴ To be specified by Procurer on the basis of CERC notified indices at the time of issue of this bid document

³⁵ Inclusive of losses computed at last year's average losses

³⁶ Procurer should specify in the bidding documents the normative transmission charges for regional, interregional and state transmission networks

base year tariff has been quoted (or known, as in case of Transmission Tariff), an annual escalation of 4%³⁷ will be assumed at the time of evaluation. For considering escalation rate of Variable Charges the methodology as described in section 3.4.2 will be followed. The Levelised Tariff over the duration of the PPA would be computed for each Bidder.

7.4.4.3 The Bidders will be ranked on the basis of the levelised tariffs. If two Bidders have the same levelised tariff, the Bidder with lower Non-Escalable Capacity Charges in initial five years shall be given a preference.

7.4.4.4 The discount rate that shall be used for the purpose of evaluation will be as notified by CERC (as applicable at the time of issuance of the bid documents)

7.5 Step IV - Bidder Selection

7.5.1.1 The Bidder with lowest Levelised Tariff (L1) as evaluated in Step III would be invited for discussions. The endeavor would be to achieve the best financial and commercial terms regarding risk sharing, and project completion schedule in comparison with suitable benchmark terms acceptable to Procurer. However, there would be no negotiations on tariff or contracted capacity.

7.5.1.2 In case the Successful Bidder, i.e. Bidder with lowest Levelised Tariff (L1) does not sign the PPA within the timelines stipulated herein, the next ranked Bidder (L2) on the score in Step III would be invited for discussions. The process will continue till Bidders are selected for the complete B MW power purchase, subject to each Bidder having minimum contracted capacity of A MW. Procurer reserves the right to increase / decrease the total procurement capacity (currently B MW), based on the bids received.

³⁷ To be specified by Procurer on the basis of CERC notified indices at the time of issue of this bid document

8. FORMAT OF APPLICATION

8.1.1.1 This chapter prescribes formats for submission of information to ensure that information and data collected from each Bidder would be interpreted in a consistent manner. Hence it is required that all Bidders should submit information as per the formats indicated below.

8.2 TECHNICAL INFORMATION (VOLUME - I)

8.2.1.1 The details of information required for technical information are attached under Annexure 1. The Bidder shall provide a technical outline of the bid as under:

1. Scheme of supply
2. Details of proposed power plant
3. Type of plant and fuel
4. Land and water requirements including plans for meeting these requirements
5. Communication System
6. Environmental Aspects
7. Time schedule for commencement of supply (Format 2)
8. Pre-feasibility study/ Detailed Project Report, if available for reference
9. Design Energy data, for Hydro Power Plant only

8.2.1.2 The Bidder shall also ensure compatibility of the proposed plant with the grid requirements as specified by Procurer in Annexure 1.

8.3 FINANCIAL INFORMATION (VOLUME - II)

8.3.1 Formats

8.3.1.1 The reference to formats under financial information (Volume - II) is to formats attached under Annexure 2. Under this volume the Bidder would have to indicate

The proposed capacity and tariff quotes (Format 3)

- Details of the proposed plant- For reference only
 - Cost of fuel along with assumptions made.
All key operating parameters used for determination of tariff such as plant heat rate, auxiliary consumption, secondary fuel consumption, fuel calorific value, assumptions for working capital etc.
 - Project cost (Format 4)(**for information only - will not form basis of evaluation**)

- Proposed financing structure (***for information only - will not form basis of evaluation***)

8.3.2 Tariff and capacity quotes:

8.3.2.1 Bidders are required to provide the tariff quotes as per Format 3.

8.3.2.2 Tariff to be paid in Rupees will consist of following components:

8.3.2.3 Variable Charge: Bidder should quote Variable Charge component in Rs. / kWh, for each of the year during the term of PPA or can quote only the base year variable charges in Rs./kWh (as detailed in section 3.4.2). Not applicable for Hydro Power Plants.

8.3.2.4 Non-Escalable Capacity Charge: Bidder should quote non-escalable Capacity Charge component in Rs./kWh based on the normative availability³⁸, for each of the year after the start of commercial operation of the plant (as detailed in section 3.4.3). If the ratio of minimum and maximum Capacity Charges quoted for any year is less than 0.7³⁹, then the bid shall be rejected and shall not be evaluated further (refer section 3.4.3.4).

8.3.2.5 Escalable Capacity Charge: Bidder should quote escalable Capacity Charge component in Rs / kWh based on the normative availability, for the base year (as detailed in section 3.4.3).

8.3.2.6 In the case of Gas Turbine, the Bidder shall quote only one set of figures for all tariff parameters for the first year of operation covering both open cycle and combined cycle operation.

8.3.3 Details of project cost and means of finance

8.3.3.1 Details about Project cost {As per Format 4 }: Only for reference and not for evaluation

Note:

- 1. Project cost (Format 4) will not be used as a basis for evaluation.**
- 2. Correctness and completeness of the assumptions underlying the total project cost and other costs shall be responsibility of the Bidder. Any change in actual project cost or other costs from the**

³⁸ For Hydro Plant, all the tariff components quoted by the Bidder in Rs/kWh should be on the design energy basis and the design energy calculations should be attached along with the quote separately. The Procurer may ask the to get the design energy figures checked by an identified agency, at the stage of evaluation of the bid.

³⁹ To avoid excessive front loading or back loading during the term of the contract.

estimate will have no bearing on the tariff quoted under Format 3 of Annexure 2.

- 3. The tariff quoted as per Format 3 shall be all inclusive tariff. No exclusions shall be allowed. The Bidder shall take into account all costs i.e. capital and operating (including statutory taxes, duties, levies etc.). Availability of the inputs necessary for generation of power should be ensured by the Bidder at the project site and all costs involved in procuring the inputs at the project site must be reflected in the tariff quoted.*
- 4. Bids having tariffs quoted with conditionalities, shall be liable for rejection.*

Checklist for Bidders

The Bidder may use the checklist below to ensure that the bid submitted is complete in all respects.

Volume I.

- Information requirement as per Annexure 1.
- Design Energy data, in case of Hydro Power Plant
- Comfort Letter for Fuel Linkage
- Format 1 – Executive Summary
- Format 2 - Time schedule for project completion
- Covering Letter (Format as per Annexure 4)
- Bank Guarantee (s)(Format as per Annexure 5)

Volume II

- Format 3 - Tariff and capacity quotes
- Format 4 - Details about project cost

Please note that the information requirement prescribed above is the minimum information required from the Bidders. The Bidder may provide additional information to support and supplement the above.

ANNEXURE 1

FORMATS FOR TECHNICAL INFORMATION (VOLUME I)

1. TECHNICAL INFORMATION

2.1 Fuel

- Type of fuel
- Mode of transportation of fuel
- Mode of storage of fuel
- Source of fuel (Domestic or Imported)
- Arrangements/Contracts for long term supply of fuel

2.2 Plant Capacity and Proposed Delivery Point

| S. No. | Plant / Unit | Proposed interconnection point | Net Capacity available for delivery at proposed interconnection point |
|-----------------|--------------|--------------------------------|---|
| | | | |
| | | | |
| | | | |
| Total Capacity: | | | |

2.3 Land and water requirements

Bidders are required to indicate land and water availability for the plant as per the following format:

| Site Proposed | Land Available | Water Avlb. (Cu. m./day) |
|---------------|----------------|--------------------------|
| | | |
| | | |
| | | |

2.4 Environmental Aspects

Signature _____
For

Bidder's Rubber Seal and Full Address

Format 1: Executive Summary

1.1.a Name of the Bidding Company/ Bidding Consortium

1.1.b Name of the Lead Member in the case of a Bidding Consortium

1.2 Details of the Bidding Consortium

| S. No. | Name of the Company | Role Envisaged |
|--------|---------------------|----------------|
| | | |
| | | |
| | | |
| | | |
| | | |

1.3 Details of the contact person

Name

Designation

Company

Address

Phone Nos.

Fax Nos.

E-mail address

Signature _____

For

Bidder's Rubber Seal and Full Address

Format 2: Time Schedule for Commencement of Delivery

1. *The Bidder should submit the date on which the supply will commence.*
2. *In case the Bidder plans to commence supply of a part of the contracted capacity at different date, then the date and the capacity should be provided.*

| Date of commencement | Capacity (in MW) |
|----------------------|------------------|
| | |
| | |
| | |

Signature _____
For

Bidder's Rubber Seal and Full Address.

ANNEXURE 2

FORMATS FOR FINANCIAL INFORMATION (VOLUME II)

Format 3: Tariff and Capacity Quotes

The Bidder quote should be received in the following format, from year of commencement of supply to subsequent z years:

Capacity bid for:

Delivery Point:

| Tariff Period | 1 ⁴⁰ | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
|---|-----------------|---|---|---|---|---|---|---|---|----|----|----|----|----|----|
| Variable charge (Rs/kWh) | | | | | | | | | | | | | | | |
| Non-escalable Capacity Charge (Rs./kWh) | | | | | | | | | | | | | | | |
| Escalable Capacity Charges (Rs/kWh) | | | | | | | | | | | | | | | |
| Design Energy | | | | | | | | | | | | | | | |

Note:

1. In the case of Gas Turbine, the Bidder shall quote only one set of figures for all tariff parameters for the first year of operation covering both open cycle and combined cycle operation.
2. In case of variable charges a Bidder is opting for quoting the base year tariff than he needs to fill the first column only.
3. In case of Escalable Capacity Charges, the Bidder shall quote only the Base year tariff i.e. he needs to fill the first column only.
4. If the ratio of minimum and maximum Capacity Charges quoted for any year is less than 0.7, then the bid shall be rejected and shall not be evaluated further (refer section 3.4.3.4).
5. Design Energy⁴¹ need to be specified for Hydro Power Plant only

⁴⁰ The year of commencement of supply

⁴¹ As defined in the CERC (Terms and Conditions of tariff) Regulations

Signature _____
For

Bidder's Rubber Seal and Full Address.

Format 4: Details about Project cost *(for information only, not to be used for evaluation)*

1. The format is to be filled for a new plant is being set up / plant already set up from where the power is proposed to be sourced.

| No | Item | Indigenous component | Foreign component | Total cost in Rs. |
|----|--|----------------------|-------------------|-------------------|
| 0 | Studies, investigations and preliminary works | | | |
| 1 | Cost of land | | | |
| 2 | Cost of Civil works | | | |
| 3 | Know-how engineering and consultancy | | | |
| 4 | Plant& Equipment* a. Mechanical equipment b. Electrical equipment c. Control instrumentation and Data Acquisition System d. Fuel transportation e. Miscellaneous tools and plants | | | |
| 5 | Project Management | | | |
| 6 | Commissioning expenditure | | | |
| 7 | Total EPC costs | | | |
| 8 | Contingency | | | |
| 9 | WC margin | | | |
| 10 | Interest during construction | | | |
| 11 | Financing charges# | | | |
| 12 | Other costs | | | |
| | TOTAL | | | |

* Bidder should furnish the cost of the imported equipments along with the cost of the present customs duty.

Financing charges include commission fees, guarantees, commitment charges, underwriting fees etc.

The Bidder should also furnish the proposed financing structure according to paragraph 4.3.1.1.

Signature _____
For

Bidder's Rubber Seal and Full Address

ANNEXURE 3

Power Purchase Agreement

Enclosed herewith is the Power Purchase Agreement. The PPA has the terms and conditions under which the Procurer would purchase power

ANNEXURE 4

DRAFT FORMAT OF COVERING LETTER

DRAFT FORMAT OF COVERING LETTER

Bidder's Name:

Full Address:

Telephone No.:

E-mail address:

Fax / No.:

To

Address of the Office

Sub:- Supply of power on long term basis at Procurer bus
Ref:- Bid Specification No. CP/ Long Term Power Purchase/ T-1

Dear Sir,

We, the undersigned Bidder having read and examined in detail the bid documents for supply of power on long term basis at Procurer bus, hereby submit our bids.

Capacity bid for: _____ MW

1.1 BID VALIDITY

We confirm that all the terms, conditions and tariff of this proposal are valid for acceptance for a period of 6 months from the date of last date of bid submission i.e. _____.

1.2 Bank Guarantee

We have enclosed a separate Bank Guarantee of Rs.[] lakh, in the form of Bank Guarantee as per your proforma (Annexure 5) from a nationalized/ scheduled/ foreign bank with office in India.

1.3 GESTATION PERIOD

We hereby confirm that the supply of power shall commence strictly as per the time frame stipulated in Format 2 of proposal.

1.4 FAMILIARITY WITH RELEVANT INDIAN LAWS & REGULATIONS

We confirm that we have studied the provisions of relevant Indian laws & regulations as required to enable us to quote for this bid and execute the contract, if awarded.

1.5 CONTACT PERSON

Details of contact person as specified in Format 1 are furnished as under:

Name
Designation
Company

Address
Phone Nos.
Fax Nos.
E-mail address

We are enclosing herewith Volume I and II with duly signed formats, in 1 original + () copies as desired by you in your bid document for your consideration.

Dated the _____ day of _____ of 20

Thanking you,
We remain,

Yours faithfully,

(Signature, Name, Designation and Company's Seal)

Business Address:

Name and address of principal Officer.

ANNEXURE 5

FORMAT OF BANK GUARANTEE

**FORMAT OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT
(To be specified by each Procurer. However, a suggested format is as enclosed)**

(To be stamped in accordance with Stamp Act)

The Bank of _____ hereby agree unequivocally and unconditionally to pay at Name of the Place within 48 hours on demand in writing from Procurer or any Officer authorized by it in this behalf, of any amount upto and not exceeding Rs. _____ (Rs. _____ only) to the said Procurer on behalf of M/s. _____ who have submitted bid for supply of power of _____ capacity at Procurer bus in Name of the Place State⁴².

This agreement shall be valid and binding on this Bank up to and including _____ and shall not be terminable by notice or any change in the constitution of the Bank or the firm of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made given, concerned or agreed with or without our knowledge or consent, by or between parties to the said within written contract. The validity of this Bank Guarantee will be extended by us for the further period of six months, one month prior to its present validity period at the request of Procurer.

In case of any dispute arising out of or in connection with the extension or encashment of Bank Guarantee, the courts in Name of the Place will have jurisdiction.

Our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only). Our Guarantee shall remain in force until _____. Unless a suit or action to enforce a claim under the guarantee is filed against us within six months from the date, all your rights under the said guarantee shall be invoked and we shall be relieved and discharged from all our liability thereunder.

Signature _____
For

Banker's Rubber Seal and Full Address.

⁴² Need to modify the statement according to the delivery point

Annexure 6

Procurer 220 kV and 400 kV Transmission Network

Annexure 7

The escalation of yearly expenses from the published data for the tariff period shall be computed as follows:

$$0.4 \times \text{INFL}_{\text{CPI}} + 0.6 \times \text{INFL}_{\text{WPIOM}}$$

what should be the best possible index

where:

INFL_{CPI} = Annual Average Inflation in CPI_IW

$\text{INFL}_{\text{WPIOM}}$ = Annual Average Inflation in WPIOM

Where as CPI_IW is directly published by the Government, WPIOM shall be computed from disaggregated data on wholesale prices published by Ministry of Industry.

Note

The special index of wholesale prices for power generating utilities (WPIOM) may be obtained as a weighted average of relevant components selected from disaggregated WPI series (1993-94=100) as given below:

COMMODITIES WEIGHTS

| | | |
|-----------|---|-----------------|
| 1 | Lubricants | 0.16367 |
| 2 | Cotton Cloth | 0.90306 |
| 3 | Jute, Hemp and Mesta Cloth | 0.37551 |
| 4 | Paper & Paper Products | 2.04403 |
| 5 | Rubber & Plastic Products | 2.38819 |
| 6 | Basic Heavy Inorganic Chemical | 1.44608 |
| 7 | Basic Heavy Organic Chemical | 0.45456 |
| 8 | Paints Varnishes & Lacquers | 0.49576 |
| 9 | Turpentine, Synthetic Resins, Plastic materials etc | 0.74628 |
| 10 | Matches Explosives & Other Chemicals | 0.94010 |
| 11 | Non-Metallic Mineral Products | 2.51591 |
| 12 | Basic Metals Alloys & Metals Products | 8.34186 |
| 13 | Machinery & Machine Tools | 8.36331 |
| 14 | Transport Equipment & Parts | 4.29475 |
| | All the Above (WPIOM) | 33.47307 |

$$\text{WPIOM} = \frac{\sum_{i=1}^{14} w_i \text{WPI}_i}{\sum_{i=1}^{14} w_i}$$

Where WPI_i is the wholesale price index of the i th commodity and w_i is the respective weight

Annexure 8

Format for deviations from the PPA, if any

Deviations from the Draft PPA

The Bidder should provide details of the deviations if any, sought in the PPA in the following format. The Bidder should give the rationale for seeking deviations and suggest alternatives.

| S No. | Clause No. | Existing provision | Proposed change | Rationale for change |
|-------|------------|--------------------|-----------------|----------------------|
| | | | | |

Signature _____
For

Bidder's Rubber Seal and Full Address.

Vol III

Draft Power Purchase Agreement

for

**Tariff Based Bidding Process for Procurement of Power
on Long Term Basis by Setting up Power Stations where
Location or Fuel is not specified**

between

**[Insert Name of Distribution Licensee 1]
("Procurer 1")**

and

[Insert Name of Distribution Licensee 2]

(“Procurer 2”)

and

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

**(As per Guidelines for Determination of Tariff by
 Bidding Process for Procurement of Power by
 Distribution Licensee)**

Long Term PPA (more than 7 years)

Standard Bid Documents

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2.

This Agreement is made the [] day of [] 20[]

Between

- (1) [Insert Name of Distribution licensee], (the “Procurer1”)
- (2) [Insert Name of Distribution licensee], (the “Procurer2”)
- (3) [Insert Name of the Generating Company], (the “Seller”)

(The “Procurer1” and “Procurer2” are collectively referred to as the “Procurers”⁴³ or individually as a “Procurer” and each of the “Procurer1”, “Procurer2” and “Seller” are individually referred to as “Party” and collectively to as the “Parties”)

Whereas:

- A. The Procurers initiated a competitive bidding process for procurement of generation capacity and purchase and supply of electricity to the Procurers in bulk as per the bidding guidelines notified by Government of India.**
- B. The Seller has been one of the bidders who participated in the competitive bidding process and has offered the generation capacity in aggregate ofMW and sale and supply of electricity in bulk there from to the Procurers;**
- C. Based on the most competitive tariff, terms and conditions offered by the Seller the procurers have selected the Seller to sell the generation capacity and supply of electricity in bulk to the Procurers to the extent of MW capacity in aggregate on the terms and conditions contained in the bidding documents;**
- D. As envisaged in the bidding conditions the parties have to sign this Power Purchase Agreement setting out the terms and conditions of the sale of generation capacity and supply of electricity in bulk by the Seller to the Procurers.**

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

⁴³ Procurer can be one, two or more. The existing draft of the PPA is for two Procurers. The PPA needs to be customised by the Procurers before enclosing the same with the Bidding documents.

1 ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under as amended or re-enacted from time to time:

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| “Act” or “Electricity Act 2003” | Electricity Act 2003 or any further amendments made subsequent to the same; |
| “Agreed Form” | means, in relation to any document, the form of the said document most recently agreed to by the Parties and initialled by them for identification; |
| "Agreement" or "Power Purchase Agreement" or "PPA" | means this document including its Schedules containing the terms and conditions for purchase of power by Procurer; |
| "Appropriate Commission" | means the Central Electricity Regulatory Commission or a State Electricity Regulatory Commission, as the case may be exercising the function to regulate sale of electricity by a generating company and the power purchase and procurement process of the Procurers under the Electricity Act, 2003; |
| “Availability Factor” or “Availability” | shall have the meaning ascribed thereto in Article 1.5 of Schedule 5 of this Agreement; |
| “Available Capacity” | shall have the meaning ascribed thereto in Article 1.4 of Schedule 5 of this Agreement; |
| “Bid” | means the RFP (Request for Proposal) as issued by the Procurers; |
| “Bid Deadline” | means the date of submission of proposal in response to the RFP issued by the Procurers; |
| "Bill Dispute Notice" | means the notice issued by a Party raising a dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party; |
| “Business Day” | means a day other than Sunday or a statutory holiday, on which the banks remain open for business in [] ⁴⁴ ; |
| “Capacity Charge” or “Capacity Charges” | shall have meaning as specified in Schedule 6; |

⁴⁴ The place to be specified by the Procurers

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| “Capacity Notice” | means a notice given pursuant to Article 1.2 of Schedule 5 of this Agreement; |
| "Central Transmission Utility" or "CTU" | means the utility as defined in the Electricity Act, 2003; |
| "CERC" | means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors; |
| “CERC Norms” | means the tariff fixation and other relevant regulations as announced by CERC from time to time; |
| "Change in Law" | has the meaning specified in Article 13.1.1; |
| “Characteristics Tests” | means the tests of a Power Station’s ability to operate consistently with its Contracted Operating Characteristics carried out in accordance with Article 1.3 of Schedule 4 of this Agreement; |
| "Check Meters" or “Check Meter” | shall have the meaning ascribed thereto in Schedule 9 and “Check Meter” shall mean a reference to any one of them; |
| "Commercial Operation Date" or "COD" | means, in relation to a Unit, the date on which such Unit is Commissioned or in relation to the Project, the date on which the Project is Commissioned. The COD of first unit is aa ⁴⁵ months from the signing of the PPA. The COD of the second unit and the plant ⁴⁶ is [] months from the signing of the PPA. The Unit or the Project is commissioned when it has passed the Commissioning Tests for commercial operation; |
| "Commissioning Tests" or “Commissioning Test” | “Commissioning Tests” means (a) the Performance Test; and (b) the Characteristics Tests; and “ Commissioning Test ” means any one of them; |
| "Construction Contractor" | means one or more main contractors, appointed by the Seller to design, engineer, construct and Commission the Project; |
| “Construction Period” | means the period from (and including) the date upon which the Construction Contractor is instructed or required to commence work under the Construction Contract up to (but not including) the Commercial Operations Date; |
| "Consultation Period" | means the period, commencing from the date of issue of a Seller |

⁴⁵ To be decided by Procurer but should be more than 48 months

⁴⁶ It is assumed here that the number of units in the plant is two., This definition needs to be changed based on the configuration of the plant

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| | Preliminary Termination Notice or a Procurer Preliminary Termination Notice, for consultation between the Parties to: |
| | (i) mitigate the consequence of the relevant event having regard to all the circumstances; and |
| | (ii) prevent termination of this Agreement; |
| "Contract Year" | means |
| | a) the period beginning on the date of this Agreement and each succeeding twelve (12) month period thereafter provided that |
| | b) the Contract Year shall begin once again from the Required Commercial Operation Date of the first Unit and shall thereafter be for each succeeding twelve (12) month period and provided further that |
| | c) the last Contract Year of this Agreement shall end on the last day of the term of this Agreement; |
| "Contracted Capacity" | in relation to the each Unit means [] MW, rated gross capacity each, and in relation to the Power Station as a whole means [] MW rated gross capacity, or such lower rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement; |
| "Contracted Operating Characteristics " | means the performance levels of the Project, specified in Article 1.3 of Schedule 3; |
| "Control Centre" or "Nodal Agency" or "SLDC" | means the State Load Dispatch Centre located in [insert location] or such other load control centre designated by the Procurers from time to time from which the Procurers shall issue Dispatch Instructions to the Power Station; |
| "Co-ordinating Committee" | shall have the meaning ascribed thereto in Article 7.7 of this Agreement; |
| "Declared Capacity" | <i>in relation to a Power Station at any time means the net capacity of the Power Station at the relevant time (expressed in MW at the Interconnection Point) as declared by the Seller in a Capacity Notice or Revised Capacity Notice;</i> |
| " Delivery Point " | means the points of delivery , detailed in Schedule 7 for fulfilling the obligation of the Seller to deliver the contacted electrical energy ; |

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| “Dispute” | means any dispute or difference of any kind between the Procurers inter se, or between a Procurer and the Seller or between the Procurers and the Seller in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement; |
| "Despatch Instruction" | means any instruction issued by the Procurer to the Seller in accordance with applicable Grid Code and this agreement; |
| "Due Date" | means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received by Procurer (or, if such day is not a Business Day, the immediately succeeding day) by which date such bill is payable by Procurer; |
| “Electricity Laws” | means the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments and replacements thereof in whole or in part and any other Law pertaining to electricity including regulations framed by the Appropriate Commission; |
| "Energy Output" | means the net electrical output of the Power Stations (whether or not Commissioned) at the Interconnection Point, as expressed in kWh; |
| “Emergency” | means a condition or situation that, in the opinion of the Procurers or the agency tasked with operating and maintaining the Interconnection and Transmission Facilities or the transmission company, as the case may be, poses a significant threat to the Procurer’s or the said agency’s or transmission company’s ability to maintain safe, adequate and continuous electrical service to its customers, or seriously endangers the security of persons, plant or equipment; |
| "Expiry Date" | means the [] anniversary of the Commercial Operation Date of the last of the Units of the Project ⁴⁷ ; |
| “Final Test Certificate” | a) a certificate of the Independent Engineer certifying the results of a Commissioning Test in accordance with or Article 6.3.1 of this Agreement; or b) a certificate of the Monitoring Engineer certifying the result of a Repeat Performance Test in accordance with Article 8.2.1 of this |

⁴⁷ This date shall be at least 35 years from the Schedule Commercial Operation Date for a hydro project, 25 years from the Schedule Commercial Operation Date for a coal based project, 15 years from the Schedule Commercial Operation Date for gas/liquid Fuel based project

Agreement;

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| "Financial Closure" | | means the execution and delivery of all the Financing Agreements, for the initial draw down of funds there under; |
| "Financing Agreements" | | means all the loan agreements, notes, indentures, security agreements, letters of credit, share subscription agreements and other documents relating to the financing or re-financing of the Project at the Financial Closure, as may be amended, modified or replaced from time to time; |
| "Force Majeure" | | means an event defined in Article 12.3; |
| "Forced Outage" | | means an interruption or reduction of the generating capability of the Power Station that is not the result of: a) a request by a Procurer in accordance with this Agreement; or b) a Scheduled Outage or a Maintenance Outage; |
| "Fuel" | | means primary fuel used to generate electricity such as coal, gas etc ; |
| "Fuel Supply Agreements" | | means the agreements entered into, between Bidder and the Fuel Supplier, for the purchase, transportation or handling of fuel required for the operation of the Power Station; |
| "Functional Specifications" | | means the technical requirements and parameters described in Schedule 3 of this Agreement relating to the operation, maintenance and dispatch of any Unit and the Power Station, as they may be modified by the Seller from time to time with the prior written consent of the Procurers; |
| "Grid Code" | | means any set of regulations or codes legally binding on the Sellers' and Procurers' governing the operation of the Grid System; |
| "Grid System" | | means the Interconnection and Transmission Facilities and any other transmission or distribution facilities through which the Procurers supply electricity to their customers or the transmission company transmits electricity to the Procurers; |
| "Independent Engineer" | | means an independent consulting engineering firm or group selected jointly by the Procurers from a list of three (3) such consulting engineering firms or groups which shall be selected by the Seller; |
| "Indian Governmental Instrumentality" | | means the GOI, Government of [] ⁴⁸ and any ministry, department, board, agency or other authority of GOI or Government of []; |

⁴⁸ State Government

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| “Initial Performance Retest Period” | shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement; |
| "Interconnection Facilities" | means the facilities on the Procurers' side of the Interconnection Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission and distribution lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 9, the metering system required for the Project; |
| “Interconnection Points” | means being the points at which Electrical Output is delivered to the Procurers; |
| “Invoice” | means either a Monthly Tariff Invoice, a Supplementary Invoice or a Procurer Invoice; |
| "Law" | means, in relation to this Agreement, all laws and Electricity Laws in force in India and would include any statute, ordinance, regulation, notice, circular, code, rule or direction, or any interpretation of any of them by a Governmental Instrumentality and also includes all applicable rules, regulations, orders, directions, notifications by a Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions directions and orders of the Appropriate Commission ; |
| “Lenders” | <i>means the banks, other financial institutions, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as at Financial Close to provide the Seller with the debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their</i> |

interests under the Financing Agreements may be transferred or assigned:

Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurers under this Agreement in any manner and shall also does not lead to an increase in the liability of either Procurer;

“Main Meters”

means:

- a) the Generator Meter,
- b) the Interconnection Meter, and
- c) the Import Meter,

each of such meters having the meanings ascribed thereto in Schedule 9.

"Maintenance Outage"

means an interruption or reduction of the generating capacity of the Power Station that:

- a) is not a Scheduled Outage;
- b) has been scheduled in accordance with Article 7.6 of this Agreement; and
- c) is for the purpose of performing work on specific components, which work could be postponed by at least two (2) days but should not, in the reasonable opinion of the Seller, be postponed until the next Scheduled Outage;

"MCR"

means gross Power Station maximum continuous rating;

"Metering System"

shall have the meaning ascribed thereto in **Schedule 9** of this Agreement;

“Minimum Offtake Gaurantee”

means the minimum offtake mentioned by the Procurer in the RFP/RFQ and which is mentioned hereby:

| Period | Minimum offtake at |
|------------------------|-----------------------------|
| [] month to [] month | ()% of contracted capacity |
| [] month to [] month | ()% of contracted capacity |

“Monitoring Engineer”

means an independent engineering consulting firm or group appointed by the Procurers pursuant to Article 8.1 of this Agreement;

“Monitoring Notice”

means a notice issued by either Procurer to the Seller pursuant

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| | to Article 1.3.3 of Schedule 5 of this Agreement; |
| "Month" | means a calendar month; |
| "Net Station Heat Rate" | means the heat energy input to the Project in terms of Gross Calorific Value, to deliver one (1) kWh Energy Output at the Delivery Point; |
| "Normative Availability" | means equal to Minimum Offtake Guarantee in various periods and on annual basis this should be [] % ⁴⁹ |
| "Operation Period" | in relation to the Power Station means the period from its Commissioned Date until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement; |
| "Operating Procedures " | shall have the meaning ascribed thereto in Article 7.1 of this Agreement; |
| "Operator" | means one or more contractors appointed as operator of power generation facilities of the Project pursuant to an O&M Contract, if any; |
| "Party" and "Parties" | has the meaning specified in the recital to this Agreement; |
| "Performance Test " | means the test of a Unit's rated capacity and after commissioning of the Power Station, of the Power Station's rated capacity as a whole carried out in accordance with Article 1.2 of Schedule 4 of this Agreement; |
| "Preliminary Termination Notice" | shall have the meaning ascribed thereto in Article 14 of this Agreement; |
| "Project" | means the ownership, design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance of the Power Station undertaken by the Seller in accordance with the terms and conditions of this Agreement; |
| "Project Documents" | means <ol style="list-style-type: none">Construction Contract;Fuel Supply Agreements, including the Fuel Transportation Agreement, if any;both Collateral Agreements; andany other agreements designated at such, from time to time by the Procurers and the Seller; |

⁴⁹ This shall be aligned to the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process

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| "Prudent Practices" | Utility | 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 and maintenance of power generation equipment of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station; b) the requirements of Indian law; and c) the physical conditions at the Site; |
| "Repeat Test " | Performance | shall have the meaning ascribed thereto in Article 8.1 of this Agreement; |
| "REB" | | means the relevant Regional Electricity Board or its successor entities as defined in the Electricity Laws; |
| "Regional Accounts" or "REA" | Energy | means the accounts of power and energy delivered by the Seller and drawn by the Procurer, as issued by the relevant REB secretariat or other appropriate agency for each Week and for each Month, including the revisions and amendments thereof; |
| "RLDC" | | means the relevant Regional Load Despatch Centre as defined in the Electricity Laws, in the region in which the Project is located; |
| "Revised Notice" | Capacity | shall have the meaning ascribed thereto in Article 1.2.3 of Schedule 5 of this Agreement; |
| "RFP" | | means the Request for Proposal document issued by Procurers on [insert date] for the selection of the Investors responsible for implementing the Project; |
| "Rupees" or "Rs." | | means the lawful currency of India; |
| "SBIPLR" | | means the prime lending rate per annum for loans with one (1) year maturity as fixed from time to time by the State Bank of India and in the absence of such rate, the average of the prime lending rates for loans with one (1) year maturity fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties; |

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| “Scheduled CoD” or “Schedules Commercial Operation Date” | means (i) for the first Unit, the date falling forty eight (48 ⁵⁰) months after signing the PPA ; and (ii) for the second unit and the project, the date falling fifty two (52 ⁵¹) months from signing of the PPA, as the same may be extended from time to time in accordance with the provisions herein; |
| “Scheduled Connection Date” | shall mean the date falling 120 ⁵² days before the Scheduled Synchronisation Date; |
| “Scheduled Energy” | means the quantum of energy delivered by the generating station at the delivery point as scheduled by the Nodal Agency; |
| "Scheduled Outage" | means a planned interruption or reduction of the generating capability of the Power Station that: <ul style="list-style-type: none">a) is not a Maintenance Outage;b) has been scheduled and allowed by the Procurers in accordance with Article 7.5 of this Agreement; andc) is for inspection, testing, preventative maintenance, corrective maintenance, repairs, replacement or improvement; |
| "Scheduled Synchronisation Date" | means the date which falls 30 ⁵³ days before the Scheduled CoD of the first unit of the project; |
| “Security Deposit” | means the Bank Guarantee as submitted by the Seller at the Request for Proposal (RFP) stage; |
| "Settlement Period" | means the time block for issue of daily generation and drawal schedules as may be defined by IEGC [presently fifteen (15) minute block]; |
| “State Transmission Utility” or “STU” | means the Utility as defined in Electricity Act 2003; |

⁵⁰ Can be more than 48 and it can be either mentioned by the Procurer in the bid document or in case Procurer has not mentioned in the bid document, it shall be considered as provided by the Seller in it’s bid document subject to Procurers acceptance on the same

⁵¹ This is a tentative date and it should be either mentioned by the Procurer in the bid document or in case Procurer has not mentioned in the bid document, it shall be considered as provided by the Seller in it’s bid document subject to Procurers acceptance on the same. Moreover the above definition is assuming that the plant has two units. The definition needs to be changed in consideration of plant configuration.

⁵² This period may be changed by the Procurer

⁵³ This period may be changed by the Procurer on the basis of project type

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| "Supplementary Bill" | means a bill other than a Monthly Bill raised by either Party in accordance with Article 11.8; |
| "Tariff Payment" | means the payments under Monthly Bills in Schedule 6 and the relevant Supplementary Bills; |
| "Tariff" | means the tariff payable in accordance with Schedule 6; |
| "Technical Specifications" | means the technical requirements and parameters prescribed in relation to the Project, forming a part of the Construction Contract. Provided these shall always comply with the requirements of Article 1.1 to 1.4 of Schedule 3 of this Agreement; |
| "Tested Capacity" | in relation to a Commissioned Unit, or the Power Station as a whole (if the Power Station has been commissioned) means the results of the most recent Performance Test or Repeat Performance Test carried out in relation to the Power Station in accordance with Article 8.1 of this Agreement; |
| "Termination Notice" | shall have the meaning ascribed thereto in Article 14 of this Agreement; |
| "Term of Agreement" | has the meaning specified in Article 2.1; |
| "Technical Limits" | means the limits of Grid conditions specified in Article 1.1 of Schedule 3; |
| "Total Debt Amount" | means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the date of notification of Force Majeure Event): (a) the principal amount of the debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Project according to the Capital Structure Schedule which remains outstanding on the date of notification of Force Majeure Event after taking account of any debt repayments which could have been made out of the Monthly Tariff Payments |

received by the Seller on or before the date of notification of Force Majeure Event as per the terms provided in the Financing Agreements ;
and

- (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in Article (a) above since the Fixed Charge Payment immediately preceding the date of notification of Force Majeure Event or, if Fixed Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised, and
- (c) if this Agreement is terminated during the Construction Period, any amounts owned to the Construction Contractor for work performed but not paid for under the Construction Contract (other than amounts falling due by reason of the Seller's default or this Agreement being terminated);

"Undeclared Capacity Failure" means the failure by the Seller to make available the Declared Capacity pursuant to a Despatch Instruction, when no Monitoring Notice has been issued;

"Unit" means one steam generator, turbine generator and associated auxiliaries for a Coal Based Power Plant and one turbine generator and associated auxiliaries for Hydro Power Plant; and a block of Steam Turbine, Gas Turbines and Waste Heat Recovery Boiler along with associated auxiliaries for a Combined Cycle Gas Based Plant ;

"Unscheduled Interchange" means as defined in section 24 of the CERC (Terms and Conditions of tariff) Regulations 2004;

"Variable Charge" or "Fuel Charge" shall have meaning as specified in Schedule 6;

"Week" means a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

"Wheeling Charges" or "Transmission" are the charges paid by the Procurer to the CTU or STU or any other agency for the transfer of power from the Plant switchyard end to the

Charges” Procurer’s network

1.2 Interpretation

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

- 1.2.1 A "Recital", an "Article", a "Schedule” and a “Article" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph respectively of this Agreement.
- 1.2.2 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
- 1.2.3 “this Agreement” shall be construed as including a reference to its Schedules and Annexes;
- 1.2.4 A “crore” means a reference to ten million (10,000,000) and a “lakh” means a reference to one tenth of a million (1,00,000);
- 1.2.5 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.
- 1.2.6 “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.7 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.
- 1.2.8 A “subsidiary” of a company or corporation shall be construed as a reference to any company or corporation:
 - a) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
or
 - b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or

c) which is a subsidiary of another subsidiary of the first-mentioned company or corporation ***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***

- 1.2.9 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors.
- 1.2.10 Words importing the singular shall include the plural and vice versa.
- 1.2.11 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 1.2.12 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.13 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.14 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part.
- 1.2.15 The table of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.16 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days.

2 ARTICLE 2 TERM OF AGREEMENT

2.1 *Effective Date and Term of Agreement*

The Agreement shall have a term from such date of execution by the Parties until the Expiry Date ("Term of Agreement"), when it shall automatically terminate, unless:

- i. terminated earlier, pursuant to Article 2.2, or
- ii. extended, pursuant to Article 2.3.

2.2 *Early Termination*

This Agreement shall terminate before the Expiry Date:

- i. if either the Procurer or Seller exercises a right to terminate, pursuant to Article 14 or Article 3.3; or
- ii. in such other circumstances as the Seller and Procurer may subsequently agree, in writing.

2.3 *Extension of Term*

2.3.1 Prior to at least one hundred and eighty (180) days before the Expiry Date, either Procurer may give a written notice to the Seller that it wishes to extend this Agreement for an additional period to be specified by that Procurer.

2.3.2 If such written notice is delivered to the Seller by both the Procurers, this Agreement can be extended to such date. Upon the receipt of such notice, the Parties shall meet and discuss an extension of this Agreement, which may be extended on such terms including the period of extension, tariff, capacity and operating characteristics as the Parties may mutually agree in writing. Such extension shall commence upon the end of the last day of the Term of Agreement.

2.3.3 If the written notice referred to in Article 2.3.1 is delivered to the Seller by only one Procurer ("**Extending Procurer**"), this Agreement shall expire and stand terminated in respect of the Procurer who has not

delivered such written notice (“**Exiting Procurer**”) and no rights and obligations shall be owed by the Exiting Procurer to the Seller or vice versa. The Extending Procurer shall have the choice to elect for extension of the Term of this Agreement in respect of any portion of the Available Capacity and corresponding dispatched Electrical Output of the entire Power Station, which portion of the Available Capacity and corresponding dispatched Electrical Output shall be delivered to the Extending Procurer, or at his choice, to his designated nominee, or to both of them, in such proportions as may be notified by the Extending Procurer to the Seller. Upon the receipt of such notice, the Parties shall meet and discuss an extension of this Agreement, which may be extended on such terms including the period of extension, tariff, capacity and operating characteristics as the Parties may mutually agree in writing. Such extension shall commence upon the end of the last day of the Term of Agreement.

- 2.3.4 On Expiry of any extension of the Term under Article 2.3.2 or 2.3.3, the provisions of this Agreement, including this Article 2.3 itself shall apply *mutatis mutandis* in relation to the Procurers’ or Procurer’s right or an Extending Procurer’s nominee’s right for further extension.

2.4 Consequences of Procurers not extending

- 2.4.1 In the event that both the Procurers choose not to automatically extend the PPA under Article 2.3, the PPA shall expire and no rights and obligations by Procurers to the Seller shall be owed by any party to another.

2.5 Survival

- 2.5.1 The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides,

either expressly or by necessary implication, the survival of, post its expiry or termination.

3 ARTICLE 3 CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLERS

3.1 *Satisfaction of conditions subsequent by the seller*

- 3.1.1 Simultaneously with the execution of this Agreement the Seller shall have provided the Security Deposit, in the form of an irrevocable unconditional Bank Guarantees, of an aggregate amount calculated at Rs. 7.5 lakhs per each MW of the total contracted capacity and such bank guarantees to be provided separately to each of the Procurers in the ratio of Allocated Capacities.
- 3.1.2 Notwithstanding anything to the contrary specified in this Agreement and unless specifically waived in writing by the Procurers jointly , the Seller agrees and undertakes to duly perform and complete the following within twelve (12) months from the date of execution of this Agreement:
- i. the Seller shall have received the Initial Consents as mentioned in Schedule 1, either unconditionally or subject to conditions which do not materially prejudice its rights or the performance of its obligations under this Agreement ;
 - ii. the Seller shall have appointed the Construction Contractors, if Seller itself is not the Construction Contractor, for the design, engineering, procurement, construction and Commissioning of the Project and shall have submitted a documentary proof along with the copy of the contract to the Procurers;
 - iii. the Seller shall have executed Fuel Supply Agreement and provided the copies of the same to the Procurer;
 - iv. the Seller shall have achieved Financial Closure in relation to the Project;

- v. the Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required;
- vi. the Seller shall have finalised the specific delivery point for supply of power in consultation with the Procurer;
- vii. the Seller shall have got vacant possession of the Sites and shall have obtained valid, enforceable, unencumbered and insurable freehold or leasehold title thereto and such other real property rights including wayleaves as may be required for the Project or the performance of its obligations under this Agreement.

3.2 Reports

The Seller shall notify the Procurers in writing at least once a month on the progress made in satisfying the conditions in Article 3.1.2.

3.3 Consequences of non-fulfillment of conditions under article 3.1

- 3.3.1 If the Seller fails to furnish the valid and enforceable security deposit as provided in Article 3.1.1 at the time of the execution of this Agreement the same shall be a breach of on the part of the Seller of not duly fulfilling the terms of the bid and consequently this agreement will not become effective and the Procurers shall be entitled to encash and appropriate the earnest money deposit given by the Seller at the time of the Bid.
- 3.3.2 If any of the conditions specified in Article 3.1.2 is not duly and fully satisfied within the time specified under Article 3.1 the Procurers shall have the right to encash and appropriate in their favour as liquidated damages an amount equivalent to 20 % of the security deposit provided by the Seller under Article 3.1.1 for delay of each month or part thereof, as the case may be.

- 3.3.3 If any of the conditions specified in Article 3.1.2 is delayed beyond a period of five (5) months then the Procurer has right to terminate the agreement and in this case Seller has to pay a liquidated damages equivalent to one month of billing, calculated on the basis of quoted tariff for first Contract Year and the energy corresponding to the plant operating at 80% of the Contracted Capacity. These liquidated damages will be adjusted against the security deposit as provided in Article 3.1.1 and the remaining amount needs to be paid by the Seller to the Procurer within 10 days from the end of five (5) months period from the due date of completion of conditions subsequent.
- 3.3.4 In case of Force Majeure affecting the Seller the time period of twelve (12) months for Condition Subsequent, shall be extended for the purpose of termination and penalties as per Article 3.3.

3.4 *Security Deposit to be furnished on the fulfillment of the conditions under Article 3.1.2*

2.1

- 3.4.1 On the due fulfilment by the seller of all the conditions specified under Article 3.1.2 the Seller shall furnish to the Procurers a security deposit in the form of a irrevocable and unconditional Bank guarantee from a bank acceptable to the Procurers , for an aggregate sum calculated at an amount Rs. 5 lakhs per each MW of the total contracted capacity and such bank guarantees to be provided separately to each of the Procurers in the ratio of their respective Allocated Capacities.
- 3.4.2 This security deposit shall be in substitution of the earlier security deposit furnished under Article 3.1.1 and accordingly
- a. If the Security Deposit furnished by the Seller under Article 3.1.1 remains valid for an amount in excess of Rs 5 lakhs per MW the Seller shall be entitled to reduce to the amount calculated at Rs 5

lakhs per MW and maintain the same as security deposit under this Article 3.4 ;

- b. If the Security Deposit furnished by the Seller under Article 3.1.1 remains valid for an amount less than Rs 5 lakhs per MW the Seller shall increase the amount of security deposit so as to make it equivalent to Rs 5 lakhs per MW and maintain the same as security deposit under this Article 3.4 ;
- c. If the Security Deposit furnished by the Seller under Article 3.1.1 has been fully appropriated under Article 3.3 the Seller shall furnish a valid security deposit in the form an irrevocable and unconditional guarantee of an amount calculated at Rs 5 lakhs per MW and maintain the same as security deposit under this Article 3.4 ;

3.4.3 The security deposit furnished under Article 3.4.1 shall be for the due and timely completion of the project and commencement of commercial operation within the time specified in this Agreement.

3.4.4 The failure on the part of the Seller to furnish and maintain the security deposit as mentioned above shall be a material breach of the term of this Agreement on the part of the Seller.

3.4.5 If the Seller fails to complete the project and commence commercial operation of the units on the respective dates specified in this Agreement, subject to conditions mentioned in Article 4.5.1, the Procurers shall have the right to encash and appropriate in their favour as liquidated damages an amount equivalent to 20 % of the security deposit provided by the Seller under Article 3.4 for delay of each month or part thereof, as the case may be, without prejudice to the other rights of the Procurers including but not limited to the right to specifically enforce this Agreement and require the Seller to fulfil the conditions and implement the project and for delay beyond five months claim liquidated damages as set out in Articles 4.6.

3.5 *Return of Security Deposit*

- 3.5.1 The Security Deposit as submitted by Seller in accordance with Article 3.4., shall be released by the Procurers within 15 days from the Schedule Commercial Operation Date of the station, if the Seller meets the Schedule Commercial Operation Date and satisfactorily fulfills the obligations of commencement of Commercial Operation and in the event of delay the security deposit amount, if any, which remain unadjusted under Article 3.4 shall be released to the Procurer after the satisfactory completion of the obligations of commencement of commercial operation .
- 3.5.2 The release of the security deposit shall be without prejudice to other rights of the Procurers under this Agreement.

4 ARTICLE 4 DEVELOPMENT OF THE PROJECT

4.1 *The Seller's obligation to build, own and operate the Power Station*

4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible at Seller's costs and risks for:

- a) obtaining and maintaining in full force and effect any Consents required by it pursuant to this Agreement and Indian law;
- b) executing the Project in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned no later than its Scheduled Commercial Operations Date and such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers' scheduling and dispatch requirements throughout the Operating Period of the Power Station;
- c) owning the Power Station throughout the term of this Agreement free and clear of encumbrances except those expressly permitted by Article 18;
- d) procure the requirements of electricity at the Power Station (including construction, commissioning and start-up power) to meet in a timely manner all formalities for getting such a supply of electricity; and
- e) fulfilling all other obligations undertaken by him under this Agreement.

4.2 *Procurers' obligation*

Subject to the terms and conditions of this Agreement, the Procurers:

- a) shall be responsible for procuring the Interconnection and Transmission Facilities⁵⁴ to enable the Power Station to be connected to the Grid System not later than the Scheduled Connection Date;
- b) endeavour its best (without any legal obligation) to assist the Seller in procuring the electricity required as per Article 4.1 (d); and

⁵⁴ This obligation may also be of the Seller if the same is being specified in the RFP

- c) using all reasonable endeavours to facilitate the commissioning and testing of the Units and after commissioning of the Power Station, of the Power Station as a whole that are within their power to do.

4.3 Purchase and sale of Available Capacity and Electrical Output

- 4.3.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurers, and Procurers undertake to pay the Tariff for all of the Available Capacity and Electrical Output of the Power Station throughout its Operating Periods.
- 4.3.2 The Seller shall sell all the Available Capacity, unless otherwise instructed, of the Power Station to each Procurer in proportion of each Procurers allocated Capacity pursuant to Dispatch Instructions given by each of such Procurers.

4.4 Right to Electrical Output

- 4.4.1 Subject to the provisions of Article 11.5, the entire capacity of the project and all units in the project shall at all times be for the exclusive benefit of the Procurers and the Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Available Capacity and Electrical Output.
- 4.4.2 Notwithstanding the foregoing, the Seller shall be permitted to sell power amounting to a part of the Available Capacity of the Power Station to third parties if:
 - (a) there is a part of Available Capacity which is not Dispatched by the Procurer, ordinarily entitled to receive such part; and
 - (b) there is prior written consent by the Procurer ordinarily entitled to receive such part; and
 - (c) such part has first been offered to the other Procurer who was not ordinarily entitled to receive such part and he has chosen to waive or not exercise his first right to receive such part of the Available Capacity or his first right to nominate a third Party to receive such Available Capacity, within one (1) day of being so offered the opportunity to receive such part.
- 4.4.3 If the Procurers do not avail generation up to the declared capacity by the Seller, as mentioned in Article 4.4.2, the same energy can be sold to the third party by the Seller, and the sale realization in excess of Variable Charges⁵⁵, shall be equally shared with the Procurers and among Procurers in the ratio of their Allocated Capacity. During this period the Seller will also continue to receive the capacity charges from the Procurers. The sale under Unscheduled Interchange shall not be considered as sale to third party.

- 4.4.4 The Seller shall not itself use any of the electricity generated by the Power Station during the term of this Agreement except for the purpose of meeting the Power Station's auxiliary load requirements as per the norms laid down by the CERC.

4.5 Extensions of time

- 4.5.1 In the event that:

- (a) the Seller is prevented from performing its obligations under Article 4.1(b) by the required date because of any material default of one or both Procurers; or
- (b) a Unit, or the Power Station cannot be Commissioned by its Scheduled Commercial Operations Date because of Force Majeure Event;

the Scheduled Commercial Operations Date, the Scheduled Connection Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period to permit the Seller through the use of due diligence, to overcome the effects of the Force Majeure Event or in the case of the Procurer's or Procurers' material default till such time the material default is rectified by the Procurers.

- 4.5.2 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance on how long the Scheduled Commercial Operations Date, the Scheduled Connection Date or the Expiry Date should be deferred by, any Party may raise the Dispute in accordance with Article 17.

- 4.5.3 The Scheduled Commercial Operations Date of any Unit or the Scheduled Commercial Operations Date of the Power Station as a whole, may not be extended by more than a total of twelve (12) months from the Scheduled Commercial Operations Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events, and the new date shall be deemed the Scheduled Commercial Operations Date for the purposes of this Agreement. If the original Scheduled Commercial Operations Date is delayed beyond twelve (12) months, this Agreement shall terminate as detailed in Article 14.

4.6 Liquidated damages for delay in providing Contracted Capacity

- 4.6.1 If any Unit or the Power Station as a whole is not Commissioned by its Scheduled Commercial Operation Date other than for the reason specified in Article 4.5.1, the Seller shall pay to each Procurer liquidated damages for the delay in making the Units, or the Power Station's Contracted Capacity available for dispatch. The amount payable to Procurers shall be the encashment and appropriation of the

⁵⁵ As defined in Schedule 6

security deposit in the manner set out in Article 3.4.3 upto five (5) months of delay and thereafter for any further delay the amount calculated as follows:

$$SLD_b = \sum_{n=1}^{n=k} [CC_{un} \times d_n \times DR_1] , \text{ if } d_n \leq 60$$

$$SLD_b = \sum_{n=1}^{n=k} [CC_{un} \times 60 \times DR_1] + \sum_{n=1}^{n=k} [CC_{un} \times (d_n - 60) \times DR_2] , \text{ if } d_n > 60$$

Where:

- a) “**SLD_b**” are the liquidated damages payable by the Seller during the period beginning with the day after the five (months) from the Scheduled Commercial Operation Date of a Unit or Power Station, as the case may be up to and including the day on which Unit or said Power Station is actually Commissioned;
 - b) “**CC_{un}**” is the Contracted Capacity of Unit “n”;
 - c) “**d**” is the number of days in the period beginning with the day after the five (months) from the Scheduled Commercial Operation Date of Unit “n” up to and including the day on which Unit is actually Commissioned;
 - d) “**DR₁**” is Rs. Four Thousand (4,000) of damages per MW per day of delay in case “d” is less than 60 days and “**DR₂**” is Rs. Five Thousand (5,000) of damages per MW per day of delay in case “d” is equal to or more than 60 days
 - e) “**k**” is the number of Units
- 4.6.2 The Seller’s aggregate liability under this Article 4.6 and Article 3.4.5 shall not extend beyond twelve (12) months of delay for the Power Station as a whole provided that in case of non commissioning of the project even after twelve (12) months of the delay from the Scheduled Commercial Date, the Procurers shall have the option to terminate the agreement for breach on the part of the Seller and claim liquidated damages for such breach as provided in Article 14.
- 4.6.3 The Seller shall make payment of the amount calculated pursuant to Article 4.6.1 within ten (10) days of the earlier of:

- (a) the date on which the Unit is actually Commissioned; and
- (b) the date of termination of this Agreement.

4.6.4 The Parties agree that the agreed formula for calculation of liquidated damages payable by the Seller under this Article 4.6, read with Article 14, is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in achieving commissioning of a Unit by its Scheduled Commercial Operation Date.

4.7 *Liquidated damages for delay due to Procurer default*

4.7.1 If a Unit or the Power Station is available for conducting Commissioning Tests and is anticipated to be capable of duly completing the Commissioning Tests, but the said Commissioning Test is not undertaken or completed due to any Procurer's Event of Default, the first Unit or the second Unit (if the first Unit has been Commissioned), as relevant, shall, until it effects of the Procurer Event of Default no longer prevent the Seller from undertaking a Commissioning Test, be deemed to have a Tested Capacity equal to the Contracted Capacity and to this extent, be deemed to have been Commissioned and thus deemed to be in commercial operation with an Available Capacity of eighty (80)⁵⁶ percent of the Capacity and the Seller shall be eligible for the payment of Capacity Charges on such deemed Available Capacity. For the avoidance of doubt, it is specified that the charges payable under this Article 4.7.1 shall be paid by the both the Procurers in proportion to the Available Capacity allocated to them.

4.7.2 In every case referred to in Article 4.7.1 hereinabove, the Seller shall undertake a Commissioning Test as soon as reasonably practicable (and in no event later than one (1) weeks) after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or a Procurer Event of Default (as appropriate) and if such

⁵⁶ The figures can be changed by the Procurer and it needs to be in line with the Normative Availability as mentioned in the CERC (Terms and Conditions of Tariff) Regulations at the time of preparation of the Bidding Documents

Commissioning Test is not duly completed and / or demonstrates a Tested Capacity which is less than ninety five (95) percent Contracted Capacity, then:

- a) The Unit which fails the Commissioning Test, shall be deemed to have not been Commissioned from the deemed commissioning date referred to in Article 4.7.1;
- b) The Seller shall repay to the Procurer, all sums received by way of Capacity Charge;
- c) Where the Seller fails to achieve Commissioning by the Scheduled Commercial Operation Date, it shall also pay liquidated damages in accordance with Article 4.6.

4.8 *Increased costs due to Procurer's default*

- 4.8.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever, suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.2 shall be the amounts specified in Article 4.7.

5 ARTICLE 5 CONSTRUCTION

5.1 *The Seller's Construction Responsibilities*

The Seller shall be responsible for designing, constructing, erecting, commissioning, completing and testing the Power Station in accordance with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- a) applicable law;
- b) the Grid Code;
- c) the terms and conditions of this Agreement;
- d) the Functional Specifications;
- e) the Technical Specifications; and
- f) Prudent Utility Practices.

5.2 *The Site*

The Seller acknowledges that, before entering into this Agreement it has had sufficient opportunity to investigate the Site and accepts full responsibility as between the Parties for its condition (including but not limited to its geological condition, any toxic contamination or archaeological remains on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water) 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 for whatever reason.

5.3 *Information Regarding Interconnection Facilities*⁵⁷

The Procurers shall jointly provide the Seller, on a timely basis, all information with regard to the Interconnection and Transmission

⁵⁷ This clause is relevant only when the responsibility of getting the clearances and Transmission Linkage is with the Procurer.

Facilities as is reasonably necessary to enable the Seller to design, install and operate all interconnection plant and apparatus on the Seller's side of the Interconnection Point.

5.4 Quality of Workmanship

The Seller shall ensure that the Power Station is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international –utility grade quality such that, the useful life of the Power Station will not be less than twenty five (25)⁵⁸ years before any significant refurbishment is required.

5.5 Consents

The Seller shall be responsible for obtaining all Consents (other than those required for the Interconnection and Transmission Facilities⁵⁹) and keeping in effect all such Consents in order to carry out its obligations under this Agreement in general and this Article 5 in particular and shall supply the Procurers promptly with copies of each application that it submits, correspondence in respect of such applications and a copy of each Consent which it obtains.

5.6 Construction Documents

5.6.1 The Seller shall retain at the Site and make available for inspection to the Procurers at all reasonable times the following documents:

- (a) as-built drawings for the Power Station and / or the Project, including, but not limited to the civil and architectural works;
- (b) copies of the specifications, operating manuals and manufacturer's warranties for all major items of plant and / or equipment incorporated into the Power Station or used for the purposes of the Project;

⁵⁸ This period is for Coal Based Power Plant, for Hydro Based power Plant this period will be 35 years and for Gas/Liquid Fuel based power plant this period will be of 15 years

⁵⁹ Refer footnote number 16 above

- (c) copies of the results of all tests performed on major items of plant incorporated into the Power Station; and
- (d) such other technical documents relating to the design, procurement, engineering and construction of the Power Station as the Procurers may reasonably request from time to time.

5.6 Co-ordination of Construction Activities

5.7.1 Before the tenth (10th) day of each month during the Construction Period:

- (a) the Seller shall prepare and submit to the Procurers a monthly progress report, in the Agreed Form, which reviews the progress of the design, engineering, procurement, construction, completion, testing and commissioning of the Power Station; and
- (b) The Procurers shall prepare and submit to the Seller a monthly progress report, in the Agreed Form, which reviews the progress of the design, engineering, procurement, construction and installation of the Interconnection and Transmission Facilities⁶⁰.

5.7.2 Each Party shall designate from time to time, in a written notice to the other Party up to five (5) of its employees who shall be responsible for coordinating all construction activities relating to the Project and who shall have access at all reasonable times to the other Party's land for the purpose of inspecting the progress of the work being carried on there, subject to their giving reasonable notice of the inspection and subject to their complying with all reasonable safety procedures.

⁶⁰ This clause is relevant only when the responsibility of getting the clearances and Transmission Linkage is with the Procurers.

6 ARTICLE 6 SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

6.1 Synchronization

- 6.1.1 The Seller shall give the Procurers at least sixty (60) days advance written notice of the date on which it intends to synchronise a Unit to the Grid System.
- 6.1.2 Subject to Article 6.1, a Unit may be synchronised to the Grid System when:
- (a) it has been completed in accordance with the Technical Specification and the Functional Specification;
 - (b) it meets all connection conditions prescribed in any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System; and
 - (c) is capable of being operated safely.
- 6.1.3 The Seller shall notify the Procurers as soon as it believes a Unit has been completed, satisfies that conditions listed in Article 6.1.2 and is ready to be synchronised to the Grid System in accordance with this Agreement.
- 6.1.4 The Procurers shall inspect any Unit, which the Seller intends to synchronise to the Grid System within five (5) days after being notified in writing by the Seller pursuant to Article 6.1.3 to determine whether the requirements of Article 6.1.2 have been met. The Seller shall provide to the Procurers' employees, in accordance with Article 5.7.2 with such access to the Site as it reasonably requires to make such determination.
- 6.1.5 If the Procurers are satisfied that the Unit is ready to be synchronised in accordance with Article 6.1.2, they shall promptly notify the Seller to that effect and provide the Seller with all reasonable assistance in synchronising the Unit as soon as reasonably practicable.
- 6.1.6 If the Procurers or a Procurer does not inspect the Unit when required pursuant to Article 6.1.4, or having inspected the Unit, both or one Procurer determines that the requirements of Article 6.1.2 are not met, the Seller shall nevertheless be entitled to synchronise the Unit to the Grid System, and the Procurers shall provide the Seller with all reasonable assistance in synchronising the Unit as soon as practicable, if the Independent Engineer:
- (a) certifies to the Procurers in writing that, in its opinion, the Unit has been completed in accordance with Article 6.1.2; and

- (b) gives in writing the reasons why, in its opinion, any objections raised by the Procurer or Procurers are not well founded.

6.2 Commissioning

- 6.2.1 The Seller shall be responsible for ensuring that the Power Station is commissioned in accordance with Schedule 4 at its own cost, risk and expense.
- 6.2.2 The Procurers shall use all reasonable endeavours to accept into the Grid System, Electrical Output generated by a Unit, Electrical Output generated by the Power Station while it is undergoing commissioning and testing.
- 6.2.3 The Seller shall give the Procurers and the Independent Engineer not less than ten (10) days prior written notice of each Commissioning Test.
- 6.2.4 A Procurer or the Procurers may for reasonable cause defer any Commissioning Test for up to fifteen (15) days from the date originally notified by the Seller pursuant to Article 6.2.3 if the Procurer or the Procurers notify the Seller in writing at least twenty four (24) hours before the Commissioning Test starts of the reason for the deferral and when the test is to be rescheduled:
Provided that, such deferment at the request of a Procurer shall be permitted only once.
- 6.2.5 The Seller, the Procurers and the Independent Engineer shall each designate qualified and authorised representatives to monitor each Commissioning Test.
- 6.2.6 Testing and measuring procedures applied during each Commissioning Test shall be in accordance with the codes, practices and procedures mentioned in Schedule 4 of this Agreement.
- 6.2.7 Within five (5) days of a Commissioning Test, the Seller shall provide the Procurers and the Independent Engineer each with copies of the detailed test results

6.3 Commercial Operation

- 6.3.1 A Unit, or the Power Station, as the case may be, shall be Commissioned on the day after the date when the Procurers receives a Final Test Certificate of the Independent Engineer stating that:
 - a) the Commissioning Tests have been carried out in accordance with Schedule 4;

- b) the results of the Performance Test show that the Unit's Tested Capacity, or in the case the Power Station has been Commissioned, the Power Station's Tested Capacity is not less than ninety five (95) percent of its Contracted Capacity;
 - c) the results of the Characteristics Test show that the Unit , or in the case the Power Station has been Commissioned, the Power Station is capable of operating in accordance with its Contracted Operating Characteristics;
 - d) the Independent Engineer certifies that the Seller has complied with the requirements of Articles 5.1
- 6.3.2 If a Unit (or the Power Station, as relevant) fails a Commissioning Test, the Seller may retake the relevant test within three (3) days after the end of the previous test with one (1) days notice.
- 6.3.3 The Seller may retake the Performance Test, up to five (5) times, during a period of ninety days ("Initial Performance Retest Period") from a Unit's or if the Power Station has been commissioned, the Power Station's Commissioning Date in order to demonstrate an increased Tested Capacity.
- 6.3.4 (i) If a Unit's (or the Power Station's, as relevant) Tested Capacity at the end of the Initial Performance Retest Period is less than its Contracted Capacity, the Unit (or the Power Station's, as relevant) shall be derated with the following consequences:
- a) the Unit's (or the Power Station's, as relevant) Contracted Capacity shall be reduced to its Tested Capacity, as existing at the end of the Initial Performance Retest Period;
 - b) the Capacity Charge shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Station as a result of that derating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned);
 - c) the Seller shall not be permitted to declare the Available Capacity of the Unit or if the Power Station has been commissioned, the Power Station at a level greater than its Tested Capacity; and
 - d) the Availability Factor of the derated Unit and the Power Station shall be calculated by reference to the reduced Contracted Capacity;

in each case with effect from the Unit's (or the Power Station's, as relevant) Commissioned Date and the Procurers shall have the right to claim from the Seller any excess Tariff Payments that they may have made to the Seller.

(ii) The consequences mentioned in sub-Article (i) above shall apply for a period of one (1) year from the date of the Unit's or Power Station's Commissioned Date, as the case may be. If at the end of such one (1) year period, the Tested Capacity is less than the Contracted Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 shall apply but this time with respect to the Tested Capacity existing at the end of such one year period.

- 6.3.5 If a Unit's or Power Station's Tested Capacity at the end of the Initial Performance Retest Period is found to be more than its Contracted Capacity, the Contracted Capacity shall be deemed to be the Unit's or Power Station's Tested Capacity for all purposes.
- Provided further that the Tested Capacity in excess of the Contracted Capacity, shall be ignored for all purposes of this Agreement.

6.4 Costs Incurred

The Seller expressly agrees that all costs incurred by him in Synchronising, connecting, Commissioning and / or Testing or Retesting a Unit or the Power Station as a whole shall be solely and completely to his account and the Procurer's or Procurers' liability shall not exceed the Variable Charges for such Power Output, as set out in Schedule 6.

7 ARTICLE 7 OPERATION AND MAINTENANCE

7.1 *Operating Procedures*

7.1.1 Not later than one hundred and twenty (120) days before the Scheduled Synchronization Date of the Project, the Procurer shall provide the Seller with a draft Operating Procedure dealing with all operation interfaces between Procurer and the Seller including, but not limited to,

- a) the method of day-to-day communication between the Procurers and the Seller;
- b) safety co-ordination;
- c) clearances and switching practices;
- d) scheduling and despatch;
- e) capacity and energy reporting;
- f) operating log;
- g) incident reporting;
- h) testing of the Interconnection and Transmission Facilities;
- i) testing (including Performance Tests) and monitoring of the Units;
- j) Reactive Power support;

7.1.2 The Operating Procedures shall be consistent with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- (a) Applicable law;
- (b) the Grid Code;
- (c) the terms and conditions of this Agreement;
- (d) the Functional Specifications;
- (e) the Technical Specifications; and

(f) Prudent Utility Practices.

7.1.3 Within sixty (60) days after receiving the later of the two drafts, one submitted by each of the Procurers pertaining to the Operating Procedures, the Seller shall notify the Procurers in writing of its objections, if any, to the drafts received and the deletions, amendments or additions that it requires, and all Parties shall meet to discuss the draft Operating Procedures and to try to reach agreement on the Operating Procedures and suggested deletions, amendments and additions. If the Parties have failed to reach agreement within twenty (20) days after the Procurers' receipt of the Seller's notice pursuant to this Article, the matter shall be resolved in accordance with Article 17.

7.1.4 Any Party may from time to time propose amendments to the Operating Procedures in any manner consistent with Article 7.1.2 by giving written notice to the other Party stating the reasons for the proposed amendment. The process in Article 7.1.3 shall apply if one Party objects within sixty (60) days to any proposed amendment.

7.1.5 The Operating Procedures shall take effect on the date agreed by the Parties or, if there is no objection to the proposed Operating Procedures, the expiry of the sixty (60) day objection period or such later date as shall be set out in the draft Operating Procedures which have been circulated.

7.1.6 The Parties shall comply with the Operating Procedures

7.2 Operation and Maintenance of the Power Station

7.2.1 The Seller shall be responsible at its own expense for ensuring that the Power Station is operated and maintained in accordance with all legal requirements, including the terms of all Consents and Prudent Utility Practices so as to meet its obligations under this Agreement, including without limitation its obligations under Article 4.1, and so as not to have an adverse effect on the Grid System.

- 7.2.2 The Seller shall be responsible at its own expense for obtaining and keeping in force all Consents required for the operation of a Unit, the Power Station and the Project in accordance with this Agreement throughout its Operating Period.
- 7.2.3 The Seller shall ensure that sufficiently competent and qualified personnel are always on hand at the Power Station to enable a Unit to be operated twenty four (24) hours a day, seven (7) days a week throughout the year, it being understood that this shall not create an obligation on the Procurers to absorb all the Electrical Output that is capable of being generated if the Units are run in such manner and shall also not affect the ability of the Procurers to Dispatch the Power Plant. In relation to employing personnel the Seller shall meet any applicable laws, rules, regulations and requirements in force from time to time in India.
- 7.2.4 Not later than the Commissioned Date of the first Unit and during the term of this Agreement, the Seller shall keep at the Site as permanent stock such quantity of fuel as shall reasonably represent fifteen (15⁶¹) days supply.

7.3 Inspections

- 7.3.1 The Procurers shall have the right to designate, from time to time in a written notice to the Seller, up to five (5) of their representatives who shall be responsible for inspecting the Power Station for the purpose of verifying the Seller's compliance with this Article 7 and who shall have access to the Power Station, in the case of each Procurer:
- a) on no more than two (2) occasions in a Contract Year, upon giving not less than twenty four (24) hours notice of the inspection to the Seller;
 - b) on occasions when the Seller has reported partial or full outage, to verify the other conditions reported by the Seller which in the reasonable opinion of the Procurer may affect the output of

⁶¹ This period may be changed by the Procurer depending on the Fuel Supply Agreement. For Hydro Power Plants this clause may not be applicable.

a Unit and / or the Power Station in the next twenty four (24) hours, by giving one (1) hour notice; and

c) at any other time for good cause, upon giving such notice as maybe reasonable in the circumstances; subject , in all cases, to their complying with all reasonable safety precautions and standards.

7.3.2 In the exercise of any of its right under Article 7.3.1, the Procurers shall ensure that their representatives do not knowingly interfere with the proper operation or maintenance of the Power Station.

7.4 Dispatch Procedures

7.4.1 The Parties shall comply with the Dispatch Procedures, which should be mutually agreed among parties no later than 60 days before the Scheduled Commercial Operation Date of the first unit. The Dispatch Procedures to be agreed to shall at all times be consistent with the Applicable Laws including Grid Code.

7.4.2 The Seller may at any time and each Procurer may, in respect of the Dispatch Procedures in so far as relevant to them, at any time, after the Commercial Operations Date propose revisions to the Dispatch Procedures by giving the relevant Procurer or Seller, as the case may be, written notice of the proposed changes and the reasons for the proposed changes.

7.4.3 Within thirty (30) days of receiving any proposed change to the Dispatch Procedures pursuant to Article 7.4.2, the Party receiving the notice shall have thirty (30) days within which to notify the Party suggesting such changes whether or not it agrees to the proposed changes in which event:

(a) if the change is agreed, the revised Dispatch Procedures shall become the Dispatch Procedures as between those the relevant Procurer and Seller for the purposes of this Agreement upon the date specified in the

proposal or, if no date is so specified upon the expiry of the thirty (30) day notice period;

- (b) if the change is not agreed, the Party receiving the notice shall provide a written list of its objections to such revised Dispatch Procedures and Article 7.4.4 shall apply; and
- (c) if the Party receiving the notice fails to respond within such thirty (30) day period it will be deemed to have agreed to the prop

7.4.4 If a Party objects to any revised Dispatch Procedures proposed under Article 7.4.2, both the receiving Party and the issuing Party shall consider the objections in good faith with a view to reaching agreement on how to revise the Dispatch Procedures.

7.4.5 If the relevant Procurer and the Seller reach agreement on the revised Dispatch Procedures within twenty (20) days after the list of objections was provided pursuant to Article 7.4.3, they shall become the Dispatch Procedures for the purposes of this Agreement with effect from the date specified in the agreement. If they fail to reach agreement within that period the matter shall be resolved in accordance with Article 17.

7.4.6 Notwithstanding the foregoing provisions of this Article 7.4, no change shall be made to the Dispatch Procedures if the revised Dispatch Procedures would be inconsistent or incompatible with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- a) Applicable law;
- b) the Grid Code;
- c) the terms and conditions of this Agreement;
- d) the Functional Specifications;
- e) the Technical Specifications; and
- f) Prudent Utility Practices.

7.5 Scheduled Outages

7.5.1 Not later than November 30 in each year (or by such other date as the Procurers may jointly from time to time prescribe for the submission of outage plans from generating companies connected to the Grid System), the Seller shall submit to the Procurers in writing its firm proposals for the Scheduled Outages to be taken in the next Contract Year and its provisional proposals for Scheduled Outages in each of the next two (2) succeeding Contract Years.

7.5.2 Unless otherwise requested to do so by the Procurers, the Seller shall always plan to take Scheduled Outages only during the months of July, August and September⁶². Further, without the prior consent of both Procurers, the Seller shall not take Scheduled Outages for both the Units of the Power Station, at the same time:

Provided that, after giving a notice of not less than two (2) years, the Procurers shall have the right to jointly replace the above months of July, August and September⁶³ with any three other months.

7.5.3 Within two (2) months after receiving the Seller's proposals, the Procurers shall notify the Seller in writing whether its proposed Scheduled Outages for the forthcoming one (1) Contract Year are acceptable and, if not, and after discussing the matter with the Seller, they shall indicate the periods that would be acceptable, which shall be:

- (a) of the same duration as the periods requested by the Seller;
- (b) within the time limits required by any legal requirement relating to routine maintenance;
- (c) within the time limits required or recommended by the manufacturer or supplier of the plant which is to undergo maintenance; and
- (d) at the same point in time.

7.5.4 The Seller may only object to a Scheduled Outage proposed by the Procurers on the grounds that it would be inconsistent with the requirements of Article 7.5.3. Unless the Seller objects in writing within twenty (20) days after receiving the proposal, it shall be deemed to have

⁶² These months mentioned here are tentative and need to be specified by the Procurer

⁶³ These months mentioned here are tentative and need to be specified by the Procurer

agreed to the Scheduled Outages proposed jointly by the Procurers. If the Seller does object to a proposed Scheduled Outage within that period and the Parties cannot reach agreement within ten (10) days after the Seller's objection was sent to the Procurers, the matter shall be resolved in accordance with Article 17.

- 7.5.5 The Scheduled Outages accepted by the Procurers or agreed to by the Seller pursuant to Article 7.5.4 shall be confirmed to the extent that they relate to the next Contract Year and shall be provisional to the extent that they relate to subsequent Contract Years. Provisionally confirmed Scheduled Outages, may be changed, by any Party for good cause.
- 7.5.6 In an Emergency, a Procurer may require the Seller to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time and shall compensate the Seller for all additional costs which it reasonably incurs in rescheduling the Scheduled Outage, including damages payable or liability incurred in respect of the other Procurer who has not requested an emergency rescheduling of a confirmed Scheduled Outage.
- 7.5.7 The Procurers shall also jointly give notice to the Seller of their maintenance program for the Interconnection and Transmission Facilities⁶⁴ and shall use their reasonable endeavours to coordinate such maintenance with the Scheduled Outages approved pursuant to this Article 7.5 so as to minimise any disruption to the operation of the Project.
- 7.5.8 The Seller shall not declare any Unit available in any Settlement Period when it was scheduled to be undergoing a Scheduled Outage except to the extent that the availability of the Interconnection and Transmission Facilities is sufficient to allow the Procurers to utilise the full amount of the Power Station's Declared Capacity and the Procurers, in their sole

⁶⁴ This clause is relevant only when the responsibility of getting the clearances and Transmission Linkage is with the Procurer.

discretion, choose to accept the Electrical Output made available during such Settlement Period.

7.6 Maintenance Outages

- 7.6.1 Whenever the Seller needs a Maintenance Outage it shall advise the Procurers in accordance with the Operating Procedures of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the Seller's opinion the work should begin consistent with Prudent Utility Practices (which shall be not earlier than forty eight (48) hours after the time when the Seller advised the Procurers of the need for the Maintenance Outage).
- 7.6.2 After discussing the matter with the Seller, the Procurers shall jointly advise the Seller regarding when the requested Maintenance Outage is scheduled to begin (which shall be not later than the latest time indicated by the Seller). The Seller shall use its reasonable endeavours consistent with Prudent Utilities Practices to take the relevant Unit out of service at the scheduled time.
- 7.6.3 The Procurers may jointly require the Seller to schedule a Maintenance Outage in accordance with Articles 7.6.1 and 7.6.2 to remedy any impairment of a Unit's ability to meet its Contracted Operating Characteristics.

7.7 Coordinating Committee

- 7.7.1 No later than one hundred and twenty days (120) days prior to the Scheduled Synchronisation Date of the First Unit, the Parties shall establish a committee (the "Co-ordinating Committee") which shall be responsible for the co-ordination of the commissioning and operation of the Interconnection and Transmission Facilities and the Power Station and their coordination with the Grid System. The Co-ordinating Committee shall comprise six (6) members of which two (2) shall be

appointed by the Seller (one or more of which shall be employees of the Operator), two (2) of which shall be appointed by Procurer One, two (2) by Procurer Two.

Without limitation to the generality of Article 7.7.1, the powers and duties of the representatives of the Co-ordinating Committee shall include:

- a. the co-ordination of the respective programmes of the Parties for the construction and commissioning of the Interconnection and Transmission Facilities and each of the Units and agreement where necessary upon the respective commissioning procedures;
- b. discussion of the steps to be taken on the occurrence of a Force Majeure Event, or a shutdown or reduction in capacity for any other reason, either of the Interconnection and Transmission Facilities or the Power Station;
- c. the co-ordination of the maintenance programme of the Interconnection and Transmission Facilities and the Units and / or the Power Station whether scheduled or otherwise;
- d. the co-ordination of forecasts or requirements from the Power Station;
- e. consultation on the insurance programme to be undertaken by the Seller for the purposes of this Agreement including in respect of the Insurances;
- f. the development of any revisions to the Dispatch Procedures;
- g. the development of the Operating Procedures;
- h. safety matters affecting the Parties or their contractors;
- i. clarification of plans for an Emergency developed by the Procurers including for recovery from a local or widespread electrical blackout or voltage reduction in order to effect load curtailment;
- j. the review and revision of protection schemes and devices; and
- k. any other mutually agreed matters affecting the operation of the Interconnection and Transmission Facilities or the Power Station.

7.7.2 The Co-ordinating Committee may agree upon procedures for the holding of meetings, the recording of meetings and the appointment of sub-committees:

7.7.3 Provided that, Procurer One and Procurer Two shall alternatively nominate the Chairman of the Co-ordinating Committee on an annual

basis and the quorum for each meeting shall include at least one (1) person appointed by each Party.

All decisions at any meeting of the Co-ordinating Committee shall be made with the unanimous agreement of all persons present at such meeting:

7.7.4 Provided that, the Coordinating Committee or any Party may refer the decision to the chief executives of the Parties for further consideration and resolution. Any matters not resolved by such unanimous agreement or resolution between each Party's chief executive shall be determined in accordance with Article 17.

7.7.5 The Co-ordinating Committee shall have the option, by mutual agreement between the members of the Co-ordinating Committee, to co-opt any other member(s) from relevant bodies such as Lenders (or any agent, trustee or representative acting on their behalf).

7.7.6 Except to the extent that any decision is inconsistent with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- (a) applicable law;
- (b) the Grid Code;
- (c) the terms and conditions of this Agreement;
- (d) the Functional Specifications;
- (e) the Technical Specifications; and
- (f) Prudent Utility Practices.

the Parties shall comply with the unanimous decisions of the Co-ordinating Committee in relation to matters within its competence or those that may referred to it.

7.8 Maintenance of Records

7.8.1 Each Party shall keep complete and accurate records and all data required by each of them for the purposes of proper administration of

this Agreement including, without limitation, an accurate and up to date operating log at the Power Station with records of:

- (a) meter records and other records needed to reflect real and reactive power production for each Settlement Period and Electrical Output of the Power Station on a continuous real time basis;
- (b) records of Available Capacity and Declared Capacity;
- (c) the results of any tests;
- (d) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages (and any other restrictions or limitations affecting Available Capacity);
- (e) any unusual conditions found during inspections; and
- (f) records or primary and secondary fuel receipts, consumption and stocks.

7.8.2 All records maintained pursuant to this Article 7.8.1 shall be maintained for minimum of sixty (60) months after the creation of such records or data:

Provided that, the Parties shall not dispose of or destroy any such records after such sixty (60) month period without thirty (30) days' prior written notice to the other parties or at any time during the continuation of any dispute in respect of any matter to which such records relate.

7.8.3 Every Party shall have the right, upon reasonable prior notice, to examine the records and data of the other Parties relating to this Agreement or the operation and maintenance of the Power Station at any time during normal office hours.

8 ARTICLE 8: CAPACITY, AVAILABILITY AND DESPATCH

8.1 Repeat Performance Tests

- 8.1.1 The Procurers may jointly from time to time during the Operating Period, but at least once every Year, require the Seller to demonstrate a Unit's or (if the Power Station has been commissioned), the Power Station's Tested Capacity by carrying out a further Performance Test (a "**Repeat Performance Test**") in accordance with this Article 8.1. A Repeat Performance Test shall be carried out in accordance with Article 1.2 of Schedule 4, save that the test shall last twenty-four (24) hours instead of seventy two (72) hours.
- 8.1.2 The Procurer or Procurers, as the case may be, shall give the Seller not less than seven (7) days' advance joint written notice of the time when a Repeat Performance Test on a Unit or the Power Station (if the Power Station has been commissioned) is to begin. A Repeat Performance Test may not be scheduled for any period when the Unit to be tested is due to undergo a Scheduled Outage.
- 8.1.3 The Procurer or Procurers, as the case may be, shall jointly appoint an engineer (the "**Monitoring Engineer**") to monitor the Repeat Performance Test and to certify the results in accordance with Article 8.2. The Monitoring Engineer shall be the Independent Engineer.
- 8.1.4 If the Seller wishes to take a Unit or the Power Station (if the Power Station has been commissioned), out of service for repair before it undertakes a Repeat Performance Test, it shall inform the Procurer or Procurers, as the case may be, in writing before its scheduled start of the repairs to be carried out on the Unit or the Power Station, as the case may be and the estimated time required to complete them. The Parties shall then schedule a Maintenance Outage in accordance with Article 7.6 to enable the Seller to carry out those repairs and the Procurer or Procurers requiring the Repeat Performance Test shall defer the Repeat Performance Test until the Unit or the Power Station as a whole (if the Power Station has been commissioned), is returned to service following that Maintenance Outage.
- 8.1.5 The Procurer or Procurers requiring the Repeat Performance Test, may, for reasonable cause, defer any Repeat Performance Test for up to fifteen (15) days from the date originally notified to the Seller in accordance with Article 8.1.2 if the Procurer or Procurers, as the case may be, notify the Seller in writing at least one (1) day before the Repeat Performance Test starts of the reason for the deferral and when the test is to be rescheduled.
- Provided that, such deferment at the request of the Procurer or Procurers shall be permitted only once in respect of each of the Repeat Performance Tests.
- 8.1.6 The Seller, both the Procurers and the Monitoring Engineer shall each have the right to designate qualified and authorised representatives to monitor the Repeat Performance Test.

8.1.7 Testing and measurement procedures applied during the Repeat Performance Test shall be in accordance with the codes, practices of procedures as applied for the Performance Tests.

8.1.8 Within five (5) days of a Repeat Performance Test, the Seller shall provide the Procurers and the Monitoring Engineer each with copies of the detailed test results.

8.2 Derating

8.2.1 A Repeat Performance Test shall be concluded when the Procurers receive the Final Test Certificate of the Monitoring Engineer stating that the Repeat Performance Test has been carried out in accordance with Schedule 4 and certified the Unit's or (if the Power Station has been commissioned), the Power Station's current Tested Capacity as demonstrated by the results of the Repeat Performance Test.

8.2.2 (i) If a Unit's or (if the Power Station has been commissioned), the Power Station's, current Tested Capacity as established by the Repeat Performance test and the Final Test Certificate issued by the Monitoring Engineer, is less than its Contracted Capacity, the Seller shall not be permitted to declare the Available Capacity of the Unit or (if the Power Station has been commissioned), the Power Station, as the case may be, at a level greater than its Tested Capacity and any of the Procurers may elect to require the Unit or the Power Station (if the Power Station has been commissioned), to be derated for a minimum period of one (1) year or till such time as a Performance Test shows an increase in Tested Capacity, whichever is later, in which case:

- (a) the Unit's or (if the Power Station has been commissioned) Power Station's Contracted Capacity shall be reduced to its Tested Capacity;
- (b) the Capital Charge shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Station as a result of that derating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned); and
- (c) the Availability Factor of the derated Unit and the Power Station shall be calculated by reference to the reduced Contracted Capacity;

in each case with effect from date on which the Procurers first notified the Seller of their intention to carry out a Repeat Performance Test on the Unit or (if the Power Station has been commissioned) on the Power Station, as the case may be.

(ii) The consequences mentioned in sub-Article (i) above shall apply for a period of one (1) year from the date on which the Unit's or (if the Power Station has been commissioned), the Power Station's Tested Capacity is determined to be less than its Contracted Capacity. If at the end of such one (1) year period, the Tested Capacity is less than the Contracted Capacity

(as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 (i) shall apply but this time with respect to the Tested Capacity existing at the end of such one year period.

- 8.2.3 If the Monitoring Engineer certifies that it is unable to give a Final Test Certificate because events or circumstances beyond the Seller's reasonable control prevented the Repeat Performance Test from being carried out in accordance with Schedule 4, the Procurer shall reschedule a Repeat Performance Test as soon as reasonably practicable.
- 8.2.4 If a Unit's or (if the Power Station has been commissioned), the Power Station's, Tested Capacity is found to be more than its Contracted Capacity, the Contract Capacity shall be deemed to be the Tested Capacity. Further, the excess Tested Capacity shall be ignored for all purposes of this Agreement.

2.2 8.3 *Availability*

- 8.3.1 The Seller shall at all times keep the Procurers informed of the Available Capacity of a Unit and / or (if the Power Station has been commissioned) the Power Station as a whole, and any impairment of its Contracted Operating Characteristics in accordance with Schedule 5.
- 8.3.2 The Seller shall calculate the Availability Factor for a Unit and / or (if the Power Station has been commissioned) the Power Station as a whole, in each Settlement Period Category monthly in accordance with Schedule 5 and shall notify the Procurers in writing of the results as soon as practicable but in any event within three (3) business days after the end of the relevant month.
- 8.3.3 The Seller shall calculate monthly Availability Factors using the available written data at the time the calculations are finalised, notwithstanding that some of the data may be provisional (because of outstanding disputes, pending Interim or Post Event Notices or otherwise). The calculations shall be updated up to the latest date by which the Procurers may notify the Seller of any errors in the Monthly Tariff Invoice for the relevant month. Implications of the provisional data, once finalised and any subsequent changes in data shall be settled by the subsequent Monthly Invoice or through a Supplementary Invoice which is calculated pursuant to Schedule 6.

2.3 8.4 *Despatch*

The Seller shall comply with a Procurer's Despatch Instructions that are issued in accordance with the Despatch Procedure agreed, as mentioned in Article 7.4. The Despatch Instruction shall be in

accordance with relevant Grid Code, and are as per applicable law, including the Electricity Law.

Provided such dispatch instructions, risk seriously damaging any Unit or other plant or equipment at the Power Station or would pose a serious danger to the Seller's staff.

Provided Dispatch Instructions issued by the each of the Procurer shall not exceed the corresponding allocated capacity of the Procurer.

9 ARTICLE 9: METERING AND ENERGY ACCOUNTING

9.1 *Installation of Meters*

9.1.1 The Seller shall procure and install the Metering System in accordance with this Article 9 and Schedule 9:

Provided that, the Check Meters shall be installed jointly by the Procurers.

9.1.2 Following installation, the Metering System shall be the joint property of the Procurers and the Procurers shall be jointly responsible for the cost of its maintenance, replacement and calibration.

9.1.3 The Seller shall not commence testing or commissioning any Unit before the Interconnection Meter, the Import Meter and the associated Generator Meter and Check Meters have been installed.

9.2 *Inspection and Testing of Meters*

9.2.1 The Procurers shall jointly inspect and if necessary, recalibrate the Metering System on a regular basis and but in any event, at least once every three (3) months.

9.2.2 Each meter comprising the Metering System shall be sealed by each Party and shall not be opened, tested or calibrated except in the presence of representatives of all three Parties.

9.3 *Generator Capacity, Electrical Output and Imported Energy*

9.3.1 The Generator Capacity generated by a Unit shall, subject to Articles 9.4 and 9.5, be measured on the basis of meter readings from its Generator Meter.

9.3.2 The Electrical Output generated by the Power Station and delivered by the Seller to the Procurers at the Interconnection Point shall, subject to Articles 9.4 and 9.5, be measured on the basis of meter readings from the Interconnection Meter.

9.3.3 The energy imported by the Seller to the Power Station shall, subject to Articles 9.4 and 9.5, be measured on the basis of meter readings from the Import Meter.

9.4 *Inaccuracy of Meters*

9.4.1 In the event that any Main Meter fails to register or, upon being tested, is found not to be accurate within $\pm 0.2\%$, the Generator Capacity, Electrical Output or imported energy, as the case may be, shall for the period referred to in Article 9.4.3, be measured on the basis of the value registered by the corresponding Check Meter.

9.4.2 In the event that both a Main Meter and the corresponding Check Meter both fail to register or, upon being tested, be found not to be accurate within $\pm 0.2\%$, Generator Capacity, Electrical Output, or imported energy, as the case may be, shall for the period referred to in Article 9.4.3, be adjusted by immediately restoring and recalibrating the Main Meter and the corresponding Check Meter and the correction applied to the consumption registered by the Main Meter.

9.4.3 The period referred to in Articles 9.4. 1 and 9.4.2 above is the actual period during which inaccurate measurements were made if such period can be determined or, if not readily determinable, the shorter of:

- (a) the period since the immediately preceding test of the relevant Main Meter; or
- (b) one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

9.5 *Meter Reading*

9.5.1 *Daily Meter Output*

Meter output of the Main Meters and Check Meters installed at the Delivery Point shall be taken as at 24:00 hours on each day and the data (along with soft copy thereof by courier and / or electronic mail) on total Energy Output from 00:00 hours to 24:00 hours of the relevant day, shall be furnished by the Seller to Procurer by fax or any other communication mode mutually decided, by 12:00 hours on the following day.

9.5.2 Weekly Meter Output

Weekly Meter output of the Main Meters and Check Meters installed at the Delivery Point shall be taken by the Seller at 24:00 hours on each Sunday, which may be witnessed by CTU/STU, if applicable and the Procurer and such Meter output shall be delivered by the Seller to Procurer on the immediately following Monday, accompanied by the data (along with soft copy thereof by electronic mail).

Provided that such Meter output and other data shall be subject to change in accordance with the Regional Energy Account.

9.5.3 Weekly Meter Output and other Data

On the Monday of each Week, along with the Weekly Meter output pursuant to Article 9.5.2, the Seller shall furnish the following data to Procurer for the previous Week:

- a. the total Energy Output
 1. during the relevant Week; and
 2. upto the last day of the relevant Week commencing from the first (1st) day of the Contract Year,
- b. the details of the capacity reduction attributable to:
 1. Undeclared Capacity Failure and the Settlement Periods in which such Undeclared Capacity Failure has occurred;
 2. Monitored Capacity failure and the Settlement Period in which such Monitored Capacity Failure occurred, and
- c. supporting calculation for items (b) above.

9.5.4 Data for Monthly Billing by the Seller

On or before the second (2nd) day of each Month, the Seller shall furnish to Procurer, the following data (along with soft copy thereof by courier and/or electronic mail) along with the Monthly Bill for Power Output and the Energy Output delivered by the Seller at the Delivery Point during the previous Month:

- i. the total Energy Output during the relevant Month, and up to the last day of the relevant Month, commencing from the first (1st) day of the Contract Year in the format as will be mutually agreed;
- ii. details of the capacity reduction attributable to:
 - a) Monitored Capacity Failure and the Settlement Period in which such Monitored Capacity Failure has occurred during the relevant month;
- iii. the Seller shall submit relevant documents and detailed calculation in support of the claim of
 - a) Energy output;
 - b) capacity reduction for Monitored Capacity Failure; and
 - c) Calculation of Available Capacity Hours, Excess Energy Output, and Energy output less than the Normative Availability.

9.5.4.1 The Seller and Procurer shall each maintain, in respect of the Project

- a) all meter records;

- b) all data collected for the purpose of Article 9.5.4 above;
- c) records of the Annual Generation Schedule;
- d) records of Scheduled Outages, Maintenance Outages, Forced Outages and any other restrictions or limitations affecting capacity or any capacity test;
- e) records of daily supply position of Fuel; and
- f) any other records in relation to the Energy Output and the Power Output.

Such records may be inspected by the other Party during normal business hours upon reasonable written notice of the same (including at any time during the pendency of any breach under this Agreement).

9.5.4.2 All records, documents and data mentioned in Article 9.5.4.1 shall be maintained for a minimum of sixty (60) months after creation of such records, documents or data.

9.6 Energy Accounting

9.6.1 Regional Energy Account

In case the Seller's power plant or identified plant is not located within the state in which the Procurer has asked for the delivery of the energy, the REB secretariat or other appropriate agency will issue Regional Energy Accounts (REA) based on the data provided by the RLDC and output of the Main Meters and Check Meters delivered by the Seller pursuant to Article 9.4 and such REAs shall be subject to subsequent corrections. The REA as finalized shall be binding on the Parties. The values of scheduled energy output used for determination of Tariff Payment in the previous Monthly Bills shall be adjusted in accordance with the finalized REA. Accordingly, the Seller or Procurer, as the case

may be, shall raise a Supplementary Bill for adjustment of the Tariff Payment or any other amounts due.

In case the Seller plant or the identified plant is located within the state in which the Procurer has asked for the delivery of the energy, the billing will be done based on the joint readings taken by the Seller and the Procurer or by the Seller or the STU.

9.6.2 RLDC / SLDC Charges

All scheduling and RLDC / SLDC charges applicable shall be borne by Procurer.

10 ARTICLE 10: INSURANCES

10.1 Insurance during the Construction Period

The Seller shall effect and maintain or cause to be effected and maintained during the Construction Period Insurances against such risks, with such deductibles and with such endorsements and co-insured(s) as are to be specified in Article 1 of Schedule 12 by the Parties, such Schedule to be filled up and completed prior to Financial Close, together with:

- (a) such Insurances as may be required under:
 - (i) any of the Financing Agreements; and
 - (ii) the laws of India; and
- (b) such other Insurances Prudent Utility Practices would ordinarily merit maintenance of.

10.2 Insurance during the Operating Period

Not later than three (3) months prior to the Scheduled Synchronisation Date of the first Unit, the Seller shall effect and maintain during the Operating Period Insurances against such risks, with such deductibles and with such endorsements and co-insured(s) as are to be specified in Article 2 of Schedule 12, which Schedule shall be filled up and completed prior to the Financial Close, together with:

- (a) such Insurances as may be required:
 - (i) under any of the Financing Agreements; and
 - (ii) the laws of India; and
- (b) such Insurances Prudent Utility Practices would ordinarily merit maintenance of.

10.3 Excuse in Failing to Insure

10.3.1 The Seller shall not be in breach of its obligations to procure an Insurance under Articles 10.1 and 10.2 to the extent and only for the period that:

- (a) the particular insurance is not available to it in the international and Indian insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the Seller or the Seller's Contractors; and

- (b) the Seller effects and maintains for the period referred to in Article 10.3.1(a) complimentary Insurance cover having regard to the capacity of the international and Indian insurance markets.

10.3.2 In the event of any Dispute between the Seller and any of the Procurers' as to the capacity of any Insurance or reinsurance markets for the purposes of this Article 10.3 the matter resolved pursuant to the provisions of Article 17.

10.4 No change to Insurances

The Seller may only effect the Insurances covering different risks, deductibles, endorsements, co-insured(s) or other terms different to those referred to in this Article 10 with the prior written consent of the each of the Procurers' which consent shall not be unreasonably withheld or delayed.

10.5 Non Payment of Premiums

The Seller shall ensure that each policy of Insurance contains an endorsement providing that it may not be cancelled (except for non-payment of premiums) or reduced without at least thirty (30) days prior written notice being given by the insurer to, among others, the Procurers':

Provided that, each such endorsement shall provide:

- a. that the insurer may not cancel the coverage for non-payment of premium without first giving both the Procurers ten (10) days written notice that the Seller has failed to make timely payment of the premium (including details of the amount owing); and
- b. *that the Procurers shall after having received the notice referred to in Article (a) above have the right to pay such premium directly to the relevant insurer, without prejudice to any other rights it may have as against the Seller under the terms of this Agreement.*

10.6 Evidence of Insurance Cover

10.6.1 The Seller shall furnish to both the Procurers copies of certificates and policies of the Insurances as soon as they are affected and renewed by

or on behalf of the Seller and from time to time (and at the request of the Procurers) shall furnish evidence to the Procurers 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.

10.6.2 Failure by the Seller to obtain the insurance coverage or certificates of insurance required pursuant to this Article 10 shall not relieve the Seller of its obligations under this Article 10 or in any way relieve or limit the Seller's obligations or liabilities under any other provision of this Agreement.

10.6.3 If the Seller shall fail to effect and / or maintain any of the Insurances, the Procurers may effect such Insurances during the period in which the Seller does not, at the full cost and expense of the Seller, due and payable within thirty (30) days of a notice, from either of the Procurers, to the Seller.

10.7 *Preference for Indian Insurers*

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

10.7.2 In the event of any Dispute between the Seller and any one of the Procurers as to whether any one of the Insurances are capable of being effected with Indian insurance companies, for the purposes of this Article 10.7, the matter shall be referred to resolve Dispute, pursuant to the provisions of Article 17.

10.8 *Application of Insurance Proceeds*

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

- 10.8.2 If a Force Majeure Event or a similar natural event or circumstance renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the portion of the proceeds of such Insurance available to the Procurers (after payment to the Lenders of the Total Debt Amount) shall be as determined by an Expert mutually agreed by the parties.
- 10.8.3 Any Dispute or difference between the Parties as to whether the Power Station 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 Article 17.
- 10.8.4 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 Seller under any Insurance shall not be charged to or payable by the Procurers.

11 ARTICLE 11 BILLING AND PAYMENT

11.1 General

From the Commercial Operation Date (COD) of the Project, Procurer shall pay the Seller the Monthly Tariff Payment, on or before the Due date, comprising of quoted tariff by the Seller for every Contract Year, determined in accordance with this Article 11 and Schedule 6. All Tariff Payments by Procurers shall be in Indian Rupees.

11.2 Delivery and content of Monthly Bills

The Seller shall issue to Procurer a signed Monthly Bill for the Energy Output supplied by the Seller to Procurer for the immediately preceding Month.

Provided that:

- i. if the Project is Commissioned during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- ii. if the Project is Commissioned after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the COD of the Project until the last day of the immediately following Month.

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

second (2nd) day of such Month and if such second (2nd) day is not a Business Day, the immediately succeeding Business Day.

Each Monthly Bill shall include:

- i. Meter output for the relevant Month referred to in Article 9.5.4;
- ii. the Seller's computation of scheduled energy and Availability in accordance with Schedule 6;
- iii. the Seller's computation of various components Monthly Tariff Payment in accordance with Schedule 6;
- iv. supporting data, documents and calculations in accordance with this Agreement.

11.3 *Payment of Monthly Bills*

11.3.1 Procurer shall remit the amount payable under Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller to Procurer in accordance with Article 11.3.3 below.

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

- i. deductions required by the Law; and
- ii. adjustments in Tariff required by the terms of this Agreement but not reflected in the Monthly Bill.
- iii. any debit note raised by Procurer in relation to payments made under this Agreement.

11.3.3 The Seller shall open a bank account at [Identified Place] (the "Designated Account") for all Tariff Payments to be made by Procurer to the Seller, and notify Procurer of the details of such account at least thirty (30) days before the dispatch of the first Monthly Bill to Procurer. Procurer shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Seller of such instructions on the same day. The date of such instructions shall be deemed to be the date of payment by Procurer under this Agreement. Procurer shall also designate a bank account at [Identified Place] for payments to be made by the Seller (including Supplementary Bills) to Procurer and notify the Seller of the details of such account by the COD of the Project.

11.3.4 In the event of delay in payment of a Monthly Bill by Procurer beyond the period of one month from the date of billing, a Payment Surcharge shall be payable by Procurer to the Seller at the rate of two (2) percent in excess of the SBIPLR for the time being, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) on per annum basis, for each day of the delay.

11.3.5 For payment of monthly bills within 7 days of date of billing, a rebate of 2%⁶⁵ shall be allowed. If the payments are made after 7 days but within a period of one month of presentation of bills by the Seller, a rebate of 1% shall be allowed.

11.4 Payment Security Mechanism

⁶⁵ These rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the Bid Documents

11.4.1 Letter of Credit : The Procurer shall provide Payment Security Mechanism to the Seller in respect of payment of Monthly Bills, in the form of a monthly revolving and irrevocable Letter of Credit, opened and maintained by Procurer, which may be drawn upon by the Seller in accordance with Articles 11.4.1.1 through 11.4.1.5; and

11.4.1.1 Not later than one (1) Month prior to the COD of the Project, Procurer shall through a scheduled bank at [*Identified Place*]open a monthly revolving and irrevocable Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of the first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i. for the first Contract Year, equal to the estimated average monthly billing based on Normative Availability;
- ii. for each subsequent Contract Year, equal to the one point two (1.2) times the average of the Monthly Tariff Payments of the previous Contract Year.

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

11.4.1.2 Procurer shall cause the scheduled bank issuing the irrevocable Letter of Credit to intimate the Seller regarding establishing of such irrevocable Letter of Credit to the Seller in writing.

11.4.1.3 If at any time, such irrevocable Letter of Credit amount falls short of the amount specified in Article 11.4.1.1, Procurer shall restore such shortfall within seven (7) days.

11.4.1.4 If Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 11.6.7, the Seller may draw upon the Letter of Credit for an amount equal to such Monthly Bill or part thereof plus Payment Surcharge, if applicable in accordance with Article 11.3.4 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

For the avoidance of doubt it is clarified that the Seller shall not be entitled to drawdown on the Letter of Credit for any failure of Procurer to pay a Supplementary Bill.

11.4.1.5 Procurer shall ensure that the Letter of Credit shall be renewed not later than 30 days prior to its expiry.

11.4.1.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Seller.

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

11.4.2 Collateral Arrangement

11.4.2.1 As further support for Procurer's obligations, the Procurer and the Seller, together with the Scheduled Bank as Escrow Agent, shall at least 30 days before the commercial operation date, enter into an Escrow and Disbursement Agreement (referred as "Escrow Agreement") for the establishment and operation of the Escrow Account in favour of the Seller, into which the revenues from the customers of Procurer in particular geographic areas specified therein, shall be deposited. The parties shall contemporaneously with the execution of the Escrow Agreement enter into a Security and Hypothecation Agreement (referred as "Security Agreement"), whereby Procurer shall hypothecate to the Seller the amounts deposited in the Escrow Account and the receivables. The Escrow Agreement and the Security Agreement are collectively referred to as the "Collateral Arrangement". If Procurer fails to make any payment under Article 11.3 and the Letter of Credit as mentioned in Article 11.4.1 is not operational or is not having sufficient amount to pay for the pending payments of the Seller, the Seller can draw upon the Collateral Arrangement in accordance with the terms thereof.

11.5 Third Party Sales on default

11.5.1 If the Seller is unable to implement the Payment Security Mechanism specified in Article 11.4, for any reason whatsoever, the Seller shall have the right to offer such portion of the Available Capacity and Electricity produced earmarked for the defaulting Procurer to the other non defaulting Procurer ("**Default Electricity**"), after giving 7 days notice to the defaulting Procurer. The non defaulting Procurer has the right to elect to receive the whole or

any part of the Default Electricity referred to hereinabove, either himself, or by nominating a third party, who shall, on such nomination, be entitled to receive the same.

11.5.2 If the non defaulting Procurer does not make the election to receive the Default Electricity, either himself, or by nominating a third party within one (1) day of it being so offered , or he expressly waives his first right to receive the same and / or to nominate a third party to receive the same, the Seller shall have the right (but not the obligation) to make available and sell 25% of the Default Electricity, without losing claim on the Capacity Charges due from the Defaulting Procurer, to third party, namely:

- (a) any consumer, subject to applicable law; and
- (b) any licensee under the Electricity Act, 2003.

11.5.3 If the payment security mechanism is not fully restored within 30 days of the event of the payment default, the Seller can sell full Available Capacity to the other parties without losing claim on the Capacity Charges due from the Procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the defaulting Procurer. In case the surplus over energy charges is higher than the capacity charge liability of the defaulting Procurer, such excess over the capacity charge liability shall be retained by the Seller.

11.5.4 If the non defaulting Procurer makes the election aforementioned in Article 11.5.1, but only in respect of a part of the Default Electricity, choosing to receive such part of the Default Electricity either himself, or by nominating a third party within one (1) day of it being so offered, the Seller shall have the right (but not the obligation) to make available 25% of the entire remainder of the Default Electricity to third party. If the payment security mechanism is not fully restored within 30 days of the event of the payment default, the Seller can sell full Available Capacity to the other parties without losing claim on the Capacity Charges due from the Procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the defaulting Procurer. In case the surplus over energy charges is higher than the capacity charge liability of the defaulting Procurer, such excess over the capacity charge liability shall be retained by the Seller.

11.5.5 Sales to any person or Party other than the defaulting Procurer under Article 11.5.2, 11.5.3 or 11.5.4 shall cease and regular supply of Electricity to the defaulting Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this period at the option of Seller:

- (a) the day on which the defaulting Procurer pays the due payment to the Seller and renews the Letter of Credit as mentioned in Article 11.4.1 ;
or
- (b) the date being “x” days from the date on which Notice referred to in Article 11.5.1 was served, where “x” days shall be calculated in accordance with **Schedule 2**.

11.6 Disputed Bill

11.6.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within ten (10) days of receiving it, such bill shall be taken as conclusive.

11.6.2 If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, that Party shall, within ten (10) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i. the details of the disputed amount;
- ii. its estimate of what the correct amount should be; and
- iii. all written material in support of its claim.

11.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, the invoicing Party shall revise such bill within fifteen (15) days of receiving such notice and make a refund to the disputing Party within fifteen (15) days of receiving such notice.

11.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

- i. reasons for its disagreement;

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

iii. all written material in support of its counter-claim.

11.6.5 Upon receipt of such notice of disagreement to the Bill Dispute Notice, authorised representative(s) of a director of the board of directors of each Party shall meet and make best endeavours to amicably resolve the dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

11.6.6 If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 11.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 17.

11.6.7 In case of Disputed Bills it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 17 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the parties shall be bound by the decision of the Appropriate Commission including in regard to interest or delayed payment surcharge, if any directed to be paid by the Appropriate Commission.

11.6.8 If a dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 11.6.5 or by Dispute Resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party within five (5) days of the dispute either being amicably resolved by the Parties pursuant to Article 11.6.5 or settled by Dispute Resolution Mechanism in accordance with Article 11.6.7 along with interest and /or delayed payment surcharge as may directed by the Appropriate Commission.

11.7 *Quarterly and Annual Reconciliation*

Both Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation at the end of each quarter of each Contract Year and annual

reconciliation at the end of each Contract Year to take into account REA (if applicable), Tariff Adjustment Payments, Tariff Rebate Payments, Tariff Surcharge Payments, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Parties shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff Adjustment Payments for the relevant Contract Year and payment of such Supplementary Bill for the Tariff Adjustment Payments for the relevant Contract Year.

11.8 *Payment of Supplementary Bill*

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

- i. Adjustments required by the Regional Energy Account (if applicable);
- ii. Tariff Payment for change in parameters, pursuant to provisions in Schedule 6; and
- iii. Change in Law as provided in Article 13

and such Bill shall be paid by the other Party.

11.8.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to Procurer's designated bank account and

notify Procurer of such payment on the same day. For such payments, rebates as applicable to Monthly Bills pursuant to Article 11.3.5 shall apply.

11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond one month from the date of billing, a Payment Surcharge shall be payable at the rate of interest equal to two (2) percent in excess of the SBIPLR for the time being. The Payment Surcharge shall be applicable on the outstanding amount of payment, calculated on a day to day basis on per annum basis for each day of delay and such Payment Surcharge shall be added to the amount of the Supplementary Bill and payment made accordingly.

11.9 *Payment for Start up Power and Auxiliary Load*

The Seller shall pay to Procurer or other entity directly for the power and energy consumed for start-up of the Project and sourced from such entity.

12 ARTICLE 12 FORCE MAJEURE

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.2 Affected Party

An affected Party means the Procurer or Seller whose performance has been affected by an event of Force Majeure.

An event of Force Majeure affecting the CTU/STU or any other agent of Procurer or Seller, which has affected the transmission line beyond the delivery point, shall be deemed to be an event of Force Majeure affecting Procurer.

Any event of Force Majeure affecting the performance of the Construction Contractor shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting:

- a) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Project; or
- b) a delay in the performance of any of the Seller's Contractors

Similarly, any event of Force Majeure affecting the performance of the Construction Contractor of the Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure event is affecting a delay in the Performance of Procurer's Contractors.

12.3 Force Majeure

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, war embargo, 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; or**
- iii. any event or circumstance of a nature analogous to any of the above**

12.4 Force Majeure Exclusions

Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 12.2;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian law or Indian Directive; or
 - iii. Breach of, or default under this Agreement or any Project Agreements or Government Agreements.

12.5 *Notification of Force Majeure Event*

12.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it not reasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.

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

12.6 *Duty to perform and duty to mitigate*

To the extent not prevented by a Force Majeure event pursuant to Article 12.3, the Affected Party shall continue to perform its obligations pursuant to this

Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

12.7 Available Relief for a Force Majeure Event

Subject to this Article 12:

- (a) 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 a Force Majeure Event; and
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to his obligations including but not limited to those specified under Article 4.5.

13 ARTICLE 13 CHANGE IN LAW

13.1 Definitions

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:

- i. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulation, notice, circular, code, rule or direction by any Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies, etc., or
- ii. the imposition by any Governmental Instrumentality of any material condition in connection with the issuance, renewal, modification, revocation or non-renewal (other than for cause) of any Consent after the date of this Agreement.

that in either of the above cases results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation or sale of electricity;

13.1.2 "Competent Court" means:

the Supreme Court of India or any High Court, or any tribunal or any similar judicial or quasi-judicial body that has jurisdiction in relation to issues relating to the Project.

13.2 Tariff Adjustment Payment for Change in Law

13.2.1 If a Change in Law results in the Seller's revenue or costs directly attributable to the Project being decreased or increased by half a percent (0.5%) of the estimated revenue from the Electricity for the Contract Year (considering the tariff quoted in that Contract Year and the energy corresponding to 80% of the Contracted capacity and for the purpose of above calculations the quoted tariff will be determined assuming the fuel and non-escalable capacity charge indices notified by CERC at the time when it is being brought to the notice of other party as per Article 13.2.2) for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Seller shall be proportionately increased or decreased.

13.2.2 The Procurer or the Seller, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect all increases or decreases till the date of such certificate.

13.2.3 The adjustment in Monthly Capacity Payment for reasons attributable to Article 13.2.1 shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law;
- (ii) the date of order/judgment of the Competent Court, if the Change in Law is on account of a change in interpretation of Law;
- (iii) the date of impact resulting from the occurrence of Article 13.1.1(ii).

13.2.4 The payment for Changes in Law shall be through Supplementary bill as mentioned in Article 11.8.

13.3 *Appeal against Change in Law*

If the results stated in Article 13.1.1 are brought about by a change in the interpretation of Law by a court or tribunal that does not qualify as a Competent Court, the Seller agrees that it shall, at its own cost, appeal against such order/judgment up to the level of the appropriate Competent Court and the right of the Seller to recover the additional amount from the Procurers on account of Changes in Law shall, unless waived in writing by the Procurers, shall be dependent on the Sellers taking adequate steps to contest the increase.

14 ARTICLE 14 EVENTS OF DEFAULT AND TERMINATION

14.1 *Seller Event of Default*

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

- (i) the failure of any Unit to be Commissioned by the date falling twelve (12) months after its Scheduled Commercial Operation Date, or**
- (ii) after the commencement of construction of the Project, the abandonment by the Seller or the Seller's Contractors of the construction of the Project for a period of two (2) months, or**
- (iii) if at any time following a Unit being Commissioned and during its retest, such Unit's Tested Capacity is less than ninety two (90) percent of its Contracted Capacity and such Tested Capacity remains below ninety two (90) percent even three (3) months thereafter; or**
- (iv) after Commercial Operation Date of the Project, the Seller fails to achieve Average Availability of 65%, for a period of twelve (12) consecutive months, or**
- (v) the Seller fails to make any payment required to be made to Procurer under this Agreement within three (3) Months after the Due Date of a valid invoice raised by the said Procurer on the Seller, or**

- (vi) any misrepresentation or untrue statement made in the representation and warranties made by the Seller in Schedule 10 of this Agreement; or**
- (vii) if the Seller:**
 - a) assigns or purports to assign its assets or rights in violation of this Agreement; or**
 - b) transfers or novates any of its rights and/or obligations under this agreement, in violation of this Agreement; or**
- (viii) if the Seller becomes voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such dissolution of the Seller is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and creditworthiness similar to the Seller and expressly assumes all obligations under this Agreement and is in a position to perform them; or**
- (ix) the Seller repudiates this Agreement; or**
- (x) except where due to the a Procurer's failure to comply with its obligations, the Seller is in material breach of any of its obligations pursuant to this Agreement.**

14.2 *Procurer Event of Default*

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

- (i) the defaulting Procurers fails to pay any portion of a Monthly Bill or Supplementary Bill for a period of 90 days after the Due Date and the Seller is unable to recover the amount outstanding to the seller through the Payment security Mechanism provided in Article 11.4; or**
- (ii) the defaulting Procurer repudiates this Agreement; or**
- (iii) the defaulting Procurer is otherwise in material breach of this Agreement which leads to inability of the Seller to perform its obligations under this Agreement; or**
- (iv) any misrepresentation or untrue statement made in the representation and warranties made by the Procurer in Schedule 10 of this Agreement.**

14.3 Termination procedure for Seller Event of Default

14.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 14.1, the Procurers shall have the right to deliver to the Seller a Procurer Preliminary Termination Notice, which shall specify in reasonable detail the circumstances giving rise to the issue of such notice.

14.3.2 Following the issue of Procurer Preliminary Termination Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree shall apply.

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

14.3.4 Within a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, Procurers may terminate this Agreement by delivering a Procurers Termination Notice, whereupon this Agreement shall terminate on the date of such notice.

14.4 *Termination procedure for Procurer Events of Default*

14.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 14.2 (i) in making payment of the amount due to the Seller, the Seller shall have the option to follow the remedies provided under Article 11.4. Provided that for any other Procurer Event of Default in regard to Payment Security Mechanism such as non maintenance of Letter of Credit or Escrow Mechanism the Seller shall not be entitled to terminate the Agreement but may invoke the Dispute Resolution under Article 17 including for direction for specific performance of then obligation of the Procurer.

14.4.2 Without in any manner affecting the rights of the Seller under Article 14.4.1 in the event payment of any undisputed bill or amount due as per the direction of the Appropriate Commission remains outstanding for more than 90 days or in the event of default under Article 14.2 (ii), (iii) or (iv), the Seller shall have the right to deliver to Procurers a Seller Preliminary Termination Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

14.4.3 Following the issue of a Seller Preliminary Termination Notice, the Consultation Period of 60 days or such longer period as the Parties may agree, shall apply.

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

14.4.5 Within a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed or the Procurers Event of Default giving rise to the Consultation Period shall have been remedied, the Seller may terminate this Agreement by delivering a Seller Termination Notice, whereupon this Agreement shall terminate on the date of such notice.

14.5 *Consequences of Termination*

14.5.1 Consequence of Termination for Seller Event of Default

Where this Agreement is terminated by Procurers pursuant to Article 14 for any Seller Event of Default, the Seller shall pay as compensation to Procurers, an amount equivalent to six (6) months of the billing, at the quoted tariff and energy corresponding to the 80% of the contracted capacity, as liquidated damages. For the purpose of above calculations the quoted tariff will be determined assuming the fuel and non-escalable capacity charge indices⁶⁶ notified by CERC at the time of issue of Preliminary Termination Notice. The above amount paid shall be shared by the Procurers in proportion to the capacity of the Project allocated to each of the Procurers. In addition in case any compensation pursuant to CERC Interstate Transmission Regulations for consequential relinquishment of transmission access is payable by Procurers, then such amount shall also be

⁶⁶ In case Seller has not quoted the firm price in the bid

payable by the Seller and the same shall be paid to the Procurers. Such amount shall be paid within thirty (30) days of the day of termination of this Agreement. Further, Seller shall not sell power to any third party till such termination payment has been made.

14.5.2 Consequence of Termination for Procurers Event of Default

Where this Agreement is terminated by the Seller pursuant to Article 14 for any of the Procurers Event of Default, the following shall be the consequences:

- (i) the Seller shall offer the other Procurers the first option to acquire the Capacity allocated to the defaulting Procurer on the same terms and conditions as was applicable to the Defaulting Procurer and in the event the other Procurers shall acquire such capacity or any part thereof this agreement shall stand amended to the extent of such capacity acquired as sale of the capacity to such other Procurer. The Defaulting Procurer shall stand released of all obligations under this Agreement in regard to such capacity acquired by the other procurer except for the actual loss suffered by the Seller from the date of the termination till the date of acquisition of the capacity by the other Procurer;**
- (ii) in the event of the other Procurer does not acquire the capacity of the of the Defaulting Procurer at all or only in part, such capacity not so acquired shall be sold by the Seller to any person willing to purchase the capacity on the best possible tariff, terms and conditions. The other Procurer shall also be entitled to participate in the purchase of the capacity notwithstanding that such other procurer did not opt for purchase of the Capacity as provided in sub-clause (i) above. The seller shall be entitled to claim compensation from the defaulting purchaser the actual loss**

suffered by the Seller pending the sale of such Capacity and thereafter on the difference in the price payable under this Agreement by the Defaulting Procurer and the best possible price the Seller can procure on such resale of the Capacity.

- (iii) the Seller shall make every effort to mitigate the loss to the Defaulting Procurer.**
- (iv) notwithstanding anything contained above the aggregate liability of the Defaulting Procurer shall not in any event exceed an amount equivalent to six (6) months of the billing, at the quoted tariff and energy corresponding to the 80% of the contracted capacity, as liquidated damages. For the purpose of above calculations the quoted tariff will be determined assuming the fuel and non-escalable capacity charge indices⁶⁷ notified by CERC at the time of issue of Preliminary Termination Notice.**

14.5.3 The termination of the Agreement shall not affect the accrued rights and obligations of the parties.

⁶⁷ In case Seller has not quoted the firm price in the bid

15 ARTICLE 15 LIABILITY AND INDEMNIFICATION

15.1 Indemnity

15.1.1 The Seller shall indemnify, defend and hold Procurer harmless against:

- (a) any and all third party claims, actions, suits or proceedings for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest suffered or incurred by Procurer by reason of a breach by the Seller of any of its obligations under this Agreement. (Provided that this Article 15 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer

the above losses together shall constitute "Indemnifiable Losses".

15.1.2 Procurer shall indemnify, defend and hold the Seller harmless against:

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

any of its obligations under this Agreement (Provided that this Article 15 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents

The above losses together shall constitute “Indemnifiable Losses”.

15.2 *Limitation of liability*

A Party ("Indemnifying Party") shall not be liable to indemnify the other Party ("Indemnified Party") under this Article 15 for any indemnity claims made in a Contract Year until the aggregate of all indemnity claims of the Indemnified Party in a given Contract Year exceeds half a percent (0.5%) of the average annual Tariff Payment for all the Contract Years up to the Contract Year in which the indemnity claim is made.

15.3 *Procedure for claiming indemnity*

15.3.1 *Third party claims*

- (a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1(a) or 15.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 15.1.1(a) or 15.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within [30 days] of receipt of the above notice.

Provided however that, if:

- (i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 15.3.1(b) below; and
- (ii) the claim amount is not required to be paid/deposited to such third party pending the resolution of the dispute,

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

- (b) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 15.1.1(a) or 15.1.2(a) and the indemnifying Party shall reimburse to the indemnified Party all reasonable costs and expenses incurred by the indemnified party. However, such indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

15.4 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the

Indemnifying Party pursuant to Article 15.1.1(b) or 15.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses. The Indemnifiable Losses shall be paid by the Indemnifying Party within [30] days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party.

15.5 *Limitation on Liability*

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

16 ARTICLE 16: ASSIGNMENTS AND CHARGES

16.1 Assignments

Subject to Article 16.2.2, this Agreement may not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual agreement between the Parties to be evidenced in writing:

Provided that, such consent shall not be unreasonably withheld if either of the Procurers seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- (a) such transferee is either the owner or Operator of all or substantially all of the distribution system for [insert State Name] and /or such transferee is a successor entity of any of the Procurers; and
- (b) all Agreements shall remain in place and shall be effective as to such successor.

16.2 Permitted Charges

16.2.1 Notwithstanding Article 16.1, the Seller may create any encumbrance over all or part of the Security Package or the other assets of the Project to the Lenders or the Lender's Representative on their behalf as security for:

- (a) amounts payable under the Financing Agreements; and
- (b) any other amounts agreed by the Parties,

Provided that:

- I the Lenders or the Lender's Representative on their behalf shall have entered into the Direct Agreement in the Agreed Form; and
- II any encumbrances granted by the Seller in accordance with this Article 16.2.1 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller itself and as trustee of the Procurers:
 - (i) to release from such encumbrances all of the right, title and interest of the Seller to Additional Compensation so as to enable the Procurers to claim its right of subrogation;

16.2.2 Article 16.1 does not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the Seller carrying out the Project;
- (b) pledges of goods, the related documents of title and / or other related documents arising or created in the ordinary course of the Seller carrying out the Project; or
- (c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the Seller carrying out the Project.

17 ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION

17.1 *Governing Law*

This Agreement shall be governed by and construed in accordance with the Laws of India.

17.2 *Amicable Settlement*

17.2.1 Either Party is entitled to raise any matter, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity (collectively “Dispute”) by giving a written notice to the other Party, which shall contain:

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

17.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 17.2.1, furnish:

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

17.2.3 Within thirty (30) days of issue of notice by other Party pursuant to Article 17.2.2, both the Parties shall meet to settle such Dispute amicably, failing which the Dispute shall be referred to Dispute Resolution in accordance with Article 17.3.

17.3 *Dispute Resolution*

Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by the Appropriate Commission as provided under section 79 or 86 of the Electricity Act, 2003 and the Appropriate Commission may refer the matter to Arbitration as provided in the said provision read with section 158 of the said Act.

17.4 *Parties to Perform Obligations*

Notwithstanding the existence of any dispute and difference referred to the Appropriate Commission as provided in Article 17.3 and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations under this Agreement.

18 ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties.

18.2 Third Party Beneficiaries

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

18.3 No Waiver

A waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by one 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.

18.4 Remedies

Where this Agreement provides for any rebate or other remedies for any breach or shortfall in performance, the Parties shall not be entitled to make any other claim or pursue other remedies under law.

18.5 Entirety

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

18.5.2 All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the sale or purchase of Electrical Output and Contracted Capacity under this Agreement to the Procurers by the Seller are abrogated and withdrawn.

18.6 Assignment

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

18.7 Confidential Information

Subject to Article 18.8, all Parties shall at all times during the continuance of this Agreement:

- (a) use their reasonable endeavours 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 no Party shall disclose the same to any other person; and
- (b) not use any document or other information (whether technical or commercial) obtained by them respectively by virtue of this Agreement concerning another's undertaking for any purpose other than performance of that Party's obligations and exercise of its rights under this Agreement:

Provided that, the provisions of this Article 18.7 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.

18.8 Disclosure of Confidential Information

18.8.1 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 or Parties relating to the Project and shall not, save as may be required by law or appropriate regulatory or statutory authorities, or to any Indian Governmental Instrumentality, or to prospective lenders to, or investors in, the Seller 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.

18.8.2 The provisions of Article 18.8.1 shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement;
- (b) information relating to the Project in the possession of a Party before that information was disclosed to it by or on behalf of the other Party or Parties and which was not obtained under any obligation of confidentiality; and
- (c) information obtained from a third party who is free to disclose the same, and which is not obtained under any obligation of confidentiality.

18.8.3 Every 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 or Parties, as the case may be, if such disclosure is made in good faith:

- (a) to any affiliate of such Party, having made it aware of the requirements of this Article 18.8, or to any Indian Governmental Instrumentality; or
- (b) 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 Article 18.8; or
- (c) 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 Article 18.8; or
- (d) to the extent required by the rules of a relevant and recognised stock exchange; or
- (e) to the extent required by any applicable law of India or pursuant to an order of any court of competent jurisdiction; or
- (f) to any insurer under a policy of Insurance; or
- (g) to directors, employees and officers of such Party having made them aware of the requirements of this Article 18.8,

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 Articles 18.8.3(d) and 18.8.3(e) or to carry on its ordinary business.

18.9 Affirmation

The Seller and Procurer each affirm that:

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

18.10 Severability

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.

18.11 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the Seller and Procurer.

18.12 Survival

Notwithstanding anything to the contrary herein, the provisions under Article 12 (Force Majeure), Article 15 (Liability and Indemnification), Article 17 (Governing Law and Dispute Resolution), Article 14 (Events of Default and Termination), and Article 18 (Miscellaneous) shall continue and survive any expiry or termination of this Agreement.

18.13 Counterparts

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

18.14 Notices

18.14.1 All notices to be given under this Agreement shall be in writing and in the English Language.

18.14.2 All notices must be delivered personally, by registered or certified mail or facsimile to the addresses below:

Seller : [insert details]

Procurer 1: [insert details]

Procurer 2: [insert details]

18.14.3 All notices or communications given by email or facsimile 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.

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

18.15 *Language*

The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

18.16 *Breach of Obligations*

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties acknowledge the damages alone shall not be adequate remedy for such breach. Accordingly each Party agrees that in addition to any other rights or remedy which the other Party or Parties, as the case may be, may have at Law or in equity, the non breaching Party or Parties shall be entitled to specific performance and injunctive relief in any court of competent jurisdiction for any breach or threatened breach by the other Party.

18.17 *Nomination Restriction*

Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of a Procurer to nominate a third Party to receive benefits under this Agreement, such Third Party shall have a financial standing not less than to the Procurer in question.

18.18 *Dispatch Instructions*

Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to a Procurer or Procurers issuing a dispatch instruction to the Seller, where law so requires that dispatch instruction be issued only by a control centre, such references shall be construed as being references to the Seller receiving dispatch instructions from the said control centre and the same shall apply in relation to any other functions being exercised by any other entity or organisation in the future, from time to time..

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at [place].

For and on behalf of
[Procurer]

For and on behalf
[THE Seller]

Signature with seal

Signature with seal

Witness:

1.

2.

Witness:

1.

2.

3. SCHEDULE 1 SELLER'S INITIAL CONSENTS ⁶⁸

⁶⁸ This list need to be finalised by Procurer

4. SCHEDULE 2 Calculation of 'x' days, refer Article 11.5.1

| Percentage of Monthly Invoice which is the subject of default under Article 11.4 as notified in the Notice (issued under Article 11.5.1) relatable to the present occurrence | Number of times a Notice has been issued under Article 11.5.1 to the defaulting Procurer prior to present occurrence | | | | |
|---|--|----------------------|----------------------|----------------------|----------------------------------|
| | 1 st time | 2 nd time | 3 rd time | 4 th time | 5 th time and onwards |
| Less than 25% | x = 20 days | x = 25 days | x = 40 days | x = 60 days | x = 85 days |
| 25% to 30% | x = 20 days | x = 30 days | x = 45 days | x = 65 days | x = 90 days |
| More than 30% to 35% | x = 20 days | x = 35 days | x = 50 days | x = 70 days | x = 95 days |
| More than 35% to 40% | x = 20 days | x = 40 days | x = 55 days | x = 75 days | x = 100 days |
| More than 40% | x = 20 days | x = 45 days | x = 60 days | x = 80 days | x = 105 days |

5. SCHEDULE 3: FUNCTIONAL SPECIFICATION⁶⁹

| <u>S No.</u> | <u>Description</u> | <u>Unit</u> | <u>Particulars</u> |
|---|--|-------------|------------------------|
| 1.1 Grid Conditions at Interconnection Point | | | |
| 1.1.1 | Voltage :Nominal | kV | [] |
| | Variation | % | [] |
| 1.1.2 | Frequency : Nominal | Hz. | [] |
| | Variation | % | [] |
| 1.1.3 | Combined Voltage and Frequency variation for Contracted Capacity | % | [] |
| 1.1.4 | Power Factor : Nominal | | [] lag |
| | Variation | | [] to [] lag lead |
| 1.1.5 | Basic Impulse Level (Peak) | kV | [] |
| 1.2 Fault Levels: | | | |
| 1.2.1 | 3 Phase Maximum | kA | [] |
| 1.2.2 | Clearance time Maximum | ms | [] |

⁶⁹ This chapter/article describes a sample functional specifications for a coal based plant and it needs to be customised considering the plant type and relevant Grid Code

1.3 Contracted Operating Characteristics

1.3.1 Reactive power capability in accordance with reactive capability curves to be developed during detailed design, which are hereby incorporated by reference into, and made an integral part of, this Schedule 3.

1.3.2 Time period for synchronisation The time period permitted to the Seller to start up a Unit and synchronise the unit with the Grid System under various starting conditions shall not exceed the following durations .

| | |
|------------|------------|
| Hot Start | [] hours |
| Warm Start | [] hours |
| Cold Start | [] hours. |

Wherein the various starting conditions are as defined below;

| Starting Conditions | Time since last synchronisation in hours |
|---------------------|--|
| Hot Start | [] |
| Warm Start | [] |
| Cold Start | [] |

(c) **Maximum unit run up rates during starts for each Unit**

| Load Range | Hot Start | 5.1.1.1.1.1.1 W ARM START | Cold Start |
|------------------|-----------|------------------------------|------------|
| Block to 40% MCR | [] | [] | [] |
| Block to 100% | [] | [] | [] |
| Block to 30% | [] | [] | [] |
| 40% to 100% | [] | [] | [] |
| 30% to 100% | [] | [] | [] |

(d) **Maximum Ramp up and Ramp down Rates for Each Unit.**

Maximum ramp up or ramp down rates for each Unit when operating at working pressure and having been working at continuous load level for a period grater than 3 hours;

| Load Range | Loading Rate |
|----------------|--------------|
| 20% to 50% MCR | [] |

| | |
|-----------------|-----|
| 50% to 75% MCR | [] |
| 75% to 100% MCR | [] |

However, the Power Station should be capable of accommodating full load rejection in an emergency or on instruction without any problem.

(e) Dynamic Parameters

Dynamic parameters are the essential operating characteristics, which define the limits within which a Unit or the Power Station is required to operate during normal operation..

- (i) Minimum load for continuous operation without oil support – []
- (ii) Minimum block load on synchronisation – [] MW
- (iii) Turbine governor overspeed trip – []% Nominal speed
- (iv) Generator protection settings
 - Minimum frequency []
 - Maximum frequency []
- (v) The Power Station shall be capable of supplying all auxiliary loads (except black start) internally. Hence, in the event of isolation of the Power Station from the system each Unit together or alone will continue to operate with the generator supplying the auxiliaries.

1.4 Emission Standards and Noise Levels

In accordance with the laws of India and the provisions of Article 1.4, 1.5 and 1.6 of Schedule 4.

6. SCHEDULE 4: COMMISSIONING AND TESTING

1.1 General

Subject to Article 6.2 and 6.3 the Seller shall conduct with respect to each Unit:

- (a) a Performance Test in accordance with Article 1.2 of this Schedule 4 and in accordance with the provisions of ASME PTC 6; and
- (b) a Characteristics Test in accordance with Article 1.3 of this Schedule 4.

1.2 **Performance Test**

- 1.2.1 (a) The Performance Test shall be run under any and all ambient conditions (temperature, humidity etc.) that may exist during the time of the Performance Test and no corrections in final gross output of the Unit will be allowed as a result of prevailing ambient conditions.
- (b) The ability of the Unit to meet Contracted Capacity with fuel of lowest quality permitted under Fuel Supply Agreement shall be demonstrated.
- (c) The correction curves will only be used if the Grid System operation during the Performance Test exceeds Electrical System Limits.
- (d) The Performance Test shall be deemed to have demonstrated the Contracted Capacity of the Unit under all designed conditions and therefore no adjustments shall be made on account of fuel quality or ambient conditions.
- (e) The Seller shall perform in respect of each Unit a Performance Test, which such Unit shall be deemed to have passed if it operates continuously for seventy two consecutive hours at or above ninety five (95) percent of its Contracted Capacity and within the Electrical System Limits and the Functional Specifications.
- 1.2.2 For the purposes of any Performance Test pursuant to this Article 1.2, the Electrical System Limits to be achieved shall be as follows:
- (a) **Voltage**
- The Unit must operate within the voltage levels described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, voltage tests cannot be performed due to Grid System, data supplied from tests of the generator step-up transformers and generators supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified voltage limits.
- (b) **Grid System Frequency**
- The Unit shall operate within the Grid System frequency levels described in the Functional Specification for the duration of the Performance Test.
- (c) **Power Factor**
- The Unit shall operate within the power factor range described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, power factor tests cannot be performed due to the Grid System, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified power factor range.
- (d) **Fuel quality and cooling water temperature**

The Unit must operate to its Contracted Capacity with worst fuel quality and worst design water temperature value.

1.3 Characteristics Test

1.3.1 The Seller shall perform in respect of each Unit, at least the following set of tests (the “Characteristics Test”) to determine that the Unit when tested complies with Article 1.2 of Schedule 3 of the Functional Specification in accordance with Article 6.2 and 6.3.

- (i) A representative samples of ramp rates, by ramping up or down the gross turbine load while maintaining the required temperatures and temperature differences associated with each ramp rate within the turbine while maintaining all other operational parameters within equipment limits;
- (ii) Capacity for each Unit shall be tested for a period of at least two (2) hours with the turbine valves wide open and at normal turbine operation pressure.
- (iii) Automatic voltage regulator droop test;
- (iv) On load tap changer test;
- (v) Reactive capability test;
- (vi) Minimum load capability without oil support for at least two (2) hours;
- (vii) House load operation;
- (viii) Response of a Unit to step load changes;
- (ix) Full load rejection test;
- (x) Three days operation at variable loads; and
- (xi) Tests for start up times for Cold, Warm and Hot Starts.

1.3.2 A Unit shall pass a Characteristics Test if it achieves at least the same level as that referred to in Articles 1.2 and 1.3 of Schedule 3 of the Functional Specification in respect of each of the characteristics referred to in Article 3.1 of this Schedule 4.

1.3.3 A unit shall pass a characteristic test if its associated electrostatic precipitator are tested to demonstrate their ability to limit particular emissions to the permitted values set forth under Functional Specification and RFP document using the fuel of worst quality.

1.4 NO_x Emission

1.4.1 The maximum total NO_x emission from the Unit shall not be more than 260 grams of NO_x per giga joule of heat input (from thermal as well as fuel) to the boiler during the entire operating range of steam generator and w.r.t. load upto 50% of total load for the range of

coals as may be available from the Fuel Supplier. The Seller shall demonstrate the above to the Procurers.

1.5 Plant Effluent

1.5.1 All effluents emerging out of the Unit shall meet the quality requirements of the laws of India including the permissions/clearances accorded by Uttar Pradesh Pollution Control Board and by the Ministry of Environments and Forests. The Seller shall demonstrate the above to the Procurers.

1.6 Noise

1.6.1 All the plant, equipment and systems of a Unit shall perform continuously without exceeding the noise level over the entire range of output and operating frequency. The Seller shall demonstrate the above to the Procurers.

1.6.2 Noise level measurement shall be carried out with a calibrated integrating sound level meter meeting the requirement of IEC 651 or BS 5969 or IS 9779.

7. SCHEDULE 5 : AVAILABILITY FACTORS

1.1 Introduction

- 1.1.1 This Schedule sets out how Availability Factors are calculated for the purposes of the Tariff and determining whether a Seller Event of Default has arisen under Article 14.1(iv).
- 1.1.2 Article 1.2 deals with the Seller's obligation to declare the Available Capacity, Spinning Reserve Response and any impairment of the Contracted Operating Characteristics of a Unit or (if the Power Station has been commissioned) the Power Station in Capacity Notices and Revised Capacity Notices.
- 1.1.3 Article 1.3 defines when a Unit or (if the Power Station has been commissioned) the Power Station is considered to have been subject to a Capacity Failure both in normal operation and when it is being tested or monitored, and sets out procedures for the Procurers to notify the Seller whenever Capacity Failures occur by delivering Post Event Notices and Interim Post Event Notices.
- 1.1.4 Article 1.4 sets out how Available Capacity is to be determined, including how it is to be adjusted when a Unit or (if the Power Station has been commissioned) the Power Station is subject to a Capacity Failure.
- 1.1.5 Article 1.5 describes how Settlement Periods are divided into Settlement Period Categories for the purposes of calculating the Incentive Charge pursuant to Schedule 6.
- 1.1.6 Article 1.6 sets out the formula for calculating the Availability Factor in any relevant period from the data collected pursuant to this Schedule 5.
- 1.1.7 In this Schedules all notice provided to the Procurers shall also be simultaneously be provided to the Control Centre and vice versa.
- 1.1.8 In this Schedule, for the period before the Commissioning of the Power Station, the term "Power Station" shall stand substituted by "Unit".
- 1.1.9 In this Schedule, Available and Declared Capacity shall at all times be equally apportioned between the two Procurers.

1.2 Capacity Notices

- 1.2.1 As soon as practicable before the first Unit is Commissioned and thereafter not later than the prescribed time each day, the Seller shall deliver a notice (a "**Daily Capacity Notice**") to the Procurers specifying:
 - a. the date and time that the Capacity Notice is issued;
 - b. the Schedule Day to which it relates;
 - c. *the Declared Capacity of the Power Station for each Settlement Period in the relevant Schedule Day (and if the Power Station's Declared Capacity is expected to change, the rate at which each change is expected to occur);*
 - d. the extent (if any) to which the Seller expects the Power Station to be incapable of performing in accordance with its Contracted Operating Characteristics in any Settlement Period (and save for any exceptions noted in the Capacity Notice, the Seller shall be deemed to have

declared the Power Station to be capable of meeting its Contracted Operating Characteristics);
and

- 1.2.2 In Article 1.2.1, “prescribed time” means the latest time prescribed by the Electricity Acts, the Electricity Rules or any Grid Code for the delivery of Capacity Notices or, if no time is so prescribed 1000 Hours on the day prior to the relevant Schedule Day or such other time as the Parties may agree.
- 1.2.3 Whenever the Seller believes that any information previously provided to the Procurers pursuant to this Article 1.2 is no longer accurate, it shall promptly deliver a revised notice (a “Revised Capacity Notice”) to the Control Centre in accordance with this Article 1.2.3 specifying the following. Provided that a Revised Capacity Notice for a Settlement Period has to be issued at least six time blocks of 15 minutes (one and a half hour) before the beginning of such Settlement Period.
- (a) the date and time that the Revised Capacity Notice is issued;
 - (b) a reference to the previously provided information that is to be revised;
 - (c) a statement of the changes required to be made to the previous information to make it consistent with the Seller’s current expectations regarding the performance of the Power Station;
- 1.2.4 A declaration by the Seller increasing the Power Station’s Declared Capacity from zero shall be taken to mean that the Power Station could be synchronised to the Grid System not later than the time that the increase in Declared Capacity is stated to be effective (or, if no such time is stated, then immediately) if a Dispatch Instruction to synchronise were given at any time within thirty (30) minutes after the declaration was given and following synchronisation could comply with a Dispatch Instruction to ramp up immediately to its Declared Capacity or any intermediate load above its Minimum Stable Generation at a loading rate consistent with its Contracted Operating Characteristics (so any slower loading rate declared for the time being by the Seller pursuant to Schedule 3).
- 1.2.5 A declaration by the Seller increasing the Power Station’s Declared Capacity from a level above zero shall be taken to mean that the Power Station could comply with a Dispatch Instruction given at the time the increase in Declared Capacity is stated to be effective (or, if no such time is stated, then immediately) or at any later time to go from its then prevailing condition to its new Declared Capacity or any intermediate load within a time consistent with the start-up times and loading rates set out in the Contracted Operating Characteristics (or any longer start-up times or slower loading rates declared for the time being by the Seller pursuant to Schedule 3).
- 1.2.6 A declaration by the Seller reducing the Power Station’s Declared Capacity below its then prevailing level of generation shall be taken to mean that the Power Station must be given a Dispatch Instruction to ramp down not later than the time when the reduction in Declared Capacity is stated to be effective (or, if no such time is stated, then immediately) from the then prevailing level of generation to its Declared Capacity or any lower load and could comply with Dispatch Instruction by ramping down at a deloading rate consistent with its Contracted Operating Characteristics.
- 1.2.7 The Seller shall prepare Capacity Notices and Revised Capacity Notices with due care and attention in order to declare accurately the Seller’s expectations regarding the performance of the Power Station.

- 1.2.8 The Seller shall not submit any Capacity Notice or Revised Capacity Notice declaring the Available Capacity of the Power Station to be greater than its Contracted Capacity or less than its Minimum Stable Generation without the Procurers' prior written consent.
- 1.2.9 The Declared Capacity of the Power Station shall be unaffected by any Dispatched shutdown of the Power Station (unless the relevant Dispatch Instruction was issued to give effect to a requirement that the Unit be taken out of service to remedy any impairment of its ability to meet its Contracted Operating Characteristics) while the Power Station continues to be capable of starting-up, being synchronised and ramping up to its Declared Capacity or any intermediate load above its Minimum Stable Generation within the time allowed by its Contracted Operating Characteristics.

1.3 Capacity Failure

- 1.3.1 A Capacity Failure occurs in a Settlement Period when
- a. the Power Station's Declared Capacity in that Settlement Period is less than the expected availability declared in the Daily Capacity Notice for that Settlement Period (a "**Declared Capacity Failure**");
 - b. *the Power Stations level of generation in that Settlement Period (expressed in MW) and adjusted for Grid System frequency falls short of the Dispatched level after the time allowed for complying with the relevant Dispatch Instruction (determined consistently with the Operating Characteristics at that time) (1) by any amount during a Repeat Performance Test or a period of monitoring or (2) by more than the Permitted Tolerance at any other time (an "Undeclared Capacity Failure"); and*
 - c. *the Power Station's reactive power capability in that Settlement Period (expressed in MVar) falls short of the Dispatched level after the time allowed for complying with the relevant Dispatch Instruction (determined consistently with the Declared Operating Characteristics at that time) (1) by any amount during a Repeat Performance Test or a period of monitoring or (2) by more than the Permitted Tolerance at any other time (an "Undeclared Reactive Power Failure").*
- 1.3.2 The Permitted Tolerance shall be:
- (a) [] MW in relation to a failure to achieve the Dispatched MW output;
 - (b) [] MVar in relation to a failure to achieve the Dispatched reactive power output.
- 1.3.3 Whenever the Procurers have reasons to believe that the Power Station may not be capable of performing consistently with the declarations contained in the current Capacity Notice or Revised Capacity Notice, it may issue a notice (a "Monitoring Notice") to the Seller identifying the performance parameters of the Power Station that they wishes to monitor (which shall be its generating capacity, its reactive power capability and its loading or deloading rates) and shall indicate the

maximum period over which monitoring will occur (which period shall not exceed ten (10) hours). During a period of monitoring, the Procurers shall instruct the Seller to set the Power Station's governors so as to not be responsive to changes in Grid System frequency.

- 1.3.4 The Seller shall not be entitled to any additional compensation by reason of the monitoring of the Power Station beyond its right to receive the Tariff.

1.4 Available Capacity

- 1.4.1 The Power Station's available capacity in each Settlement Period (its "Available Capacity") shall be equal to its Declared Capacity in that Settlement Period, less any Capacity Reduction attributable to a Capacity Failure affecting the Unit or (if the Power Station has been commissioned), the Power Station in that Settlement Period.

- 1.4.2 If the Declared Capacity of the Power Station changes during the course of a Settlement Period, the Power Station's Declared Capacity throughout that Settlement Period shall be equal to the lowest Declared Capacity in effect at any time during that Settlement Period.

- 1.4.3 The Capacity Reduction attributable to Capacity Failures shall be calculated for each Settlement Period in which they occur in accordance with the following provisions of this Article 1.4.3

1.4.3.1 Capacity Reductions for Declared Capacity Failures

The Capacity Reduction (expressed in MW) attributable to a Declared Capacity Failure shall be two (2) times the difference (after excluding the Permitted Tolerance) between the level of generation achieved by the Power Station in response to a Dispatch Instruction and the Dispatched level or, if higher, the Power Station's Declared Capacity at that time, for a period of one (1) day.

1.4.3.2 Capacity Reductions for Undeclared Capacity Failures

The Capacity Reduction (expressed in MW) attributable to an Undeclared Capacity Failure shall be four (4) times the difference (after taking into account the Permitted Tolerance) between the level of generation achieved by the Power Station in response to a Dispatch Instruction and the Dispatched level or, if higher, the Power Station's Declared Capacity at that time, for a period of one (1) week.

1.4.3.3 Capacity Reductions for Undeclared Reactive Power Failures

The Capacity Reduction attributable to an Undeclared Reactive Power Failure shall one (1) time the number of MW equal to the number of MVAR by which the Power Station's reactive power capability at the time of the Undeclared Reactive Power Failure fell short (after taking into account the Permitted Tolerance) of the Dispatched level or, if higher, the level that would have been achieved had the plant been capable of operating at a level consistent with its Declared Leading Power Factor or, as the case may be, its Declared Lagging Power Factor.

- 1.4.4 Nothing in this Article shall restrict the Procurers' right to require the Seller to take the Power Station or any Unit out of service in accordance with Article 7.6.3 to remedy any impairment in its Contracted Operating Characteristics.

- 1.4.5 The provisions of this Article 1.4 of Schedule 5 are intended to constitute the Procurers' sole remedy in the event of a Capacity Failure except one caused by the Seller's wilful misconduct. If any Capacity Failure is caused by the Seller's wilful misconduct, the Procurers may elect to recover from the Seller as an indemnity all direct costs, arising from that Capacity Failure.

1.5 **Availability Factors**

In any period, the availability factor (the “**Availability Factor**”) of the Power Station shall be calculated as follows:

$$Av = \{(100 \sum AC^u_s) / (Cap_x \times n_x)\}$$

Where:

“**Av**” means the Availability Factor of the Power Station;

$\sum AC^u_s$ is the sum of the Available Capacities of all Units in each Settlement Period in period x
(expressed in MW)

“**Cap_x**” is the Contracted Capacity of Power Station in period x;

“**n_x**” is the number of Settlement Periods in period x

1.6 **Notices**

- 1.6.1 All written notices required to be given pursuant to this Schedule 5 may be delivered by facsimile.
- 1.6.2 Except for Interim Post Event Notices and Post Event Notices, which shall be effective only upon the receipt of a written notice in accordance with this Schedule 5, all other notices described in this Schedule 5 may be given by the Seller initially by telephone, and will be deemed to have been received by the Procurers upon such communication, provided that a written notice with respect to such communication is delivered to the Procurers within two (2) hours of such communication by telephone.

8. SCHEDULE 6: TARIFF

1.1 General

- 1.1.1 The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule
- 1.1.2 The Tariff shall be paid in two parts comprising of Capacity and Variable Charge

1.2 Capacity Charges

- 1.2.1 The non-escalable and escalable Capacity Charge paid shall be same as quoted by the Seller at the time of the bidding, subject to the achievement of normative availability by the plant.
- 1.2.2 In case the actual availability is less than the normative availability, the Capacity Charges will be paid by the Procurer on prorata basis as determined by the following formula:

$$AcFC_{kn} = \frac{AFC_{kn} * AA}{NA}$$

where:

AFC_{kn} is the Capacity Charge (both escalable and non escalable) for the Contract Year n as quoted in the bidding document (i.e. in Rs per unit) and converted into Rupees after considering normative availability and the time period under consideration. The non-escalable Capacity Charges and the escalable Capacity Charges, in Rs/kWh, shall be the same as quoted by the Seller in the Bid, in the first year. In subsequent years the escalable charges will be escalated in accordance with the escalation index as specified in Schedule 8;

$AcFC_{kn}$ is the Capacity Charge payable (Escalable and non-escalable in Rs. crore) in period k, if the actual availability is less than the normative availability;

NA is the Normative Availability; and

AA⁷⁰ is the Actual Availability and it is computed in percentage for a period as detailed in Article 1.5 of Schedule 5

- 1.2.3 The Normative Availability of the plant shall be equal to the Minimum Offtake Guarantee mentioned by Procurers in different periods of time in the RFP.
- 1.2.4 Incentives will be calculated on an annual basis. Incentives⁷¹ shall be payable for scheduled energy corresponding to scheduled generation by the Seller in excess of Normative Availability, fed at the delivery point of the Procurer. The incentives provided will be at the rate of 40%⁷² of the non-escalable Capacity Charges quoted by the Seller.
- 1.2.5 The Seller shall pay a penalty at the rate of 20% of the Capacity charges in Rs./kWh on the units under shortfall below the Minimum Offtake Guarantee given by the Procurer, subject to the fact that only if drawl schedule given by the Procurer is more than the actual generation of the Seller.

1.3 Variable Charges⁷³

- 1.3.1 The Variable charges will be calculated, in accordance with Article 1.4.3.

1.4 Monthly Tariff Payment

1.4.1 Components of Monthly Tariff Payment

The Monthly Tariff Payment for any Contract Year shall consist of the following:

- (a) Monthly Capacity Charge Payment in accordance with Article 1.4.2 below;
- (b) Monthly Variable Charge for scheduled energy in accordance with Article 1.4.3 below;
- (c) Monthly Incentive Payment determined in accordance with Article 1.4.4 below;
- (d) Monthly Penalty Payment determined in accordance with Article 1.4.5 below;

1.4.2 Monthly Capacity Charge Payment⁷⁴

The Monthly Capacity Payment for any Month m in a Contract Year n shall be calculated as below:

⁷⁰ For Hydro plant a separate formula of Capacity Index as mentioned in the CERC (Terms and Conditions of tariff) regulations will be used

⁷¹ Incentive calculation for Hydro Power Plant will be with respect to Normative Capacity index and as specified in the CERC (terms and conditions of tariff), regulations

⁷² This is a ceiling limit and this figure needs to be decided by Procurer

⁷³ This component of tariff will not be applicable for Hydro Plants

⁷⁴ In case of Hydro Power Plant the Monthly Capacity Charges will be determined by multiplying Scheduled Energy by the Quoted Tariff. In case of Hydro Plant the tariff will be determined by multiplying the scheduled energy with the tariff quoted. In a given month in a contract year, if the cumulative amount paid to the Seller is less than the corresponding ratio of Design Energy (say for sixth month bill DE/2) multiplied by the cumulative scheduled energy till that month, then the same shall be paid to the Seller, to hedge him against the hydrological risk.

If $AA_k \geq NA_k$, $FC_{mk} = AFC_{yn}$;

Else:

$FC_{mk} = (AFC_{yn} \times AA_k) / NA_k - \sum FC_{(m-1)k}$

where:

FC_{mk} is the Capacity Charge payment for the Month m (in Rupees) in the period k;

k is the period in accordance with which an year is been divided by the Procurer, to mention the Minimum Offtake Guarantee in accordance with seasonal or daily variations in the demand. The same is being detailed in Article 1.1 under definition of Minimum Offtake Guarantee

AFC_{yn} is the Capacity Charge (sum of escalable capacity charges and non escalable capacity charges) for the Contract Year n as quoted in the Bid (i.e. in Rs per kWh) and converted into Rupees after multiplying the same with the energy corresponding to the Normative Availability in the period k and the time period between the first day of the period k and until the last day of the month m. The non-escalable Capacity Charges and the escalable Capacity Charges, in Rs/kWh, shall be the same as quoted by the Seller in the Bid, in the first year. In subsequent years the escalable charges will be escalated in accordance with the annual escalation index as specified in Schedule 8;

AA_k is the Actual Availability from the first day of the period k until the last day of the Month m in a Contract Year, determined as mentioned in Article 1.1.3 (as defined in definition of AA);

NA_k Normative Availability in the period k;

$\sum FC_{(m-1)k}$ is the cumulative Capacity Charge calculated from the first day of the period k until the last day of the Month m-1, (in Rupees);

1.4.3 Monthly Variable Charges⁷⁵

The Monthly Variable Charges paid to the Seller will be as per the quotes of the Seller and the Variable Charges will be calculated differently, as detailed below, in accordance with the two ways (namely, Scenario 1 and Scenario 2) in which the quote can be given.

⁷⁵ This component of tariff will not be applicable for Hydro Power Plant. Based on the specific situation as detailed in Article 1.4.3.1, 1.4.3.2 and 1.4.3.3, the PPA needs to be customised and only the relevant clauses needs to be incorporated. In case of Hydro Plant the tariff will be determined by multiplying the scheduled energy with the tariff quoted. In a given month in a contract year, if the cumulative amount paid to the Seller is less than the corresponding ratio of Design Energy (say for sixth month bill DE/2) multiplied by the cumulative scheduled energy till that month, then the same shall be paid to the Seller, to hedge him against the hydrological risk.

Scenario 1: Where the Seller has quoted Variable Charges for each Contract Year in the term of the PPA, the Seller will be entitled for the same amount as quoted by him.

$$MFP_m = AEO_m \times QVC_m$$

where:

MFP_m is the Monthly Variable Charges for the Month m (in Rupees);

AEO_m Scheduled Energy Output in units as injected at the Delivery Point during the month (in kWh);

QVC_m is the Variable Charges quoted for each Contract Year (Rs. / kWh.)

Scenario 2: Where the Seller has quoted only Base Variable Charges in the bid document, the Variable Charges paid during the term of the PPA shall be based on the formula given below:

The variable charge for month m will be equal to the Annual Variable charges quoted by the Seller in the bid, which in turn will be calculated as follows:

$$UMFP_a = UMFP_{a-1} \times \{1 + b/100\}$$

where:

$UMFP_a$ is the variable charges for the year a (in Rupees) in Rs/kWh;

$UMFP_{a-1}$ is the variable charges for $(a-1)$ year in Rs/kWh and it will be equal to the base year Variable Charges quoted by the Seller in case of first month of first Tariff Period;

b is the annual escalation rate (in percentage) corresponding to the [Name of the fuel] as fuel, as notified and updated by CERC half yearly

The monthly Variable charge in Rupees for month m will be :

$$MFP_m = AEO_m \times UMFP_a$$

where:

MFP_m is the Monthly Variable Charges for the Month m (in Rupees);

AEO_m Scheduled Energy Output in units as injected at the Delivery Point during the month (in kWh);

1.4.4 Monthly Energy Incentive Payment⁷⁶

⁷⁶ For hydro power plant, if the Actual Capacity Index is greater than the Normative Capacity Index then the formula used for payment of incentive may be as follows: $0.65 * AFC * (CI_a - CI_n)$. Where AFC is the annual capacity charges and CI_a & CI_n are the actual and normative capacity index respectively But the Procurer may decide on some other rates or mechanism to determine the incentive payment.

If and to the extent the Actual Availability from the first Month of the Contract Year to the Month m exceeds 80%⁷⁷ in a Contract Year n, the Monthly Energy Incentive Payment for the Month m shall be determined using the following formula:

$$EIP_m = (EIR \times \sum EEO_m) - \sum EIP_{m-1}$$

where:

EIP_m is the Energy Incentive Payment for the Month m (in Rupees);

EIR is the Energy Incentive Rate of 40% of non-escalable capacity charges⁷⁸ of tariff in Rs./kWh;

$\sum EEO_m$ is the cumulative value of the Excess Energy corresponding to the Actual Availability (over and above the energy corresponding to the Normative Availability) commencing from the first day of the Contract Year n until the last day of the Month m, (in kWh); and

$\sum EIP_{m-1}$ is the cumulative value of the Energy Incentive Payment made commencing from the first day of the Contract Year n until the last day of the Month m-1 (in Rupees).

1.4.5 Monthly Penalty Payment for shortfall compared to minimum offtake limit given by Seller⁷⁹

The Penalty payment, in Rupees, in the month m, in a specific period k⁸⁰, will be determined using the following formula:

If $AA_{mi} \geq BA_{mi}$, $EPP_{mk} = 0$;

Else ;

⁷⁷ Based on the assumption that the successful Seller is a Thermal Power Plant and on the basis of CERC norms at the time of issuing the bid document

⁷⁸ This is a ceiling rate and can be decided by the Procurer

⁷⁹ For Hydro plants separate penalty mechanism linked to Capacity Index needs to be decided by the Procurer. For Hydro Plants to hedge the Hydrological risks the penalty shall be paid by the Seller for not supplying the Energy corresponding to minimum offtake guarantee only if Actual Capacity Index is lower than the Normative Capacity Index.

⁸⁰ It is assumed that while defining the minimum offtake guarantee, the Procurer will have period k in the blocks of one or more than one month

$$EPP_{mk} = FCU_n \times (BA_{mi} - AA_{mi}) \times CC \times H \times 0.2 - \sum EPP_{(m-1)k}$$

where:

- EPP_{mk} is the Penalty Payment for the Month m, in period k (in Rupees);
- FCU_n is the sum of the Escalable and Non-Escalable Capacity Charges for the year n, corresponding to period k, quoted by the Seller, in Rs./kWh;
- BA_{mi} is the Minimum Offtake Guarantee, in period k, mentioned by the Procurer in percentage of Contracted Capacity in the bidding documents;
- AA_{mi} is the Actual Availability from the first day of the period k until the last day of the Month m in a Contract Year, determined as mentioned in 1.1.3 (as defined in definition of AA);
- CC Contracted Capacity of the plant in kW;
- H Number of hours in the month m;
- $EPP_{(m-1)k}$ is the cumulative penalty paid from the first month of the period k until the last Month m-1, (in Rupees);

8.1.1.1

8.1.1.2 THE SELLER WILL PAY THIS PENALTY AMOUNT ONLY IF DRAWL SCHEDULE GIVEN BY THE PROCURER IS MORE THAN THE ACTUAL GENERATION OF THE SELLER.

1.4.6 Penalty for deviation from the schedule

Variation between scheduled generation and actual generation shall be accounted for through Unscheduled Interchange (UI) Charges as detailed in section 24 of the CERC (Terms and Conditions of Tariff) Regulations, 2004 (as amended from time to time). If the Seller's generator delivery point is at the Procurer's State STU Bus or the CTU Bus in the Procurer's State, then the UI will be settled between the Seller and STU or State Trading Company. If the Seller's generator delivery point is not at the Procurer's State STU Bus and it's an interstate transfer of power then the UI will be settled between the Generator and the STU or State Trading Company of the State where the power is fed. Similarly for Procurer, the UI will be settled between him and the STU or State Trading Company of the State.

1.4.7 Transmission/Wheeling Charges and Scheduling Charges

THE PAYMENT OF TRANSMISSION/WHEELING CHARGES SHALL BE SETTLED BETWEEN THE CTU/STU AND THE PROCURER. THE PAYMENT OF SCHEDULING CHARGES TO THE RESPECTIVE NODAL AGENCY SHALL BE THE RESPONSIBILITY OF PROCURER.

1.4.8 Penalty for not taking Minimum Guaranteed Quantity of Fuel

IN CASE SELLER HAS TO PAY PENALTY TO THE FUEL SUPPLIER FOR NOT PURCHASING THE MINIMUM GUARANTEED QUANTITY OF FUEL MENTIONED IN THE FUEL SUPPLY AGREEMENT AND IF DURING THE CORRESPONDING PERIOD PLANT ACTUAL AVAILABILITY IS GREATER THAT THE MINIMUM OFFTAKE GUARANTEED BY THE PROCURER, THEN SELLER WILL RAISE THE INVOICE TO PROCURER FOR PAYMENT OF THE PENALTY TO THE FUEL SUPPLIER.

1.5 SETTLEMENT OF BILLS

1. Monthly bill raised by the Seller will consist of Monthly Capacity Charges, Monthly Variable Charges, Monthly Energy Incentive Payment Monthly and Penalty Payment for shortfall compared to minimum offtake limit given by the Seller. The Monthly bill will be paid by the Procurer according to the following formula:

$$MB_m = FC_{mk} + MFP_m + EIP_m - EPP_{mk}$$

2. The Transmission & Scheduling Charges, Penalty from deviation from the schedule and Penalty to be paid to fuel supplier will be settled as detailed in Article 1.4.7, Article 1.4.6 and Article 1.4.8 of this schedule.

8.2

9. SCHEDULE 7: DETAILS OF INTERCONNECTION FACILITIES

10. SCHEDULE 8: ESCALATION INDEX

The escalation of yearly expenses from the published data for the tariff period shall be computed as follows:

$$0.4 \times \text{INFLCPI} + 0.6 \times \text{INFLWPIOM}$$

where:

INFLCPI = Annual Average Inflation in CPI_IW

INFLWPIOM = Annual Average Inflation in WPIOM

Where as CPI_IW is directly published by the Government, WPIOM shall be computed from disaggregated data on wholesale prices published by Ministry of Industry.

Note

The special index of wholesale prices for power generating utilities (WPIOM) may be obtained as a weighted average of relevant components selected from disaggregated WPI series (1993-94=100) as given below:

COMMODITIES WEIGHTS

| | | |
|----|---|----------|
| 1 | Lubricants | 0.16367 |
| 2 | Cotton Cloth | 0.90306 |
| 3 | Jute, Hemp and Mesta Cloth | 0.37551 |
| 4 | Paper & Paper Products | 2.04403 |
| 5 | Rubber & Plastic Products | 2.38819 |
| 6 | Basic Heavy Inorganic Chemical | 1.44608 |
| 7 | Basic Heavy Organic Chemical | 0.45456 |
| 8 | Paints Varnishes & Lacquers | 0.49576 |
| 9 | Turpentine, Synthetic Resins, Plastic materials etc | 0.74628 |
| 10 | Matches Explosives & Other Chemicals | 0.94010 |
| 11 | Non-Metallic Mineral Products | 2.51591 |
| 12 | Basic Metals Alloys & Metals Products | 8.34186 |
| 13 | Machinery & Machine Tools | 8.36331 |
| 14 | Transport Equipment & Parts | 4.29475 |
| | All the Above (WPIOM) | 33.47307 |

$$\text{WPIOM} = \frac{\sum_{i=1}^{14} w_i \text{WPI}_i}{\sum_{i=1}^{14} w_i}$$

Where WPI_i is the wholesale price index of the i th commodity and w_i is the respective weight

11. SCHEDULE 9: METERING SYSTEM

- 1.1 The metering system for the Project (the “**Metering System**”) shall comprise of:
- (a) a meter on each Unit (the “**Generator Meters**”);
 - (b) a meter at each of the Interconnection Point (the “**Interconnection Meter**”);
 - (c) a meter at each of the station transformer (the “**Import Meter**”); and
 - (d) check meters for the Generator Meters, the Interconnection Meter and the Import Meter (the “**Check Meters**”).
- 1.2 Each meter comprising the Metering System shall have an accuracy class of ± 0.2 .
- 1.3 Each meter comprising the Metering System shall, as to their technical standards, description, accuracy and calibration, comply fully with any applicable requirements of the Electricity Rules and in particular the Metering System shall meet the following:
- (i) Each of the Energy Meters:
 - a) Shall be microprocessor based conforming to IEC:60687, IEC:1036, IEC:13779, IS:14697.
 - b) Shall carry out measurement of active energy (both import and export) and reactive energy (both import and export) by 3 phase, 4 wire principle suitable for balanced/ unbalanced 3 phase load.
 - c) Shall have accuracy of energy measurement of 0.2% for active energy and 0.5% for reactive energy.
 - d) The active and reactive energy shall be directly computed in CT & VT primary ratings and stored in four different registers of memory of the meter as MWH(E), MWH(I), MVARH(E) and MVARH(I) along with a plus sign for export and minus sign for import. The VARH shall be computed and stored in four separate registers corresponding to various system voltage conditions, and these conditions shall be finalised during detailed engineering.
 - e) Shall compute the energy sent out of the Power Station busbars during each successive Settlement Period and store in the respective register.
 - f) Shall display on demand the energy sent out during previous Settlement Period.

- g) Shall continuously integrate the energy readings of each register upto the previous Settlement Period. All these readings shall be displayed on demand.
- h) Cumulative reading of each register shall be stored in a separate non-volatile memory and displayed on line.
- i) The reading shall be stored for a period of forty (40) days before being erased.
- j) Shall have a built in clock and calendar having an accuracy of atleast one minute per month or better without assistance of external time synchronizing pulse.
- k) Date/time shall be displayed on demand. The clock shall be synchronized by GPS time synchronization equipment
- l) Each meter shall have a unique identification code provided by Procurers and shall be marked permanently on the front and also in the non-volatile memory.
- m) The voltage monitoring of all the three voltages shall be provided. The meter shall normally operate with power drawn from the VT supplies.
- n) The power supply to the meter shall be healthy even with a single-phase VT supply. An automatic backup, in the event of non availability of voltage in all the phases, shall be provided by a built in long life battery and shall not need replacement for atleast 10 years with a continuous VT interruption of atleast 2 years. Date and time of VT interruption and restoration shall be automatically stored in a non-volatile memory. It shall be to take the readings of the meter when no VT supply is available.
- o) Shall have an optical port on the front of the meter for data collection. Meter Reading Instrument (MRI) for downloading data from front optical ports on the meter shall be provided by the Seller.
- p) The stored data shall be continuously transferred through necessary serial/parallel ports to a local Personnel Computer to be provided by the

Seller. Necessary hardware and software shall be provided for downloading data on the local PC for display and printing.

q) The necessary software shall be provided to accept the data on line and store in memory and on a floppy diskette and also to print the same.

r) The meter shall have means to test MWH accuracy and calibration at site and test terminal blocks shall be provided for the same.

1.3 The SLDC may require the Seller at the Sellers expense, to install such additional remote monitoring equipment as the SLDC may reasonably require for the purpose of measuring and monitoring the performance of the Power Station.

1.4 The Metering System shall measure:

- (a) in respect of the Generator Meters and the corresponding Check Meters, the Generator Capacity of each Unit at its generator terminal;
- (b) in respect of the Interconnection Meters and the corresponding Check Meter, the Electrical Output delivered at the Interconnection Points; and
- (c) in respect of the Import Meter and the corresponding Check Meter, energy imported by the Company into the Power Station at the station transformers.

1.5 The Check Meters shall be installed by the Procurers and the Seller shall provide all co-operation and assistance (including by providing sufficient space and right of way) to the Procurers for the same.

1.6 Test/Calibration Equipment

1.6.1 Solid state sub-standard meter suitable for checking the accuracy of class ± 0.2 meters shall be used. These shall be duly calibrated and sealed by government authorised meter testing house/lab or by a mutually agreed independent test house where such facilities are available.

1.6.2 Similarly, suitable primary/secondary injection sets should also be available at the Power Station.

12. SCHEDULE 10: REPRESENTATION AND WARRANTIES

1 Representations and Warranties by the Procurers

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

- (i) The said Procurer has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;**
- (ii) This Agreement is enforceable against the said Procurer in accordance with its terms;**
- (iii) The consummation of the transactions contemplated by this Agreement on the part of the said Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived;**
- (iv) The said Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;**
- (v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the said Procurer's knowledge, threatened in writing against the said Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding 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.**

- 1.1 Event of Default: In the event that any representations and warranties offered by a Procurer in the Article above are not true or are incorrect, the occurrence of such event would amount to a Procurer Event of Default releasable to the Procurer making the false or incorrect representation and warranty under

Article 14.2 of this Agreement and the Seller shall have the right to terminate this Agreement in accordance with Article 14 of this Agreement.

2 Representation and Warranties of the Seller

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

- (i) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
 - (ii) This Agreement is enforceable against it in accordance with its terms;
 - (iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
 - (iv) The Seller is not insolvent and no insolvency proceedings have been instituted, not threatened or pending by or against the Seller;
 - (v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding 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.
- 2.1 Event of Default: In the event that any representations and warranties offered by the Seller in the Article above are not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 14.1 of this Agreement and both Procurers shall have the right to terminate this Agreement in accordance with Article 14 of this Agreement.

13. SCHEDULE 11: TARIFF QUOTED BY THE SELLER

14. SCHEDULE 12: INSURANCE