The Brihan Mumbai Electric Supply & Transport Undertaking

(OF THE BRIHAN MUMBAI MAHANGARPALIKA)

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OUR REF. : CER / PP / RA Plan / 12 / 2025

DATE : 27 JAN 2025

To,
The Secretary,
Maharashtra Electricity Regulatory Commission,
13th Floor, World Trade Centre,
Centre No.1, Cuffe Parade,
Colaba, Mumbai – 400 005.

Sub: Submission of Revised Resource Adequacy Plan for BEST.

Ref: 1) CER / PP / 56 / 2024 dated 30.09.2024.
2) MERC Letter Ref. No. MERC/RA/2024-25/0691 dated 18.11.2024.
3) Technical Validation Session (TVS) dated 26.12.2024.
4) CER / DCER / M-13 / 03 / 2025 dated 08.01.2025.

Sir,

As per MERC (Framework for Resource Adequacy) Regulations, 2024, BES&T Undertaking had submitted its Resource Adequacy Plan on 30.09.2024.

As directed during the Technical Validation Session (TVS)) held on 26.12.2024 in the matter of MYT Petition filed by BEST in Case No. 207 of 2024, BEST has revised the RA Plan by incorporating the actual sales in H1 of FY 2024-25 and Power Procurement Plan in line with the MYT Petition. BEST has submitted the revised MYT petition on 08.01.2025 by informing about the modification of the RA Plan and the Revised RA Plan shall be submitted within two weeks of submission of the revised MYT petition.

In accordance with Regulation 5.4, 14.2, 15.5, 16.3, 17.4 and 21.3 of the MERC (Framework for Resource Adequacy) Regulations, 2024, BES&T Undertaking is submitting herewith the Revised Resource Adequacy Plan along with this letter which includes demand forecast, Medium-Term Distribution Resource Adequacy Plan (MT-DRAP), Short-Term Distribution Resource Adequacy Plan (ST-DRAP) and Power Procurement Plan for approval of the Hon'ble Commission, please.

Thanking you,

Yours faithfully,

(Dr. R. D. Patsute)
Chief Engineer (Regulatory)

Encl: *As above.

Resource Adequacy Plan for BEST including Demand Forecast, Medium-Term Distribution Resource Adequacy Plan, Short-Term Distribution Resource Adequacy Plan and Power Procurement Plan

Brihanmumbai Electric Supply and Transport Undertaking (BEST),
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1 Background

1.1 About BEST

1. The Municipal Corporation of Greater Mumbai is a Municipal Corporation, duly constituted under the Mumbai Municipal Corporation Act, 1888. The Municipal Corporation of Greater Mumbai is also a local authority under Part IX A of the constitution of India. The Municipal Corporation of Greater Mumbai, under the provisions of the Mumbai Municipal Corporation Act, 1888, has an Undertaking known as the Brihanmumbai Electric Supply and Transport Undertaking (of the Municipal Corporation of Greater Mumbai) [hereinafter referred to; for sake of brevity, as "BEST"]. BEST, as such, is a statutory Undertaking of a local authority.

2. BEST is a Municipal/public utility, which has been and is providing two essential services in the City of Mumbai, namely, (i) mass public transportation in the City of Mumbai as well as its extended suburbs, and (ii) distribution or supply of electricity in the Island City of Mumbai (i.e., the area from Colaba up to Mahim and Sion).

3. BEST is a "distribution licensee" under the present Electricity Act, 2003. BEST, under the Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution License applicable to Brihanmumbai Electric Supply & Transport authorized and required to distribute or supply the electricity in the area of supply specified therein, in accordance with the provisions of the Electricity Act, 2003.

4. BEST, being a statutory Undertaking of the Municipal Corporation of Greater Mumbai is also encompassed by the definition of a "Local Authority" under Section 2(41) of the Electricity Act, 2003

5. Brihanmumbai Electric Supply & Transport Undertaking, (hereinafter referred to as the “BEST”), a Distribution Licensee (DL) supplying electricity in the island city of Mumbai consumers, is hereby submitting this Resource Adequacy (RA) Plan under Regulation 5.4, 14.2, 15.5, 16.3, 17.4 and 21.3 of the MERC Resource Adequacy Regulations, 2024 in the matter of approval of demand forecasts along with Medium-Term Distribution Resource Adequacy Plan (MT-DRAP), Short-Term Distribution Resource Adequacy Plan (ST-DRAP) and power procurement plan

1.2 Historical Background of Regulatory Proceedings

6. Hon’ble Commission has notified MERC (Framework for Resource Adequacy) Regulations, 2024 to enable the implementation of Resource Adequacy framework by Guidelines issued by Central Electricity Authority (CEA) outlining a mechanism for planning of generation and transmission resources for reliably meeting the projected demand while maintaining reliability standards and optimum generation mix. It specifies mechanism for demand assessment and forecasting, generation resource planning, procurement planning, and monitoring & compliance.

7. As per second proviso to Regulation 1.3 of MERC Resource Adequacy Regulations, Hon'ble Commission has notified timelines to be followed for FY 2024-25, vide its notification dated 03rd July 2024. In the timeline Hon'ble Commission has considered that Central Electricity Authority (CEA) has not yet notified/approved National level RA plan with specification of reliability indices for Planning Reserve Margin (PRM), Loss of Load Probability (LOLP), Normalized Energy Not Served (NENS) for national/state level, it is envisaged that there could be some delays in development of RA plans by the utilities/stakeholders at state level. The detailed timelines for submission of MT-DRAP/ST-DRAP along with associated activities for implementation of the Resource Adequacy Framework as approved by Hon'ble Commission is tabulated below:

Timeline for actions and submissions by stakeholders as per MERC notification dt 03 July

Description of Activities	Timeline for Submission
DLs to submit the category wise consumption data of pervious FYs to State Transmission Utility (STU)/ Maharashtra State Load Dispatch Center (MSLDC)	14 August 2024
DLs to submit ST and MT demand forecasts to MSLDC	
MSLDC to submit State-level forecasts to CEA/ RLDC/NLDC	As per CEA/NLDC
DLs to submit ST-DRAP and MT-DRAP to the Commission	30 September 2024
STU/MSLDC to communicate aggregated State-shortfall to the Commission	15 October 2024
The Commission to approve ST-DRAP and MT-DRAP	31 October 2024
DLs to contract capacities for shortfall/surplus management	31 December 2024
DLs to submit updated Annual Rolling Plan to STU/MSLDC	31 January 2025
STU/MSLDC to submit Aggregate State level Annual Rolling Plan to NLDC	As per NLDC

8. Regulation 6.1 of the MERC Resource Adequacy Regulations, 2024 provides a list of information to be provided by DL as part of short-term, medium-term and long-term demand assessment. Further as per Regulation 6.4, DL has also to determine the load forecast for each consumer category for which Hon'ble Commission has determined separate retail tariff. BEST has already submitted the required data as per **Annexure-I** of the Regulations on 14th August 2024 and 18th September 2024 as per the above timeline to MSLDC.

9. Further as per Regulation 12.4 of MERC Resource Adequacy Regulations, 2024, DLs are required to develop and submit MT-DRAP and ST-DRAP to Hon'ble Commission with a copy of the same to SLDC. Accordingly, BEST has submitted MT- DRAP and ST-DRAP for due approval of Hon'ble Commission on 30th September 2024. BEST also submitted its power procurement plan as per Regulations 15.5 of MERC Resource Adequacy Regulations, 2024 to Hon'ble Commission for seeking approval for generation resource mix and also procurement strategy in long-term, medium-term, and short-term horizon.

10. Subsequently, Central Electricity Authority (CEA) vide letter bearing no. CEA-PL-11-37/20/2024-IRP/237dated 28th October 2024 provided Resource Adequacy Report carried out for BEST. However, till then BEST had submitted its Resource Adequacy Report to Hon'ble Commission and the CEA report didn't included assumption for demand estimation and generation capacity considered in adequate details. Hence BEST didn't proposed any changes in Resource Adequacy Report submitted on 30th September 2024.

11. Further Hon'ble Commission vide its letter no. MERC/RA/2024-25/0691 dated 18th November 2024 examined Resource Adequacy Plan submitted by BEST on 30th September 2024 vide letter no. CER/PP/56/2024. In the said letter Hon'ble Commission provided its observation on the RA plan submitted by BEST in Annexure-I accompanying the letter. The RA plan submitted by BEST was found to be compliant with all the provisions of the MERC Framework for Resource Adequacy Regulations, 2024.

12. Additionally in the said letter, Hon'ble Commission highlighted that as per Regulation 10.3 of MERC Resource Adequacy Regulations, 2024 contribution of Capacity Credit (CC) factor for the RE sources as specified by Central Electricity Authority (CEA) or MERC itself. Hon'ble Commissioned provided reference of "Discussion Paper on Methodology for Capacity Credit of Generation Sources and Coincident peak requirement of utilities under Resource Adequacy Framework" as issued by CEA vide letter dated 18th October 2024. The said discussion paper proposes a methodology that considers the 80th percentile of the top 5% of coincident demand values. Hon'ble Commission has suggested that distributed licensees should revisit the RA plan as per methodology specified by CEA in its Discussion Paper.

13. In its reply, to the said letter by Hon'ble Commission, BEST submitted that methodologies as specified in discussion paper are currently at the discussion stage and not notified, therefore and it is subjected to change based on comments by stakeholders. BEST also highlighted that that the methodologies referenced MERC Resource Adequacy Regulations

2024 and guidelines issued by CEA differ from those in the discussion paper. Accordingly, BEST requested Hon'ble Commission that until methodologies specified in discussion paper are finalized and incorporated into the regulatory framework, the RA plan as already submitted by BEST on 30th September 2024 should be considered as it is in alignment with the prevailing regulations and guidelines, ensuring consistency and adherence to established procedures

14. Hon'ble Commission has further directed BEST to submit revised RA plan vide its letter dated 26th December 2024 as part of data gaps in Case No. 207 of 2024 regarding MYT Petition by BEST for FY 2025-26 to FY 2029-30. Accordingly BEST is submitting revised RA plan considering FY 2024-25 as base year and factoring revised commissioning/retirement schedule of generating plant having PPA with BEST.

2 Demand Forecast for FY 2025-26 to FY 2034-35

15. As per Regulation 6.2 of MERC Resource Adequacy Regulations, 2024 Distribution licensee are responsible for the assessment and forecasting of demand (MW) and energy (MWh) for short- and medium-term and peak/off-peak demand (MW) for long-term within its own control area including partial open access consumers. Further, as per Regulation 6.3 and 6.4 of the aforementioned Regulations, the distribution licensee should also provide category wise consumption data and assessed consumption data of class of consumers such as agricultural, domestic etc. to various agencies such as MSLDC and/or STU for purpose of state level demand forecasts. BEST would like to submit that in line with the said Regulations it submitted the information to MSLDC on 14th August 2024 and 18th September, 2024. However, it has now revised the demand projections based on 8 months actual data of FY 2024-25 (till November 2024).

16. BEST analyzed its historic values of category-wise consumption. The historic consumption data was properly cleaned, which includes handling missing values, inconsistencies, outliers, etc. Specifically, BEST hasn't considered consumption data of FY 2021 and FY 2022 as they were impacted by COVID lockdown. Different machine learning models were trained and tested on the dataset. Mean Absolute Percentage Error (MAPE) methodology was used to check the performance of the tested models. Multi Linear Regression (MLR) model outperformed all other forecast models in accuracy and hence was used to forecast category wise consumption.

17. As per MLR model annual energy requirement is predicted using several independent variables (inputs). These include meteorological factors like temperature and precipitation and economic factors like State Gross Domestic Product. Additionally, lagged variables, representing past values of the variables, are utilized to incorporate the seasonality and cyclical patterns in the data. The future value of independent variables like temperature and

humidity was predicted using time series-based Auto-regressive integrated moving average (ARIMA).

18. Further, as per Regulation 6.9 of MERC Resource Adequacy Regulations, 2024 BEST has additionally considered impact of policy interventions including promotion of Electric Vehicles (EVs) as well as Roof Top Solar (RTS) on demand forecasted for future years as per statistical model.

19. Electric Vehicles. Based on historic growth in automobiles in Maharashtra, BEST has estimated the state's automobile industry trajectory till 2035. Further trajectory of EV sales penetration till 2035 has been made based on India's EV sales growth. The product of both these parameters has been used to determine total number of EVs (belonging to different categories such as E-buses, passenger vehicle, commercial vehicles etc.) on road in state for each year (till 2035). Further BEST has also calculated estimated trajectory of drive range (in kms) of each vehicle category based on increase in battery capacity till 2035. The total drive range thus calculated has been divided by assumed average daily run of each EV category to calculate daily charging demand for each vehicle category for each year till FY 2035. This value has been further multiplied by projected number of EVs on road for respective year to arrive at total annual energy demand attributable to EV charging.

20. BEST has also determined the demand profile of energy consumed by EV chargers pertaining to different EV categories. Initially it has been assumed that 80% of charging for all EVs across categories would happen during nighttime. As daytime most of the vehicles are operating and also due to lack of charging infra. However, as time of day tariff becomes popular due to increase in solar power ingress, more and more EV would opt for charging during daytime when tariff would be cheaper due to abundance of solar. The transition in charging pattern between FY 25 to FY 30 is tabulated below:

Table 1 Transition in EV charging profile

EV Category	FY 25		FY 30	
	Night Charging	**Day Charging**	**Night Charging**	**Day Charging**
Passenger Vehicles	80%	20%	30%	70%
Commercial Vehicles	80%	20%	60%	40%
Buses	50%	50%	50%	50%
3 Wheelers	80%	20%	40%	60%
2 Wheelers	80%	20%	30%	70%

21. **Solar Rooftop:** The RTS installation is expected to grow at the same CAGR (0.9%) as the model forecast for growth in demand from FY26. BEST has assumed RTS Capacity Utilization Factor (CUF) as 18% to estimate power generated by RTS. Further the generation profile has been considered as per solar generation profile of Mumbai.

22. **Demand Forecast:** The hourly demand profile of FY 25 serves as the base profile for projecting slot-wise demand. Using the base profile and annual demand/peak demand derived from the model, hourly load profiles from FY26 to FY35 are created using suitable scaling techniques. Further, the impact of EV and RTS have been considered separately. As per Regulation 6.15 of MERC Resource Adequacy Regulations, 2024 BEST has developed three scenarios (most probable, business as usual, and aggressive scenarios). BEST has considered historic CAGR of 0.6% in energy requirement and peak demand for projections in next Control Period for BAU scenario. Accordingly, category-wise energy consumption is provided in **Annexure-I** of this report and demand Assessment till FY 2034-35 (Hourly and Monthly peak load) is attached as **Annexure-II**.

3 Power procurement sources and Computation of Capacity Credit

23. As per Regulation 9.1 of MERC Resource Adequacy Regulations, 2024 BEST has carried following steps as part of generation resource planning: (a) capacity crediting of generation resources, (b) assessment of planning reserve margin, and (c) ascertaining resource adequacy requirement. In accordance with the Regulations, BEST has conducted a comprehensive study for resource assessment to support effective generation resource planning. This assessment involves a detailed inventory of existing and contracted future generation resources, considering key characteristics such resource type, installed capacity, availability factor, capacity utilization factor (CUF), outage rates, generation characteristics (like Station Heat rate, auxiliary consumption, start time and ramp-up and ramp-down rate) and commissioning and retirement schedules. The study has provided crucial inputs for understanding the operational efficiency and reliability of each resource. BEST is also submitting its contracted existing resources, upcoming resources, and retiring resources along with all the details as required in Regulation 9.2, 9.3 and 9.4, to the extent available with BEST or publicly available. The same is attached at **Annexure-III**.

24. Further, BEST has also calculated Capacity Credit (CC) factors for contracted generation resources have been calculated using a net load-based approach. Provided in Regulation 10.2 of MERC Resource Adequacy Regulations, 2024. The contribution of the renewable energy source to meet peak 250 demand hours is determined and expressed as a percentage of its installed capacity. This percentage represents the Capacity Credit factor. For comprehensive and accurate resource planning, this factor is calculated annually over a five-year period, with the average of these calculations utilized to account for inter-annual variability in renewable generation. For the upcoming RE resources, since the historical generation is not available, the capacity credits are calculated using the expected generation in the future and the respective demand forecast. For thermal and hydro resources, the Capacity Credit is determined based on the availability and historical outage data as per the methodology provided in Regulation 10.4 of MERC Resource Adequacy Regulations, 2024.

25. In accordance with Regulation 10.6 of MERC Resource Adequacy Regulations, 2024, BEST is hereby submitting CC factors for its contracted resources in **Annexure-IV**.

26. As per Regulation 11.2 of MERC Resource Adequacy Regulations, 2024, Planning Reserve Margin (PRM) is to be specified by CEA or Hon'ble Commission keeping in view reliability indices in terms of Loss of Load Probability (LOLP), and Normalized Energy Not Served (NENS). CEA has specified target of LOLP as 0.2% and NENS at 0.05%. CEA in its Resource Adequacy study conducted for BEST has assumed PRM of 11.6%. BEST has also calculated PRM with an objective to reach target value of LOLP and NENS as specified by CEA. BEST with the assistance of its consultants, M/s Deloitte Touche Tohmatsu India LLP has conducted extensive stochastic simulations of future generation scenarios and demand

patterns. 100 different future scenarios were generated using stochastic simulations to account for future uncertainties in generation as well as demand. The model performs detailed dispatch simulations to calculate the Loss of Load Probability (LOLP) and the Number of Expected Non-Supply (NENS) for different values of PRM. BEST has considered the base value of PRM at 7% and incrementally increasing the same, it has observed that target NENS of 0.05% is being met for all the PRMs but the target LoLP of 0.2% is being met for PRM values of 15% and above. The same calculation is tabulated below:

Table 2 Calculation of PRM

PRM	Average LOLH (in hours)	LoLP	Average EENS (in GWh)	Normalized EENS
7%	84	0.95%	3.32	0.006%
9%	62	0.71%	2.35	0.004%
11%	40	0.45%	1.42	0.003%
13%	25	0.28%	0.83	0.002%
15%	15	0.17%	0.48	0.001%
17%	8	0.10%	0.27	0.001%

27. Accordingly, BEST has considered PRM at 15% of the peak load. The same is 25% higher than PRM considered by CEA for BEST in its Resource Adequacy Study.

4 Calculation of Resource Adequacy Requirement, MT-DRAP and ST-DRAP

28. BEST has calculated resource gap for each year as per Regulation 12.2 and 12.3 of MERC Resource Adequacy Regulations, 2024. BEST has applied respective CC factors on contracted generation resources and subtracted it from demand forecast for all three scenarios (Most Probable, Business-As-Usual and Aggressive) as per Regulation 12.3 of MERC Resource Adequacy Regulations, 2024 to arrive at resource gap. The detailed calculation has been attached at **Annexure-V**.

29. BEST would like to submit that till the time of submission of this report, CEA has not published Long-term National Resource Adequacy Plan (LT-NRAP) as specified in Regulation 12.6 and National Load Dispatch Center (NLDC) has not published Short-term National Resource Adequacy Plan (ST-NRAP) as specified in Regulation 12.7. Accordingly, MSLDC hasn't been able to allocate each distribution licensee's share in the state peak as specified in Regulation 12.8. Accordingly, it would not be possible for BEST to calculate its Resource Adequacy Requirement (RAR) as mandated in Regulation 12.9 of MERC Resource Adequacy Regulations, 2024.

30. Due to absence of data, BEST has analyzed national load profile and on the basis of the same, has tried to find out its coincident peak demand at the state periphery with national coincident peak for the forecast years as per Regulation 12.12 of MERC Resource Adequacy Regulations, 2024. BEST has then applied calculated PRM of 15% on the coincident demand to arrive at provisional RAR. The calculation is tabulated below:

Table 3 Calculation of Provisional RAR (MW) at State Periphery

Particular	2026	2027	2028	2029	2030
Peak Demand (MW)	1004	1011	1018	1026	1035
Expected Coincident Demand (MW)	916	923	929	937	945
Provisional RAR (MW)	1053	1061	1068	1077	1086

31. As per Regulation 15.6 of MERC Resource Adequacy Regulations, 2024 distribution licensees have to demonstrate 100% tie-up for the first year of forecast to the Hon'ble Commission. The list of current Power Purchase Agreements (PPAs) signed by BEST has been tabulated below:

Table 4 List of Current PPA/PSA

Name of Generator	Generating Plant	Capacity (MW)	Status
M/s Sai Wardha Power Ltd	Sai Wardha Power Generation Limited-Unit- 1 to Unit- 4	125.00	Commissioned
Tata Power Company	Trombay Thermal Power Station-Unit-5	255.85	Commissioned
	Trombay Thermal Power Station-Unit-7	92.11	Commissioned
	Trombay Thermal Power Station-Unit-8,	100.00	Commissioned
	Bhira Hydro Station	153.51	Commissioned
	Bhivpuri Hydro Station,	38.38	Commissioned
	Khopoli Hydro Station	36.84	Commissioned
Walwhan Solar MH Ltd. (Welspun)	Solar Plant at Mangalwedha, Solapur	20.00	Commissioned
Adani Green Energy Twenty Six A Limited (PSA signed with SECI)	Solar Plant at Khavda RE park, Gujarat	234.00	Expected in January 2026
ABC Renewable Energy Private Limited (PSA signed with SECI)	Hybrid (Solar and Wind)	136.94	Termination notice issued
Adani Renewable Holding Eight Limited (PSA signed with SECI)	Hybrid (Solar and Wind) at Khavda RE park, Gujarat	216.22	Contracted; Expected to be commissioned in FY 2025-26
AMP Energy Green Private Limited (PSA signed with SECI)	Hybrid (Solar and Wind)	46.85	

32. As per the current plan, existing PPA for 100 MW thermal power (signed with Manikaran Ltd.) would be retiring by FY 2024-25 but the same would be compensated by new PPA signed with M/s Sai Wardha for 125 MW thermal power from the same thermal power plant. Further BEST has also planned to add 234 MW solar plant in January 2026 and 263 MW solar-wind hybrid from FY 2025-26 (from PSA signed with SECI). Further, it had also signed PSA with SECI for 136.94 MW solar plant to be set-up by ABC Renewable Energy Private Limited. However, M/s ABC Renewable Energy Private Ltd has issued termination letter which has been contested by BEST. However, using cautious approach, BEST hasn't considered the source for RA plan. The results of the Short-Term Distribution Resource Adequacy Plan (ST-DRAP) are provided in the following table.

Table 5: Contracted capacity for BEST in FY 25-26 as per ST-DRAP in MW

Resource/ Year	Thermal	Solar	Hydro	Hybrid	PSP	STOA	Power Exchange (PX)

2025-26	547	20	152	263	77	214	100

33. With the current capacity contracts in place, BEST is positioned to demonstrate full compliance by achieving a 100% tie-up for the first year, as stipulated by the regulatory framework. The comparison of firm capacity (installed capacity multiplied by capacity credit) with calculated RAR in Table 3 is provided in the following table.

Table 6: Firm capacity and RAR in MW

Year	Thermal	Solar	Hydro	Hybrid	PSP	STOA	Power Exchange	Total Firm Capacity	Expected RAR
2025-26	440	11	101	210	69	214	100	1154	1053

34. Building on the ST-DRAP, the Medium-Term Distribution Resource Adequacy Plan (MT-DRAP) extends the planning horizon to provide a strategic outlook on resource adequacy over the next five years. As per Regulation 15.9 of MERC Resource Adequacy Regulations, 2024 distribution licensee through MT-DRAP, need to submit their plan to meet their RAR with a mix of Long-term, Medium-term, and Short-term contracts as per Regulation 12,10 (70% through long-term contracts, minimum 20% through medium–term contracts, and remaining through Short-term contracts).

35. The MT-DRAP analysis has been conducted to ensure that distribution licensees can meet its RAR which is sum of projected demand and PRM. For FY 2025-26 and FY 2026-27, BEST would be contracting 196 MW and 69 MW Short term Open Access (STOA) power for respective year for meeting its RAR. In FY 2025-26, BEST is meeting 20% of its RAR through short-term contracts which is double the prescribed limit due to delay in commissioning of 234 MW solar plant (which would be commissioned in Jan 2026).

36. In FY 2027-28, BEST would need to expand its resource portfolio to address higher power demand. Towards the same, BEST would need to contract 201 MW of Firm and Dispatchable Renewable Energy (FDRE) comprising of solar, wind and energy storage. Further in FY 2028-29, it would require contracting additional FDRE capacity for 15 MW and wind plant of 54 MW.

37. In FY 2029-30, medium term contract with Tata Power Company (TPC) totaling 255.85 MW of Trombay Thermal Power Station-Unit-5 would be retiring. As per optimal power procurement plan it would be cost optimal for BEST to contract 68 MW solar plant 92 MW wind plant and FDRE with 291 MW contracted capacity, comprising of wind, solar and energy sources.

38. BEST will also continue to utilize power exchanges to meet its own peak demand, manage fluctuations in demand and supply, optimizing its procurement strategy in alignment with reliability standards. The MT-DRAP thus developed is tabulated below:

Table 7: Year-on- year installed capacity plan for BEST as per MT-DRAP in MW

Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX
2025-26	573	20	0	152	0	263	77	214	100
2026-27	573	254	0	152	0	263	77	93	101
2027-28	573	254	0	152	201	263	77	25	102
2028-29	573	254	54	152	216	263	77	32	103
2029-30	317	322	146	152	507	263	77	32	103

39. Table attached at **Annexure-VI** illustrates firm capacity contracted by BEST would meet its peak demand along with PRM.

5 Power Procurement Plan

40. As per Regulation 14.1 and 14.2 of MERC Resource Adequacy Regulations, 2024 Distribution licensee need to identify an optimal procurement generation resource mix that shall enable smooth RE integration in its portfolio of power procurement resource options while meeting reliability standards. BEST would like to ensure Hon'ble Commission that it has performed meticulous planning of power procurement sources using optimization techniques and least-cost modelling. The assumptions relating to different sources considered by BEST for least cost modelling is provided in table below:

Table 8 Assumption for cost optimization for different sources

Power Generation Source	Assumptions
Coal Based Thermal Power Plant	Annual Fixed Cost (AFC) – Rs 1.71 crore/MW constant Variable Costs – Rs 3.2 /kWh for FY24, CAGR -3.5% Minimum lead-time/ Year from which new addition will be considered – 7 Years
Solar Power Plant	Levelized Cost of Energy – Rs. 2.3/kWh Capacity Utilization Factor (CUF)- 28%
Wind Power Plant	Levelized Cost of Energy – Rs. 3.29/kWh CUF- 35%
Hydro Power Plant	Levelized Cost of Energy – Rs. 3.62/kWh CUF- 40%
Pumped hydro Storage plant	Capex: Rs. 7.88 crore/MW; AFC: Rs. 1 crore/MW Round trip efficiency: 75%
Battery Energy Storage System (BESS) with 2 hours discharge	Capex: Rs. 3.55 crore/MW; AFC: Rs. 0.57 crore/MW Round trip efficiency: 85%
BESS with 4 hours discharge	Capex: Rs. 6.03 crore/MW; AFC: Rs. 1.03 crore/MW Round trip efficiency: 85%
Fixed and Dispatchable Renewable Energy (FDRE)	Levelized Cost of Energy – Rs. 5.79/kWh
Short Term Open Access (STOA)	Variable Costs – Rs 10 /kWh for FY24, CAGR -3.5%
Medium Term Open Access (MTOA)	Variable Costs - Rs. 3/kWh for FY24, CAGR -3.5; AFC – Rs. 5/kWh
Power Exchange	Projected future market prices

41. The results of ST-DRAP and MT-DRAP have been submitted as above. Additional power procurement to be performed by BEST to meet MT-DRAP has been provided in **Annexure-VII**. Further, BEST would have to rely on Power Exchange to meet its own peak demand. The plan would be checked for consistency with national framework once it is published by CEA.

42. Further, as per Regulation 14.4 of MERC Resource Adequacy Regulations, 2024 BEST has considered MERC (Renewable Purchase Obligation, its Compliance and Implementation of

Renewable Energy Certificate Framework), Regulations, 2019 and its amendments to plan renewable energy addition.

43. BEST would also like to submit that it intends to utilize 50% of Bhira hydro station as Pumped Hydro storage plant (PSP) to meet its Energy Storage Obligation as per first amendment to MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework), Regulations, 2019. However, presently it is being utilized as a plain hydro power plant and BEST needs to evolve an implementation strategy to utilize it as a PSP. Hence, in its MYT Petition, BEST has submitted power procurement from BESS amounting to 199.94 MUs in FY 2029-30 for meeting its ESS Obligation. BEST submits that based on evolving scenario it would propose a feasible source for meeting its Energy Storage Obligation in its MTR Petition for fifth Control Period.

44. In accordance with Regulation 15.4 of MERC Resource Adequacy Regulations, 2024 BEST would forward a copy of its power procurement plan to the STU so that it may verify its consistency with the transmission system plan for the intra-State Transmission System.

45. Long-Term Power Procurement strategy of BEST would be to source least cost power from available source which should be able to meet its demand reliably at all instants. Further, it would consider RPO trajectory as specified by Hon'ble Commission and Government of India's commitment at Conference of Parties (CoP). It would also strive to increase Energy Storage capacity to better integrate infirm renewable sources such as solar and wind. To this end it will try using storage as a service or directly contracting energy storage techniques such as BESS or pumped hydro.

46. BEST is also submitting a list of all existing PPAs executed with different conventional power plants as well as RE Generators at **Annexure-VIII** in compliance with Regulation 17.4 of MERC Resource Adequacy Regulations, 2024.

Annexure I

Category-wise annual energy consumption till FY 2034-35

Table 9: Category-wise annual energy consumption FY26-FY30 in Mus (Most Probable Scenario)

Category	FY26	FY27	FY28	FY29	FY30
LT-1 A (BPL)	0.038	0.038	0.038	0.038	0.039
LT-1 B	2182.533	2197.824	2213.025	2228.057	2242.929
LT2 (a)Comm <20	882.581	888.765	894.912	900.991	907.005
LT2 (b) 20-50 Comm.	186.294	187.599	188.896	190.179	191.449
LT2 (c) >50 Comm.	397.963	400.751	403.523	406.264	408.976
LT3A Industrial <20 kW	107.828	108.584	109.335	110.077	110.812
LT 3B >20 Industrial	79.644	80.202	80.757	81.305	81.848
LT-4A Schools & Hosp	65.079	65.535	65.988	66.436	66.880
LT-4B Public Service	180.649	181.915	183.173	184.417	185.648
LT-4B Public Ltg	16.797	16.915	17.032	17.148	17.262
LT 5B Agri. Others	0.163	0.164	0.165	0.166	0.167
LT-6 Vehicle Chg	37.846	46.711	58.471	75.335	97.675
HT-1 Industrial	177.323	177.421	177.514	177.594	177.662
HT-2 Commercial	220.791	220.913	221.028	221.128	221.213
HT-3 Group Hsg	36.289	36.309	36.328	36.345	36.359
HT-4 Railway Metro	2.687	2.689	2.690	2.691	2.692
HT 5A Govt Sch & Hosp.	31.207	31.224	31.240	31.254	31.266
HT 5B Public Ser. Oths	207.879	207.995	208.103	208.197	208.277
HT 6 EV chg.	4.006	4.945	6.190	7.975	10.340
Sub-Total	**4817.597**	**4856.498**	**4898.409**	**4945.598**	**4998.500**
RTS Generation	-3.84	-4.13	-4.44	-4.73	-5.04
Total	**4813.753**	**4852.367**	**4893.972**	**4940.865**	**4993.463**

Table 10 Category-wise annual energy consumption FY31-FY35 in Mus (Most Probable Scenario)

Category	FY31	FY32	FY33	FY34	FY35
LT-1 A (BPL)	0.039	0.039	0.039	0.040	0.040
LT-1 B	2257.790	2272.644	2287.497	2302.346	2317.180
LT2 (a)Comm <20	913.014	919.021	925.027	931.032	937.031
LT2 (b) 20-50 Comm.	192.717	193.985	195.253	196.520	197.787
LT2 (c) >50 Comm.	411.686	414.394	417.102	419.810	422.515
LT3A Industrial <20 kW	111.546	112.280	113.014	113.748	114.480
LT 3B >20 Industrial	82.390	82.932	83.474	84.016	84.558
LT-4A Schools & Hosp	67.323	67.766	68.209	68.651	69.094
LT-4B Public Service	186.878	188.108	189.337	190.566	191.794
LT-4B Public Ltg	17.377	17.491	17.605	17.719	17.834
LT 5B Agri. Others	0.169	0.170	0.171	0.172	0.173
LT-6 Vehicle Chg	120.379	143.496	167.105	191.283	216.138
HT-1 Industrial	177.731	177.802	177.873	177.946	178.018

Category	FY31	FY32	FY33	FY34	FY35
HT-2 Commercial	221.299	221.387	221.476	221.566	221.657
HT-3 Group Hsg	36.373	36.387	36.402	36.417	36.432
HT-4 Railway Metro	2.693	2.694	2.695	2.697	2.698
HT 5A Govt Sch & Hosp.	31.279	31.291	31.304	31.316	31.329
HT 5B Public Ser. Oths	208.358	208.440	208.524	208.609	208.695
HT 6 EV chg.	12.743	15.190	17.690	20.249	22.880
Sub-Total	5051.785	5105.517	5159.797	5214.705	5270.330
RTS Generation	-5.34	-5.65	-5.96	-6.27	-6.59
Total	**5046.443**	**5099.871**	**5153.837**	**5208.432**	**5263.744**

Table 11: Category-wise annual energy consumption FY26-FY30 in Mus (Business-As-Usual Scenario)

Category	FY26	FY27	FY28	FY29	FY30
LT-1 A (BPL)	0.037	0.037	0.037	0.037	0.037
LT-1 B	2134.460	2145.778	2155.699	2163.152	2168.011
LT2 (a)Comm <20	863.141	867.718	871.730	874.744	876.709
LT2 (b) 20-50 Comm.	182.190	183.156	184.003	184.639	185.054
LT2 (c) >50 Comm.	389.198	391.261	393.070	394.429	395.315
LT3A Industrial <20 kW	105.453	106.012	106.502	106.871	107.111
LT 3B >20 Industrial	77.890	78.303	78.665	78.937	79.114
LT-4A Schools & Hosp	63.645	63.983	64.279	64.501	64.646
LT-4B Public Service	176.670	177.607	178.428	179.045	179.447
LT-4B Public Ltg	16.427	16.514	16.591	16.648	16.686
LT 5B Agri. Others	0.159	0.160	0.161	0.161	0.162
LT-6 Vehicle Chg	37.013	45.604	56.957	73.141	94.413
HT-1 Industrial	173.417	173.220	172.915	172.420	171.728
HT-2 Commercial	215.927	215.682	215.302	214.686	213.824
HT-3 Group Hsg	35.490	35.450	35.387	35.286	35.144
HT-4 Railway Metro	2.628	2.625	2.620	2.613	2.602
HT 5A Govt Sch & Hosp.	30.519	30.485	30.431	30.344	30.222
HT 5B Public Ser. Oths	203.300	203.069	202.712	202.132	201.320
HT 6 EV chg.	3.918	4.828	6.029	7.743	9.995
Sub-Total	4711.483	4741.493	4771.519	4801.528	4831.539
RTS Generation	-3.759	-4.033	-4.322	-4.595	-4.869
Total	**4707.724**	**4737.460**	**4767.197**	**4796.934**	**4826.670**

Table 12 Category-wise annual energy consumption FY31-FY35 in Mus (Business-As-Usual Scenario)

Category	FY31	FY32	FY33	FY34	FY35
LT-1 A (BPL)	0.037	0.038	0.038	0.038	0.038
LT-1 B	2172.767	2177.401	2181.881	2186.171	2190.226
LT2 (a)Comm <20	878.632	880.506	882.318	884.053	885.692
LT2 (b) 20-50 Comm.	185.460	185.856	186.238	186.604	186.950
LT2 (c) >50 Comm.	396.183	397.027	397.844	398.627	399.366
LT3A Industrial <20 kW	107.346	107.575	107.796	108.008	108.208

Category	FY31	FY32	FY33	FY34	FY35
LT 3B >20 Industrial	79.288	79.457	79.620	79.777	79.925
LT-4A Schools & Hosp	64.788	64.926	65.059	65.187	65.308
LT-4B Public Service	179.841	180.224	180.595	180.950	181.286
LT-4B Public Ltg	16.722	16.758	16.792	16.825	16.857
LT 5B Agri. Others	0.162	0.163	0.163	0.163	0.164
LT-6 Vehicle Chg	115.846	137.482	159.390	181.631	204.296
HT-1 Industrial	171.039	170.350	169.660	168.967	168.265
HT-2 Commercial	212.966	212.109	211.250	210.386	209.512
HT-3 Group Hsg	35.003	34.862	34.721	34.579	34.436
HT-4 Railway Metro	2.592	2.581	2.571	2.560	2.550
HT 5A Govt Sch & Hosp.	30.101	29.980	29.858	29.736	29.613
HT 5B Public Ser. Oths	200.512	199.705	198.897	198.083	197.261
HT 6 EV chg.	12.263	14.554	16.873	19.227	21.627
Sub-Total	4861.547	4891.552	4921.564	4951.573	4981.578
RTS Generation	-5.141	-5.409	-5.684	-5.956	-6.225
Total	**4856.407**	**4886.143**	**4915.880**	**4945.616**	**4975.353**

Table 13: Category-wise annual energy consumption FY26-FY30 in Mus (Aggressive Scenario)

Category	FY26	FY27	FY28	FY29	FY30
LT-1 A (BPL)	0.039	0.039	0.041	0.042	0.043
LT-1 B	2244.533	2253.348	2254.085	2247.915	2240.120
LT2 (a)Comm <20	913.630	912.567	908.281	907.600	905.299
LT2 (b) 20-50 Comm.	192.608	192.079	192.193	192.237	192.026
LT2 (c) >50 Comm.	409.106	410.343	410.961	409.431	407.774
LT3A Industrial <20 kW	111.109	110.832	111.152	110.912	110.952
LT 3B >20 Industrial	81.855	82.237	82.443	81.873	81.835
LT-4A Schools & Hosp	66.942	67.113	67.177	67.131	67.084
LT-4B Public Service	186.588	187.288	185.952	185.066	185.554
LT-4B Public Ltg	17.374	17.343	17.386	17.270	17.192
LT 5B Agri. Others	0.168	0.168	0.169	0.175	0.180
LT-6 Vehicle Chg	39.142	47.749	59.428	76.041	97.629
HT-1 Industrial	191.936	197.405	206.781	211.439	215.039
HT-2 Commercial	233.114	239.207	251.438	262.318	265.933
HT-3 Group Hsg	38.311	40.189	42.159	42.843	45.055
HT-4 Railway Metro	2.782	2.831	2.937	2.965	3.058
HT 5A Govt Sch & Hosp.	32.271	33.564	35.080	35.921	36.771
HT 5B Public Ser. Oths	213.826	213.170	211.663	219.465	229.858
HT 6 EV chg.	4.160	5.103	6.340	8.085	10.409
Sub-Total	4979.493	5012.574	5045.665	5078.728	5111.811
RTS Generation	-3.913	-4.179	-4.456	-4.704	-4.972
Total	**4975.580**	**5008.395**	**5041.210**	**5074.025**	**5106.839**

Table 14 Category-wise annual energy consumption FY31-FY35 in Mus (Aggressive Scenario)

Category	FY31	FY32	FY33	FY34	FY35
LT-1 A (BPL)	0.043	0.045	0.047	0.049	0.050
LT-1 B	2236.775	2220.683	2215.096	2203.676	2187.815
LT2 (a)Comm <20	900.187	898.391	894.342	892.965	905.364
LT2 (b) 20-50 Comm.	190.480	188.916	188.208	187.904	186.379
LT2 (c) >50 Comm.	406.187	403.554	403.291	401.535	397.325
LT3A Industrial <20 kW	110.020	109.889	108.907	108.438	108.116
LT 3B >20 Industrial	81.191	81.296	80.236	80.277	79.674
LT-4A Schools & Hosp	66.662	66.398	65.745	65.572	65.347
LT-4B Public Service	184.686	183.209	182.813	181.863	180.102
LT-4B Public Ltg	17.171	17.052	16.951	16.953	16.816
LT 5B Agri. Others	0.184	0.189	0.197	0.199	0.201
LT-6 Vehicle Chg	118.361	139.764	161.131	182.902	203.019
HT-1 Industrial	220.564	229.517	238.703	248.020	255.484
HT-2 Commercial	273.559	286.347	290.987	295.312	304.705
HT-3 Group Hsg	45.903	47.355	48.081	50.208	51.894
HT-4 Railway Metro	3.169	3.272	3.397	3.508	3.592
HT 5A Govt Sch & Hosp.	37.747	38.315	39.913	41.291	42.349
HT 5B Public Ser. Oths	239.307	248.776	255.735	263.862	267.100
HT 6 EV chg.	12.660	14.945	17.177	19.483	21.708
Sub-Total	5144.857	5177.915	5210.957	5244.016	5277.039
RTS Generation	-5.203	-5.446	-5.673	-5.917	-6.126
Total	**5139.654**	**5172.469**	**5205.284**	**5238.099**	**5270.913**

Annexure II

Demand Assessment till FY 2034-35 (Hourly and Monthly peak load)

Table 15: Annual Demand after considering losses and solar rooftops impact FY26 to FY30 (Most Probable)

Annual demand (MUs)	FY26	FY27	FY28	FY29	FY30
	5194	5235	5278	5327	5381

Table 16: Annual Demand after considering losses and solar rooftops impact FY31 to FY35 (Most Probable)

Annual demand (MUs)	FY31	FY32	FY33	FY34	FY35
	5438	5496	5554	5613	5673

Table 17: Annual Hourly Peak (MW) FY26 to FY 30 (Most Probable)

Hourly peak demand (MW)	FY26	FY27	FY28	FY29	FY30
	1004	1011	1018	1026	1035

Table 18: Annual Hourly Peak (MW) FY31 to FY 35 (Most Probable)

Hourly peak demand (MW)	FY31	FY32	FY33	FY34	FY35
	1043	1052	1061	1070	1079

Table 19: Annual Demand after considering losses and solar rooftops impact FY26 to FY30 (Business as Usual)

Annual demand (MUs)	FY26	FY27	FY28	FY29	FY30
	5080	5111	5142	5172	5202

Table 20: Annual Demand after considering losses and solar rooftops impact FY31 to FY35 (Business as Usual)

Annual demand (MUs)	FY31	FY32	FY33	FY34	FY35
	5234	5266	5298	5330	5362

Table 21: Annual Hourly Peak (MW) FY26 to FY 30 (Business as Usual)

Hourly peak demand (MW)	FY26	FY27	FY28	FY29	FY30
	965	971	977	983	988

Table 22: Annual Hourly Peak (MW) FY31 to FY 35 (Business as Usual)

Hourly peak demand (MW)	FY31	FY32	FY33	FY34	FY35
	994	1000	1006	1012	1019

Table 23: Annual Demand after considering losses and solar rooftops impact FY26 to FY30 (Aggressive Scenario)

Annual demand (MUs)	FY26	FY27	FY28	FY29	FY30
	5369	5403	5437	5471	5504

Table 24: Annual Demand after considering losses and solar rooftops impact FY31 to FY35 (Aggressive Scenario)

Annual demand (MUs)	FY31	FY32	FY33	FY34	FY35
	5539	5574	5610	5645	5680

Table 25: Annual Hourly Peak (MW) FY26 to FY 30 (Aggressive Scenario)

Hourly peak demand (MW)	FY26	FY27	FY28	FY29	FY30
	1026	1033	1039	1045	1026

Table 26: Annual Hourly Peak (MW) FY31 to FY 35 (Aggressive Scenario)

Hourly peak demand (MW)	FY31	FY32	FY33	FY34	FY35
	1052	1059	1066	1072	1079

Table 27: Monthly Hourly Peak (MW) from FY26 to FY 30 (Most Probable Scenario)

Month	FY26	FY27	FY28	FY29	FY30
April	928	935	942	949	957
May	1004	1011	1018	1026	1035
June	1002	1009	1016	1024	999
July	900	906	913	827	835
August	859	865	871	878	886
September	855	861	882	889	896
October	922	929	935	943	951
November	842	848	855	862	837
December	810	816	822	825	720
January	636	631	658	667	690
February	753	758	763	769	785
March	818	823	829	838	845

Annexure III

Details of contracted power sources

Table 28: Contracted power sources

Sr. No.	Generating Stations	Resource Type	Installed Capacity (MW)	Allocated Capacity (MW)	Commissioning Year	Expected Retirement Year	Fixed Cost (Rs/kWh)	Heat Rate (at full load) kCal/kWh	Variable Cost (Rs/kWh)	Start Up Cost (Rs.)	Start Up time (h)	Forced Outage	PLF/CUF (%)	Date of signing of PPA	Date of expiry of PPA	Planned maintenance	Ramp Rate (MW/min)	Auxiliary Consumption	Technical Minimum
I	**Central Generating Stations**																		
II	**State Generating Stations**																		
1	Trombay Thermal Power Station-Unit-5, Trombay, Mumbai.	Thermal	500	255.85	1984		1.05	2587	5.833	H: Rs. 0.62 Cr. W: Rs. 0.96 Cr. C: Rs. 1.30 Cr.	H: 4.5 W: 7 C: 12	2.88%	68.89%	06.03.2024	1.04.2029	2%	5	6.6%	55%
2	Trombay Thermal Power Station-Unit-7, Trombay, Mumbai	Thermal	180	92.11	1994		1.3	2135	5.077	H: Rs. 0.10 Cr. W: Rs. 0.15 Cr. C: Rs. 0.40 Cr.	H- GTG: 0.5, STG: 02. W- GTG: 0.5, STG: 4 C- GTG: 0.5, STG: 6	0.45%	97.37%	06.03.2024	NA	2%	1.7	3.7%	55%
3	Trombay Thermal Power Station-Unit-8, Trombay, Mumbai	Thermal	250	100.00	2009	2034	1.24	2384	5.643	H: Rs. 0.30 Cr. W: Rs. 0.46 Cr. C: Rs. 0.93 Cr.	H: 3.5 W: 4.5 C: 9	0.49%	70.57%	06.03.2024	NA	3%	2.5	7.3%	55%
4	M/s Sai Wardha Power Generation	Thermal	540	125	2011			2335	5.56	H: Rs. 0.059 Cr. W: Rs. 0.13 Cr.	H: 5.5 W:4. C: 2	55.00%		15.10.2024			1.00	9.75%	55%

Sr. No.	Generating Stations	Resource Type	Installed Capacity (MW)	Allocated Capacity (MW)	Commissioning Year	Expected Retirement Year	Fixed Cost (Rs/kWh)	Heat Rate (at full load) kCal/kWh	Variable Cost (Rs/kWh)	Start Up Cost (Rs.)	Start Up time (h)	Forced Outage	PLF/CUF (%)	Date of signing of PPA	Date of expiry of PPA	Planned maintenance	Ramp Rate (MW/min)	Auxiliary Consumption	Technical Minimum
	Private Limited, B-2 , Warora Growth centre, MIDC, Warora, Chandrapur, Maharashtra - 442907									C: Rs. 0.22 Cr.									
III	**Hydro**																		
1	Bhira Hydro Station, Bhira Complex, Mulshi, Pune.	Hydro	300	153.51	Unit 2 to 6-1974 to 1977 Unit 7 -1997		0.77	NA	0.939		0.16		NA	06.03.2024	NA		3.330	1%	
2	Bhivpuri Hydro Station, Raigad, Maharashtra.	Hydro	75	38.38	1999		1.46	NA	2.210		0.16		NA	06.03.2024	NA		1.200	1.2%	
3	Khopoli Hydro Station, Raigad, Maharashtra	Hydro	72	36.84	2000-2003		2.35	NA	3.786		0.16		NA	06.03.2024	NA		0.600	1.2%	
IV	**Renewable**																		
1	Walwhan Solar MH Ltd. Mangalwedha , Solapur Maharashtra	Solar	20	20.00			8.56						17.8%	27.05.2013	03.10.2038				
2	Adani Green Energy Twenty Six A Limited, Khavda RE park, Gujarat	Solar	234	234	Feb 2026								28%	09.12.2022					

Sr. No.	Generating Stations	Resource Type	Installed Capacity (MW)	Allocated Capacity (MW)	Commissioning Year	Expected Retirement Year	Fixed Cost (Rs/kWh)	Heat Rate (at full load) kCal/kWh	Variable Cost (Rs/kWh)	Start Up Cost (Rs.)	Start Up time (h)	Forced Outage	PLF/CUF (%)	Date of signing of PPA	Date of expiry of PPA	Planned maintenance	Ramp Rate (MW/min)	Auxiliary Consumption	Technical Minimum
3	ABC Renewable Energy Private Limited (PSA signed with SECI)	Hybrid		136.94	2025-26								41.69%	25.06.2021					
4	Adani Renewable Energy Holding Eight Limited, Khavda RE park, Gujarat	Hybrid	600	216.22	2025-26								36.66%	25.06.2021					
5	AMP Energy Green Private Limited, 71°14'8.44"E, 26°14'45.54" N	Hybrid	130	46.85	2025-26								42.5%	25.06.2021					

Table 29:Emission norms for TPPs

Emission Parameter	TPPs (units) installed before 31st December, 2003	TPPs (units) installed after 31st December 2003 and up to 31st December 2016	TPPs (units) to be installed from 1st January 2017
Particulate Matter	100 mg/Nm3	50 mg/Nm3	30 mg/Nm3
Sulphur Dioxide (SO2)	600 mg/Nm3 (for units less than 500MW capacity) and 200 mg/Nm3 for units 500MW and above capacity	600 mg/Nm3 (for units less than 500MW capacity) and 200 mg/Nm3 for units 500MW and above capacity	100 mg/Nm3
Oxides of Nitrogen (NOx)	600 mg/Nm3	450 mg/Nm3	100 mg/Nm3

Annexure IV

Computation of Capacity Credit (CC) factors for contracted and upcoming generation resource

Table 30:Capacity Credits

Financial Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP
2026	78%	57%	-	66%	-	80%	90%
2027	78%	59%	-	61%	-	80%	90%
2028	78%	60%	-	58%	37%	80%	90%
2029	78%	51%	64%	48%	37%	80%	90%
2030	79%	53%	63%	48%	37%	80%	90%

Annexure V

Calculation of MT-DRAP, ST-DRAP and resource gap

Table 31:Calculation of Resource gap with contracted capacities (in MW) – Most Probable Scenario

Financial Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX	Total Firm Capacity	PEAK	Resource Gap
2026	449	11	0	101	0	210	69	214	100	1154	1004	-150
2027	449	149	0	92	0	210	69	91	101	1162	1011	-151
2028	449	153	0	88	75	211	69	25	102	1171	1018	-153
2029	449	129	35	73	80	211	69	32	103	1180	1026	-154
2030	251	171	92	74	188	210	69	32	103	1190	1035	-155

Table 32:Calculation of Resource gap with contracted capacities (in MW) – Business-As-Usual

Financial Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX	Total Firm Capacity	PEAK	Resource Gap
2026	449	11	0	101	0	210	69	214	100	1154	965	-189
2027	449	149	0	92	0	210	69	91	101	1162	971	-191
2028	449	153	0	88	75	211	69	25	102	1171	977	-194
2029	449	129	35	73	80	211	69	32	103	1180	983	-197
2030	251	171	92	74	188	210	69	32	103	1190	988	-202

Table 33:Calculation of Resource gap with contracted capacities (in MW) – Aggressive Scenario

Financial Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX	Total Firm Capacity	PEAK	Resource Gap
2026	449	11	0	101	0	210	69	214	100	1154	1020	-134
2027	449	149	0	92	0	210	69	91	101	1162	1026	-136
2028	449	153	0	88	75	211	69	25	102	1171	1033	-138
2029	449	129	35	73	80	211	69	32	103	1180	1039	-141
2030	251	171	92	74	188	210	69	32	103	1190	1045	-145

Table 34: ST-DRAP (in MW) Most Probable Scenario

Resource	Thermal	Solar	Hydro	Hybrid	PSP	STOA	PX
2025-26	573	20	152	263	77	214	100

Table 35:MT-DRAP (in MW) Most Probable Scenario

Resource	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX
2025-26	573	20	0	152	0	263	77	196	100
2026-27	573	254	0	152	0	263	77	91	101
2027-28	573	254	0	152	201	263	77	25	102
2028-29	573	254	54	152	216	263	77	32	103
2029-30	317	322	146	152	507	263	77	32	103

Annexure VI

Meeting of peak demand and PRM through firm capacity

Table 36:Firm capacities and calculation of PRM as per MT-DRAP results (in MW)

Financial Year	Thermal	Solar	Wind	Hydro	FDRE	Hybrid	PSP	STOA	PX	Total Firm Capacity	PEAK	PRM
2026	449	11	0	101	0	210	69	214	100	1154	1004	15%
2027	449	149	0	92	0	210	69	91	101	1162	1011	15%
2028	449	153	0	88	75	211	69	25	102	1171	1018	15%
2029	449	129	35	73	80	211	69	32	103	1180	1026	15%
2030	251	171	92	74	188	210	69	32	103	1190	1035	15%

Annexure VII

Optimal power procurement plan

Table 37:Y-O-Y power procurement as per MT-DRAP (in MW)

Financial Year	Solar	Wind	FDRE	STOA*
2025-26	-	-	-	214
2026-27	-	-	-	91
2027-28	-	-	201	25
2028-29	-	54	15	32
2029-30	68	92	291	32

*STOA capacity is non-cumulative as it would expire each year and fresh STOA contracts would be signed each year

Annexure VIII

Power Purchase Agreement of BEST.

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF SOLAR POWER

ON LONG TERM BASIS

Between

WELSPUN ENERGY MAHARASHTRA PRIVATE LIMITED

And

BRIHANMUMBAI ELECTRIC SUPPLY AND TRANSPORT

UNDERTAKING (BEST)

May -- 2013

WELSPUN ENERGY MAHARASHTRA PRIVATE LIMITED

OFFICE OF THE DY. GENERAL MANAGER BEST (UNDERTAKING) ELECTRIC SUPPLY

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WELSPUN ENERGY MAHARASHTRA PRIVATE LIMITED

OFFICE OF THE DY. GENERAL MANAGER BEST (UNDERTAKING) ELECTRIC SUPPLY

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA

HE 327203

WELSPUN ENERGY LIMITED

Welspun House, 7th Floor, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013. Phone 91-22-66136000

प्रधान मुद्रांक कार्यालय, मुंबई
प. मु. विक्रेता क्र. ९५
14 MAY 2013
सक्षम अधिकारी

श्रीमती. तृ. सु. सातंत

This Solar Power Purchase Agreement is made on the 27 day of May 2013 at Mumbai

Between

Welspun Energy Maharashtra Pvt. Ltd, a company incorporated under the Companies Act 1956, having its registered office at Trade World, "B" Wing, 9th Floor, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013 (hereinafter referred to as "Seller", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part;

And

Brihanmumbai Electric Supply & Transport Undertaking (BEST), a statutory Undertaking of Municipal Corporation of Greater Mumbai and Distribution Licensee

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OFFICE OF THE DY. GENERAL MANAGER BEST UNDERTAKING ELECTRIC SUPPLY

supplying electricity to the Island City of Mumbai and public transport to Mumbai having its registered office at BEST Bhavan, BEST Marg, Mumbai-400 001 (hereinafter referred to as the " Procurer / Purchaser / Buyer", which expression, unless repugnant to the context, shall be deemed to include its successors and permitted assigns) of the Second Part.

Both Seller and Procurer are individually referred to as 'Party' and collectively referred to as 'Parties'

Whereas:

1. BEST has signed a Memorandum of Understanding (MoU) with Welspun Energy Maharashtra Pvt. Ltd on January 29th, 2013 to procure power from Solar Renewable Energy to fulfill their Solar Renewable Purchase Obligation under MERC (Renewable Purchase Obligation, its Compliance and Implementation of REC framework) Regulations, 2010.
2. Welspun Energy Maharashtra Pvt. Ltd desires to develop, own and operate a Solar Photovoltaic Power Plant at MIDC Mangalwedha (G.C), Taluka Mangalwedha, District Solapur, Maharashtra, hereinafter referred to as the "Facility" or "The Project"
3. Welspun Energy Maharashtra Pvt. Ltd has agreed to sell Solar Power to BEST from the Solar power plant and BEST as a Utility under the Solar Renewable Purchase Obligation (RPO) has agreed to buy the Energy generated from the Facility in accordance with and subject to the terms and conditions of this Agreement.

The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by Seller to Procurer.

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:

WELSPUN ENERGY MAHARASHTRA PRIVATE LIMITED

OFFICE OF THE DY. GENERAL MANAGER BEST (UNDERTAKING) ELECTRIC SUPPLY

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, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Articles, amended or modified from time to time in accordance with the terms hereof;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Mumbai;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Commission"	means Maharashtra Electricity Regulatory Commission
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commencement Notice"	means the meaning set forth in Article 5
"Commencement Date"	Shall mean the actual date of commencement of supply of respective Unit(s) from the Power Project where upon the Seller starts injecting power from the Power Project to the Delivery Point
"Competent Court of Law"	tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges,

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	acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31st and thereafter each period of 12 months beginning on April 1st and ending on March 31st provided that: (i) in the financial year in which the Scheduled Commencement Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commencement Date and a new Contract Year shall commence once again from the Scheduled Commencement Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Energy"	shall mean MU's contracted for supply by the Seller to Procurer at the Delivery Point from the Solar Power Project;
"Day"	Shall mean a day, if not a Business Day, the immediately succeeding Business Day.
"Delivery Point"	shall be the at LILO point of Welpsun Mangalwedha substation at the inter-connection to MSETCL grid
"Deemed Generation"	means the as defined in Article 4.4.4
"Dispute"	shall mean any dispute or difference of any kind between Procurer and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall have the same meaning ascribed thereto in Article 10 of this Agreement
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;

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" Energy Accounts"	shall mean the state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twenty five (25) years from the Commencement Date of last Unit of the Project subject to that the supply of power shall be limited for a period of 25 years from the Commencement Date of solar project;
"Financing Agreements"	shall mean the agreements pursuant to which the Seller has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Procurer;
"Force Majeure" or "Force Majeure Event"	Shall have the meaning ascribed thereto in Article 11 of this Agreement.
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state(s) of Maharashtra and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Installed Capacity"	Shall mean the name plate capacity of all the Units of the Power Project;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the Seller in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on Seller's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
"Inter-connection point"	Shall mean the point at 132 kV voltage level or above where the power from the solar power project is injected into the state grid system. The responsibility of achieving electrical connections of the power project with the MSETCL lies with the Seller.
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"Law"	shall mean in relation to this Agreement, all laws

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	including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
Metering point	Metering shall be done at the interconnection point between MSETCL and the Solar Project where the power is injected into the MSETCL grid system
"MERC"	shall mean the Maharashtra Electricity Regulatory Commission
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Operating Period";	shall mean the period commencing from the Commencement Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 9.4 of this Agreement
"Power Project"	shall mean the solar power generation facility of Installed Capacity of 20 MW located at MIDC Mangalwedha (G.C), Taluka Mangalwedha, District Solapur, Maharashtra. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement.
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement.
"Project Financing Arrangements/Financial Closure"	shall mean arrangement of necessary funds by the Seller either by way of commitment of funds by the company from internal resources and/or tie up of funds through a bank/financial institution by way of sanction of a loan
"Prudent Utility Practices"	shall mean 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,

	Commencement, operation and maintenance of power generation equipment 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 Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 9.3.4 of this Agreement
"Renewable Purchase Obligation (RPO)"	is the total consumption of electricity for purchase from renewable sources of energy in the area of each distribution licensee under Section 86 (i) (e) of Electricity Act 2003.
"Rupees", "Rs.",	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commencement Date"	shall mean start date of supply of power from the solar PV project by Seller to Procurer
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
"SLDC Charges"	shall mean the charges levied by the SLDC of the state wherein the Solar Power Project is located;
"State Nodal Agency"	shall mean the Maharashtra Energy Development Agency (MEDA)
"Solar Photovoltaic" or "Solar PV"	Shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the Seller to provide Solar Power to Procurer as per the terms and conditions of this Agreement
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"State Grid System"	means the intrastate transmission system of the State of Maharashtra as modified and expanded from time to time, for delivery of electricity to the Procurer's consumers in the State of Maharashtra
"State Grid Code"	shall mean the State Grid Code as specified by Maharashtra Electricity Regulatory Commission, referred under Clause(h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Tariff"	Shall have the same meaning as provided for in Article 8 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 9 and the relevant Supplementary Bills;

"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Week"	Shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2 ***Interpretation***

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

1.2.1 "Agreement" shall be construed as including a reference to its Articles and/or Appendices and/or Annexures;

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3 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);

1.2.4 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;

1.2.5 "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;

1.2.6 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;

1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol " " shall denote Indian Rupees, the lawful currency of India;

1.2.9 Words importing the singular shall include the plural and vice versa;

1.2.10 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;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or

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re- enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 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;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and 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;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

2. ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

2.2 *Term of Agreement*

2.2.1 This Agreement shall remain effective subject to Article 2.3 and 2.4, and shall remain in full force and effect until the 25th anniversary of the Commencement Date unless renewed or extended. This Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date if either Procurer or Seller terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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3. ARTICLE 3: CONDITIONS PRECEDENT

3.1 Following conditions precedent are to be fulfilled by the Seller at time of signing this Agreement:

a) The Seller shall provide to the Procurer a Detailed Project Report (DPR) in respect of the Project

b) The Seller shall provide proof of landholding to the Procurer

c) The Seller shall provide a letter from Financial institution showing in principle approval for funding the project subject to this Power Purchase Agreement signing between the parties

3.2 CONDITIONS SUBSEQUENT

3.2.1 ***Satisfaction of obligations by the Seller***

The Seller agrees and undertakes to duly perform and complete all of the following activities at its own cost and risk on or before six months from the date of signing of PPA, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by Procurer:

a) The Seller shall obtain all Consents, Clearances and Permits required for supply of power to Procurer as per the terms of this Agreement

b) The Seller shall make Project Financing Arrangements and shall provide necessary documents to Procurer in this regard;

c) Commencement date: The Seller shall commence the supply of power within six months from the date of signing of PPA

d) The Seller shall make adequate arrangements to connect the Power Project switchyard with the MSETCL Interconnection Facilities at the Delivery Point;

e) The Seller shall sign a Connection Agreement with MSETCL confirming the evacuation and connectivity of the State Grid system upto the delivery point by the Scheduled Commencement Date;

f) The Seller shall produce the documentary evidence of the clear right or title or possession of the land in the name of Seller;

g) The Seller shall also comply with the provisions of IEGC/Maharashtra State Grid Code, prevailing and future ABT orders issued by MERC, and other technical operational and safety criteria.

h) The Seller shall obtain and maintain necessary policies of insurance during the term of this agreement consistent with Standard Utility Practice.

i) The Seller shall submit to Procurer the relevant documents as stated above, and

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also complying with the Conditions Precedent, on or before six months from the date of signing of PPA.

3.3 ***Consequences of non-fulfillment of conditions subsequent***

3.3.1 If the Seller is unable to commence power supply beyond six months from the date of signing of PPA, the Seller shall pay to Procurer any regulatory charges that may be levied by MERC for shortfall in units calculated on pro-rata basis till COD based on the delay in such a commencement of solar power supply.

3.3.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.3.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event.

3.3.4 Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.2, shall also lead to an equal extension in the Scheduled Commencement Date.

3.3.5 In case for any particular year of the contract period, the Seller is unable to supply the minimum agreed quantity of energy units to the Procurer, the Seller shall pay to Procurer any regulatory charges that may be levied by MERC on Procurer for shortfall in units towards RPO non-compliance calculated for that particular contract year.

3.4 Satisfaction of obligations by the Procurer:

a) The Procurer shall obtain necessary approvals from Maharashtra State Electricity Transmission Company Ltd (MSETCL) to arrange for the drawl of power beyond the Delivery Point from the State Grid system before six months from the date of signing of PPA.

b) The Procurer shall sign the Power Purchase agreement within 45 days of submission of all the documents towards satisfaction of all obligations by the Seller listed in Clause 3.1

c) The Procurer shall also ensure any compliance required under the provisions of Maharashtra State Grid Code, prevailing and future ABT orders issued by MERC.

3.4.1 Obligations to Satisfy

Seller and Procurer shall use all reasonable endeavours to procure the satisfaction in full of the Obligations set out above when and in so far as the subject matter of the relevant condition falls within the scope of its respective responsibility under Article 3.

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Procurer and Seller shall co-operate as required to procure necessary legal opinions with respect to their respective authorization to execute this Agreement and the enforceability of this Agreement.

3.5: Non-fulfilment of Conditions Precedent

3.5.1. In case of inability of the Seller to fulfill the conditions specified in Section 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Precedent as mentioned in Section 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of Four (4) Months continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by Procurer or the Seller by giving a Termination Notice of at least thirty (30) days, in writing to the other Party.

3.5.2: Similarly, in case of inability of the Procurer(s) to fulfill the conditions specified in Section 3.3 due to any Force Majeure event, the time period for fulfillment of the condition precedent as mentioned in Section 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of Four (4) Months continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurer or the Seller by giving a Termination Notice of at least thirty (30) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.

3.5.3. No Tariff revision shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.5; Provided that due to the provisions of Clause 3.5.1 and 3.5.2, any increase in the time period for completion of Obligations mentioned under Section 3.1, shall also lead to an equal extension in the Scheduled Commencement Date.

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4. ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *Seller's Obligations*

4.1.1 The Seller undertakes to be responsible, at Seller's own cost and risk, for:

a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and

b) designing, constructing, erecting, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

c) the commencement of supply of power up to the Contracted Energy to Procurer no later than the Scheduled Commencement Date and continuance of the supply of power throughout the term of the Agreement; and

d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; and

e) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;

g) Fulfilling all obligations undertaken by the Seller under this Agreement.

4.2 *Information regarding Interconnection Facilities*

4.2.1 The Seller shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Seller's side of the Delivery Point to enable delivery of electricity at the Delivery Point.

4.3 *Purchase and sale of Contracted Energy*

4.3.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to Procurer and Procurer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted energy.

4.4 *Right to Contracted Energy*

4.4.1 The Procurer, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the Seller beyond the agreed quantity, the agreed quantity is as indicated in the table shown below.

Number of Units to be supplied to Procurer	**Contract Year 2013-14**	**Contract Year 2014-15**	**Contract Year 2015-16 and thereafter**
In Millions	28.0 OR Proportionate	30.0	31.5

	energy for part of the year from date of Commencement of supply		

If for any Contract Year, it is found that the Seller has not been able to supply minimum energy as above, on account of reasons solely attributable to the Seller, the non-compliance by Seller shall make Seller liable to pay the compensation provided in the Section 3.3.5 to enable Procurer to remit the regulatory charges only in the case of levy of such charges by MERC on Procurer for the Contract year. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be computed at the rate equal to the compensation payable on per unit basis by Procurer towards non-compliance of Solar Renewable Purchase Obligation in state of Maharashtra.

4.4.2 Notwithstanding Article 4.4.1, the Seller is free to sell any energy which is in excess of the quantum of power agreed to be supplied under this Agreement to a third-party from Scheduled Commencement Date.

4.4.3 The Seller is free to augment the installed capacity of the project at any point in time of any contract year to supply the minimum energy agreed as above to the Seller.

4.4.4 Deemed Generation: The Procurer shall be obliged to pay for the contracted energy during the entire term of the contract and shall continue to make payments to the Seller under even any of the following circumstances:

i.) Subsequent to commencement date of supply, the Procurer fails to draw power owing to non-fulfillment of Procurer's obligations
ii.) Procurer declines to take power supply from the Seller

Under such circumstances, Seller is not deemed to be liable for compensation of regulatory penalties, defined as per Clause 4.4.1, that are levied on Procurer for non-compliance of Renewable Purchase Obligation. This clause 4.4.4 is subject to the Seller having generated and injected the agreed quantity, as per Clause 4.4.1, into the MSETCL grid and submitted metered records of such generation to Procurer.

4.5 ***Extensions of Time***

4.5.1 In the event that the Seller is prevented from performing its obligations under Article 4.1 by the Scheduled Commencement Date due to:

a) any Procurer Event of Default; or

b) Force Majeure Events affecting the Procurer, or

c) Force Majeure Events affecting the Seller,

the Scheduled Commencement Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or Procurer through the use of due diligence, to

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overcome the effects of the Force Majeure Events affecting the Seller or Procurer, or till such time such Event of Default is rectified by Procurer.

4.5.2 Subject to Article 4.5.6, in case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commencement Date would not be extended by more than three (3) months.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) Months, non-affected Party may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 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 the time period by which the Scheduled Commencement Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.5 As a result of such extension, the Scheduled Commencement Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commencement Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commencement Date arising due to any reason envisaged in this Agreement shall not be allowed beyond March 31st, 2014.

4.7 Acceptance/Performance Test

4.7.1 Prior to synchronization of the Power Project, the Seller shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central/state government to carry out testing and certification for the solar power projects.

4.8 Prudent Practices

4.8.1 The Seller shall be further required to provide entry to the site of the Power Project free of all obstructions at all times during the Term of the Agreement to Procurer.

5. ARTICLE 5: SYNCHRONISATION, COMMENCEMENT OF POWER SUPPLY

The Seller will specify in a written notice ("Commencement Notice") to the Procurer that (i) the Facility is constructed in accordance with this Agreement and is ready to deliver Energy in accordance with the terms hereof; (ii) all permissions and approvals required for the Facility to sell Energy at the rates and terms specified under this Agreement have been obtained and (iii) all interconnection.facilities are available to receive Energy from the Facility. Such notice shall take effect and the Commencement Date will be achieved following the Procurer's declaration that all of the conditions set forth in this Section and Article 3 have been satisfied or waived by the Procurer i.e.:

(a) The Seller has successfully completed the testing of the Facility in accordance with the manufacturer's recommendations and the Seller has obtained and provided to the Procurer Certificates from the Electrical Inspectorate (GOM) or MSETCL, MEDA or the Procurer's officer as may be designated;

(b) The Facility has achieved initial synchronization with the State Grid System and has demonstrated the reliability of its communications systems and communications with the Procurer;

(c) The Seller has operated the Facility without experiencing any abnormal or unsafe operating conditions on any interconnected system;

(d) The Seller shall also have notified the Procurer no later than 15 (fifteen) days prior to the Commencement Date. At that time, Officers of the Procurer shall verify that the Seller has achieved all of the conditions precedent to Commercial Operation and shall provide the Seller a written endorsement in this behalf acknowledging the documents, certificates, approvals etc provided by the Seller in this behalf.

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6. ARTICLE 6: DISPATCH

6.1 *Dispatch*

6.1.1 The Power Project shall be required to maintain compliance to the applicable State Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time.

6.2 *Open Access*

6.2.1 The Seller shall be responsible for entering into Connection agreement with MSETCL and for obtaining all approvals for grid connectivity of the Project from Maharashtra State Electricity Transmission Company Ltd (MSETCL) at 132kV or higher voltage level, including survey, design, engineering and construction of the said transmission line of the transmission system.

6.2.2 The Transmission system up to delivery point shall either be developed by Seller or shall be developed by MSETCL through deposit work basis for which all expenditure will be borne by Seller. Procurer shall fully co-operate with Seller by furnishing necessary documentation for approvals related to grid connectivity applications.

6.2.3 The Procurer shall fully co-operate with Seller in obtaining the permission from MSETCL and authorized State Government body under Section 68 of the Indian Electricity Act 2003 and section 164 of the Electricity Act 2003 for construction of the dedicated transmission line from its project to the interconnection point of MSETCL. The Procurer shall fully co-operate with the Seller in obtaining the approvals from MEDA/MSETCL, if required, for matters related to withdrawal of power from MSETCL including furnishing such letter, recommendations, confirmation and no objection certificate as may be required.

6.2.4 The Procurer shall be fully responsible to sign a new / modify their current Bulk Power Transmission Agreement with the MSETCL / MSSLDC to ensure that the Power injected by the Seller into the grid has all the necessary formalities fulfilled to be purchased by the Procurer from the date of commencement of supply.

7. ARTICLE 7: METERING

7.1 *Meters*

7.1.1 Metering point shall be the LILO point of Welspun Mangalwedha substation at the inter-connection of the said Solar Project with the MSETCL grid system

7.1.2 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the applicable State Grid Code, as amended and revised from time to time.

7.1.3 The Seller shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at Seller's side of Delivery Point.

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8. ARTICLE 8: APPLICABLE TARIFF

8.1 The Seller shall be entitled to receive the Tariff of Rs. 8.56/ kWh with effect from the Scheduled Commencement Date or actual Commencement Date, in case Commencement Date has been achieved prior to Scheduled Commencement Date.

9. ARTICLE 9: BILLING AND PAYMENT

9.1 *General*

9.1.2 From the commencement of supply of power, Procurer shall pay to the Seller the monthly Tariff Payments, in accordance with this Article. All Tariff Payments by Procurer shall be in Indian Rupees.

9.2 ***Delivery and Content of Monthly Bills/Supplementary Bills***

9.2.1 The Seller shall issue to Procurer a signed Monthly Bill/Supplementary Bill for the immediately preceding Month no later than 15 days after the end of each calendar Month. In case the Monthly Bill / Supplementary Bill for the immediately preceding Month is issued after the 15th day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed of Article 9.3.1 below.
Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by SLDC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy metered at metering point and the applicable tariff.

9.3 ***Payment of Monthly Bills***

9.3.1 Procurer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the (fifth) 5th day of the immediately succeeding Month (*the Due Date*) in which the Monthly Bill/ Supplementary Bill is issued by the Seller to the Procurer to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 9.3.2 (iii) below.

In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be (fifth) 5th day of the next month to the succeeding Month.

9.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

i) deductions required by the Law; and

ii) amounts claimed by Procurer, if any, from the Seller, through an invoice to be payable by the Seller, and not disputed by the Seller within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

iii) The Seller shall open a bank account at Mumbai (the "Seller's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by Procurer to the Seller, and notify Procurer of the details of such account at least sixty (60) Days before the dispatch of the first Monthly Bill. Procurer shall also designate a bank account at Mumbai ("Procurer's Designated

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Account") for payments to be made by the Seller to Procurer, if any, and notify the Seller of the details of such account sixty (60) Days before the Scheduled Commencement Date. Procurer and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller's Designated Account or Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

9.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by Procurer beyond its Due Date, a Late Payment Surcharge shall be payable to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

9.4 **Payment Security Mechanism**

Letter of Credit (LC):

9.4.1 Procurer shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer which may be drawn upon by the Seller in accordance with this Article.

9.4.2 Not later than one (1) Month before the start of supply, Procurer through a scheduled bank at Mumbai open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its 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;
ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

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

9.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 9.4.2 due to any reason whatsoever, Procurer shall restore such shortfall within seven (7) days.

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

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

9.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Procurer.

9.4.8 If Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 9.4.6, the Seller may draw

upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 9.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to Seller and;

ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

9.5 ***Rebate***

9.5.1 For payment of bills by the Procurer to the Seller through a letter of credit, a rebate of 2% of the Monthly Bill shall be allowed.

9.5.2 For payment of bills other than through letter of credit within a period of one month of presentation of bills by the Seller, a rebate of 1% shall be allowed.

9.5.3 For the above purpose, the date of presentation of bill shall be same day in case it is delivered on or before 12:00 noon, else it would be the next Business Day

9.5.4 No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess.

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10. ARTICLE 10: Dispute in Billing

10.1 Dispute in Billing

10.1.1 If the Procurer does not dispute a Monthly Bill or a Supplementary Bill raised by the Seller by the Due Date, such Bill shall be taken as conclusive.

10.1.2 If the Procurer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount and it shall within fifteen (15) 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.

10.1.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.1.2, the Seller shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.1.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.1.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Procurer 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.

10.1.5 Upon receipt of the Bill Disagreement Notice by the Procurer under Article 10.1.4, authorized representative(s) or a director of the board of directors/ member of board or authorized representatives of the Procurer and Seller shall meet and make Procurer endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.1.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.1.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.1.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

10.2 Bi-Annual Reconciliation

10.2.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to bi-annual reconciliation at the beginning of the 3rd quarter of each Contract Year and second reconciliation at the end of each Contract Year within 30 days of the end of that respective quarter to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

10.2.2 The Parties, therefore, agree that as soon as all such data in respect of any month of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.3 ***Payment of Supplementary Bill***

10.3.1 Seller may raise a ("Supplementary Bill") for payment on account of:

i) Adjustments required by the Energy Accounts (if applicable); or

ii) Change in Law as provided in Article 12, or

and such Supplementary Bill shall be paid by the other Party.

10.3.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date. For such payments by Procurer, Rebate as applicable to Monthly Bills pursuant to Article 9.5 shall equally apply.

10.3.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 9.3.3.

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11. ARTICLE 11: FORCE MAJEURE

11.1 *Definitions*

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

11.2 *Affected Party*

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

11.3 *Force Majeure*

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events 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:

a) 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 or tornado;

b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

11.4 *Force Majeure Exclusions*

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) 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 or consumables for the Power Project;

b. Delay in the performance of any contractor, sub-contractor or their agents ;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d. Strikes 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

iii. Breach of, or default under this Agreement.

11.5 ***Notification of Force Majeure Event***

11.5.1 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 unreasonable 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.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. 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 Force Majeure Event.

11.5.2 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

11.6 ***Duty to Perform and Duty to Mitigate***

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, 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 Force Majeure Event as soon as practicable.

11.7 ***Available Relief for a Force Majeure Event***

11.7.1 Subject to this Article:

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

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

(c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

(d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

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12. ARTICLE 12: CHANGE IN LAW

12.1 *Definitions*

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

12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 *Relief for Change in Law*

12.2.1 The aggrieved Party shall be required to approach the Commission for seeking approval of Change in Law.

12.2.2 The decision of the Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

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13. ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 *Seller Event of Default*

13.1.1 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 Procurer of its obligations under this Agreement, shall constitute a Seller Event of Default:

(i) the failure to commence supply of power to Procurer up to the Contracted Energy, by the end of the period specified in Article 4, or

(ii) If the Seller fails to supply energy for a continuous period of three months for what so ever reason except due to Force Majeure event.

(iii) Failure to follow the grid discipline in accordance with Grid Code

(iv) Any other reason which will act against the interest of Procurer's consumers.

(v) Seller's failure to commence Commercial Operations within 12 (twelve) months from the date of Signing of PPA, except to the extent such failure is attributable to an event of Force Majeure or to the Procurer in any manner.

(vi) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

(vii) the Seller repudiates this Agreement and does not rectify such breach within a period of sixty (60) days from a notice from Procurer in this regard; or

(viii) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Seller within sixty (60) days of receipt of first notice in this regard given by Procurer.

(ix) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

13.2 *Procurer Event of Default*

13.2.1 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 a Procurer Event of Default on the

MAHARASHTRA PRIVATE LIMITED WELSPUN ENERGY
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part of defaulting Procurer:

(i) Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Letter of Credit

(ii) Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or

(iii) except where due to any Seller's failure to comply with its obligations, Procurer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Procurer within thirty (30) days of receipt of notice in this regard from the Seller to Procurer; or

(iv) if Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or any winding up or bankruptcy or insolvency order is passed against Procurer

(v) Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

(vii) Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or Procurer 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 has creditworthiness similar to Procurer and expressly assumes all obligations of Procurer and is in a position to perform them; or;

(vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of Procurer.

13.3 ***Procedure for cases of Seller Event of Default***

13.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 13.1, Procurer shall have the right to deliver to the Seller, a notice stating its intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice

13.3.2 Unless the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, within a period of seven (7) days following the expiry of the Consultation Period of sixty (60) days or such longer period as the Parties may agree, Procurer may terminate tbis Agreement by giving a written Termination Notice of thirty (30) days to the Seller.

13.3.3 Provided further that in the case of Seller Event of default and agreement is

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terminated, the Procurer may terminate this Agreement by delivering a Termination Notice to Procurer and in such an event Seller shall have liability to make payment within 30 days from the date of termination notice toward compensation to Procurer equivalent to three years billing based on the applicable tariff as under this agreement

13.4 ***Procedure for cases of Procurer Event of Default***

13.4.1 Upon the occurrence and continuation of any Procurer Event of Default specified in Article 13.2 the Seller shall have the right to deliver to Procurer, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

13.4.4 After 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 Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Energy to any third party of the Seller's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the Seller.

13.4.4 Provided further that in the case of Procurer Event of default and agreement is terminated, the Seller may terminate this Agreement by delivering a Termination Notice to Procurer and in such an event Procurer shall have liability to make payment within 30 days from the date of termination notice toward compensation to Seller equivalent to three years billing based on the applicable tariff as under this agreement.

13.5 ***Termination due to Force Majeure***

13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

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14. ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 *Indemnity*

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

a) any and all third party claims against Procurer 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 any of its obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of a breach by the Seller of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement)

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

a) any and all third party claims against the Seller, 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 any of their obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Seller from third party claims arising by reason of a breach by Procurer of any of its obligations. .

14.2 Procedure for claiming Indemnity

14.2.1 ***Third party claims***

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or
14.1.2(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. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; 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.
The Indemnified Party may contest the claim by referring [illegible] bitrator for

which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(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 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.

14.3 ***Indemnifiable Losses***

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article, such event shall constitute a payment default under Article 13.

14.4 ***Limitation on Liability***

14.4.1 Except as expressly provided in this Agreement, neither the Seller nor its/ 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 permitted 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 properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 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 for such claims excluded under this Article. 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 for such claims excluded under this Article.

14.5 ***Duty to Mitigate***

14.5.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article

15. ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 *Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing.

Provided that, Procurer permits assignment of any of Sellers rights and obligations under this Agreement in favour of the lenders to the Seller, if required under the Financing Agreements.

Provided that, such consent shall not be withheld by the Seller if Procurer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

15.2 *Permitted Charges*

15.2.1 Seller shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 15.1.

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16. ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 *Governing Law*

16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Mumbai.

16.2 *Amicable Settlement and Dispute Resolution*

16.2.1 *Amicable Settlement*

i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

(a) a description of the Dispute;

(b) the grounds for such Dispute; and

(c) all written material in support of its claim.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article (i), furnish:

(a) counter-claim and defences, if any, regarding the Dispute; and

(b) all written material in support of its defences and counter-claim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16.2.1(i) if the other Party does not furnish any counter claim or defence under Article 16.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1, the Dispute shall be referred for dispute resolution in accordance with Article 16.3

16.3 *Dispute Resolution*

16.3.1 **Dispute Resolution by the Appropriate Commission**

iv. Where any Dispute (a) arises from a claim made by any Party for any change in terms related to tariff and open access conditions of this agreement or (b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Maharashtra Electricity Regulatory Commission.

16.3.2 **Dispute Resolution through Arbitration**

If the Dispute arises out of or in connection with any claims not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the Indian

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Arbitration and Conciliation Act, 1996 as under provided not settled amicably as per Article
16.2.1:

i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996
ii) The place of arbitration shall be Mumbai. The language of the arbitration shall be English
iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

16.4 ***Parties to Perform Obligations***

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Central Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

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17. ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

17.2.1 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.

17.3 *Waiver*

17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

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

17.4 *Confidentiality*

17.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

a) to their professional advisors;

b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

c) disclosures required under Law.

Without the prior written consent of the other Party

17.5 *Severability*

17.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

17.6 *Notices*

17.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

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17.6.2 If to the Seller, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address: 7th Floor, Welspun House, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai – 400013

Attention: Ms Jyoti Mistry

Email : jyoti_mistry@welspun.com

Fax. No.: 022 24908020

Telephone No.: 022 66136000 Ext 6405 / 9664455974

17.6.3 If to Procurer, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address: BEST Undertaking, 1st Floor, Multistoried Annexe Building, Colaba, Mumbai - 400001

Attention: Chief Engineer (Regulatory Cell)

Email: cerc@bestundertaking.com

Fax. No.: 022 22824978

Telephone No.: 022 22799567

17.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

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OFFICE OF THE DY. GENERAL MANAGER BEST (UNDERTAKING) ELECTRIC SUPPLY

17.7 ***Language***

17.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

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

17.8 ***Restriction of Shareholders / Owners' Liability***

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement.

17.9 ***Taxes and Duties***

17.9.1 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Seller, contractors or their employees that are required to be paid by the Seller as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

17.9.2 Procurer shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer in relation to the matters set out in Article 17.9.1.

17.9.3 Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by Procurer on behalf of Seller.

17.10 ***Independent Entity***

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

17.10.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurer and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and Procurer.

17.11 ***Compliance with Law***

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003 or any rules

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and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[Procurer]

OFFICE OF THE DY. GENERAL MANAGER BEST UNDERTAKING ELECTRIC SUPPLY

Name, Designation and Address

Mr. SHRIKANT R. KHEDKAR
Deputy General Manager
Electric Supply

Witness

1. R.D. Patsute

2. Anand V. Kadam

For and on behalf of
[Seller]

WELSPUN ENERGY MAHARASHTRA PRIVATE LIMITED

Name, Designation and Address

MR. VINEET. MITTAL
CO-FOUNDER AND MANAGING DIRECTOR

Witness

1. SRIRAM RAMAMURTHY

2. VINOD JAGDHANE

Bombay Mercantile Co-Operative Bank Ltd.,
78,Mohammedali Road,
Mumbai-400 003.

D-5/STP(V)/C.R.1056/04/05/336-339/2009

भारत 39600 175185 SPECIAL ADHESIVE महाराष्ट्र JAN 16 2019 14:56 Rs.0000500/- PB5449 INDIA STAMP DUTY MAHARASHTRA

SUPPLEMENTAL POWER PURCHASE AGREEMENT

For

PROCUREMENT OF SOLAR POWER
ON LONG TERM BASIS

Between

WALWHAN SOLAR MH LIMITED

And

BRIHANMUMBAI ELECTRIC SUPPLY AND TRANSPORT UNDERTAKING (BEST)

IN RESPECT OF
20 MW SOLAR PV POWER PLANT LOCATED AT

MIDC MANGALWEDHA (G.C.), TALUKA MANGALWEDHA
DISTRICT SOLAPUR, MAHARASHTRA

January-2019

Walwhan Solar MH Limited

OFFICE OF THE DY. GENERAL MANAGER BEST UNDERTAKING ELECTRIC SUPPLY

SUPPLEMENTAL POWER PURCHASE AGREEMENT
For
PROCUREMENT OF SOLAR POWER ON LONG TERM BASIS

Between

WALWHAN SOLAR MH LIMITED

And

BRIHANMUMBAI ELECTRIC SUPPLY AND TRANSPORT UNDERTAKING (BEST)

THIS SUPPLEMENTAL POWER PURCHASE AGREEMENT hereinafter called the "Supplemental Agreement" is entered into at Mumbai on the 16th day of January 2019.

Between

Walwhan Solar MH Limited incorporated under Company Act, 1956 having its registered Office at C/o The Tata Power Company Limited, Corporate, Center B, 34 Sant Tukaram Road, Carnac Bunder, Mumbai, Maharashtra, India 400 009 (hereinafter referred to as "*Seller / Power Producer* " and or "WSMHL", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as Party of first part;

And

Brihanmumbai Electric Supply & Transport Undertaking (BEST), a statutory Undertaking of Mumbai Municipal Corporation of Greater Mumbai and Distribution Licensee supplying electricity to the Island city of Mumbai and Public Transport to Mumbai having its registered office at BEST Bhavan, BEST Marg, Mumbai-400 001 (hereinafter referred to as the *"Procurer / Purchaser / Buyer"* and or "BEST", which expression unless repugnant to the context, shall be deemed to include its successors and permitted assigns) as party of the second part;

Both, Seller in this case **"WSMHL"** and Procurer in this case **"BEST"** are individually referred to as "Party" and collectively as the "Parties"

Whereas:

A. BEST has signed a Memorandum of Understanding (MoU) with Welspun Energy Maharashtra Pvt. Ltd on January 29th, 2013 to procure power form Solar Renewable Energy to fulfill their Solar Renewable Purchase Obligation under MERC (Renewable Purchase Obligation, its compliance and implementation of REC framework) regulations, 2010.

B. Welspun Energy Maharashtra Pvt. Ltd desires to develop, own and operate a Solar Photovoltaic Power Plant at MIDC Mangalwedha (G. C.), Taluka Mangalwedha, District Solapur, Maharashtra hereinafter referred to as the "Facility" or "The Project".

C. Welspun Energy Maharashtra Pvt. Ltd has agreed to sell Solar Power to BEST from the Solar Power Plant and BEST as Utility under the Solar Renewable Purchase Obligation (RPO) has agreed to buy the Energy generated from the Facility in accordance with and subject to the terms and conditions of Solar Power Purchase Agreement.

D. Accordingly, Welspun Energy Maharashtra Pvt. Ltd. and BEST had signed Power Purchase Agreement on 27th May 2013 hereinafter called as the "PPA", setting out the terms and conditions of sell of Solar Power to BEST from its 20 MW Solar Power Project located at MIDC Mangalwedha (G. C.), Taluka Mangalwedha, District Solapur, Maharashtra.

E. Now, ***Walwhan Solar MH Limited*** formerly known as Welspun Energy Maharashtra Pvt. Ltd. through letter dated 13th Dec 2017 & 1st Feb 2018, has requested BEST to change the name of seller from Welspun Energy Maharashtra Pvt. Ltd. to ***Walwhan Solar MH Limited***.

F. Walwhan Solar MH Limited formerly known as Welspun Energy Maharashtra Pvt. Ltd. has submitted Memorandum and Articles of Associations, Board resolutions for change of name, shareholding pattern of the new company and Certificate of Incorporation pursuant to change in name to Walwhan Solar MH Limited.

NOW THEREFORE, in consideration of the premises, mutual agreements, covenants and conditions set forth in this Supplemental Agreement, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. All capitalized terms unless specifically defined in this Supplemental Agreement shall have the meanings ascribed to them respectively in the Agreement.

2. The Parties, namely, BEST and WSMHL hereby agree that the rights and obligations of Welspun Energy Maharashtra Pvt. Ltd. under the PPA dated 27th March 2013 entered into between Welspun Energy Maharashtra Pvt. Ltd and BEST shall stand assigned to WSMHL for all intent and purposes and on the same terms and conditions including tariff as agreed in the Power Purchase Agreement read with other applicable Deeds and Documents.

3. WSMHL shall duly fulfill all obligation and responsibility under taken by Welspun Energy Maharashtra Pvt. Ltd. under the PPA and Supplemental PPA. Further, WSMHL shall duly fulfill the operation & maintenance of the Solar Power project and generation and supply of electricity from the project to BEST as if Welspun Energy Maharashtra Pvt. Ltd. had continued to be the *Power Producer / Seller*.

4. The Solar Power Purchase Agreement dated 27th May 2013 entered between Welspun Energy Maharashtra Pvt. Ltd. and BEST shall stand assigned in favor of M/s. Walwhan Solar MH Limited (WSMHL) in place of Welspun Energy Maharashtra Pvt. Ltd. and modified as under:

   4.1. The *Seller* referred in the Solar Power Purchase Agreement as "Welspun Energy Maharashtra Pvt. Ltd." shall be replaced by "Walwhan Solar MH Limited".

   4.2. All other terms and conditions including tariff of Solar Power Purchase Agreement dated 27th May 2013 entered between Welspun Energy Maharashtra Pvt. Ltd. and BEST shall remain unchanged and shall apply mutatis mutandis to "***Walwhan Solar MH Limited.***"

Walwhan Solar MH Limited

OFFICE OF THE DY. GENERAL MANAGER BEST UNDERTAKING ELECTRIC SUPPLY

IN WITNESS WHEREOF, the Parties have signed this Supplemental Agreement on the Day, Month and Year first written above through their authorized representative(S) at Mumbai.

For and on behalf of (Seller)
Walwhan Solar MH Limited

Authorized Signatory 1

M.D. Paranjpe

MAHESH DINKAR PARANJPE

Name & Designation Director & Chairman

Authorized Signatory 2

KARTIK PANDYA

Name & Designation HEAD - COMMERCIAL

Common Seal

Walwhan Solar MH Limited

In the presence of Witnesses:

1. Kishipal Khobragade

2. Manali Rumde

For and on behalf of (Procurer)
Brihanmumbai Electric Supply And Transport Undertaking (Best)

Authorized Signatory 1

RANJIT JAGDAMBA SINGH

Name & Designation DGM (ES)

Common Seal

OFFICE OF THE DY. GENERAL MANAGER BEST UNDERTAKING ELECTRIC SUPPLY

In the presence of Witnesses:

1. SUNIL NAMADEO BHINGE

2. (N. P. JAGALDAS)

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA 2019 VC 183092

जिल्हा कोषागार कार्यालय, ठाणे

26 APR 2019

मुद्रांक प्रमुख लिपीक

AGREEMENT FOR
PROCUREMENT OF POWER (FOO)
100 MW

The Brihanmumbai Electric Supply & Transport Undertaking (of Brihanmumbai Mahanagarpalika)
BEST Bhavan, Colaba, Mumbai,
Maharashtra 400001

AND

Manikaran Power Limited, Kilburn Colony, P.O. Hinoo, Ranchi, Jharkhand-834002
24th May, 2019

E-Tender No. BEST/Medium/Lumpsum Tariff/18-19/ET/31
E-Reverse Auction No. BEST/Medium/Lumpsum Tariff/18-19/RA/30

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Part I

Preliminary

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AGREEMENT FOR PROCUREMENT OF POWER

THIS AGREEMENT is entered into on this the 24th day of. May, 2019

BETWEEN

1 The Brihanmumbai Electric Supply & Transport Undertaking (of Brihanmumbai Mahanagarpalika) represented by its General Manager and having its principal office at BEST Bhavan, Colaba, Mumbai, Maharashtra-400001 (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 Manikaran Power Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at Kilburn Colony, P.O. Hinoo, Ranchi, Jharkhand-834002, (hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Utility had resolved to procure electricity from a power generating station that would dedicate a contracted capacity of 100 MW for production of electricity and supply thereof to the Utility on finance, own and operate (the "**FOO**") basis in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

(B) The Utility had accordingly invited proposals by its Request for Qualification dated 17 April, 2018 (the "**Request for Qualification**" or "**RFQ**") for shortlisting of Bidders who offer to supply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia*, the selected bidder.

(C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No. *23/17/2013-R&R (Vol-IV) dated 16 January, 2017 (the "**Request for Proposals**" or "**RFP**") from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.

(D) After evaluation of the Bids received, the Utility had accepted the Bid of the selected bidder and issued its Letter of Award No. CER/19/2019 dated 26th March 2019 (hereinafter called the "**LOA**") to the selected bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Power within 30 (thirty) days of the date of issue thereof.

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

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

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ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the

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jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Utility hereunder or pursuant hereto in any manner whatsoever;

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

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

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

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

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

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

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Utility shall be provided free of cost and in three copies, and if the Utility is required to return

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any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

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

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

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

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

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

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

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

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

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

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Part II

The Procurement Contract

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ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

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

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

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

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ARTICLE 3

GRANT OF PROCUREMENT CONTRACT

3.1 The Procurement Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein for supply thereof to the Utility (the **"Procurement Contract"**) for a period of 5 (Five) years commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five per cent) of initial contract period or one year whichever is lower .

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

(a) ensure that the Developer finances, owns, operates and maintains the Power Station in accordance with this Agreement;

(b) ensure that the Developer procures Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;

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

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

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

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

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(g) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or Encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.2 Extension of Contract Period

Notwithstanding anything to the contrary contained in this Agreement, save and except the extension of Contract Period specified in the Proviso of Clause 3.1.1, in the event that extension of the Contract Period due to the Supplier in accordance with the provisions of this Agreement is not granted by the Utility for any reason, the Utility shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Supplier a lump sum amount computed in accordance with this Clause 3.2 in lieu of the Fixed Charge that would have been payable to the Supplier if the Contract Period shall have been extended in accordance with this Agreement. For computation of the aforesaid lump sum amount payable hereunder, the Fixed Charge due and payable for and in respect of the last month of the Contract Period shall be deemed as the base and the amount so determined shall be reduced by 10% (ten per cent) for the following month and the same computation shall be repeated for every subsequent month for the purposes hereof. For the avoidance of doubt and by way of illustration, if the Fixed Charge for the last month of the Contract Period is Rs. 1 crore (Rupees one crore) and the period of foregone extension is 2 (two) months, the amount payable for and in respect of the first and second months shall be a sum of Rs. 90 lakh (Rupees ninety lakh) and Rs. 81 lakh (Rupees eighty one lakh) respectively. It is further clarified that payment for a part month shall be computed on a proportionate basis. The Parties further agree that the payment of such amount shall be deemed to form part of the Secured Obligations and may be recovered by the Supplier under and in accordance with Article 13.

3.3 Substitution of the Utility

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

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ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

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

(a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;

(b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;

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

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

(a) provided Performance Security to the Utility;

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

(c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;

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

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

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

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

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

4.2 Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

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4.4 Deemed Termination upon delay

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

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ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, "through the Developer", procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. The Supplier shall further ensure that the Developer maintains all consents, clearances and permits as required under Applicable Law for the operation and maintenance of Power Station and production of power, in full force and effects during the Term of this Agreement.

5.1.2 The Supplier shall comply and shall cause the Developer to comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.4 The Supplier shall ensure that the Developer shall operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof each year of the Contract Period (the "**Normative Availability**").

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to 1000 kWh per megawatt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour,

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such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.1.5 The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of medium term open access shall be mutually decided by the Utility and Supplier;

(b) procure, or cause to be procured, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;

(c) ensure performance and fulfilment of Developer's obligation in respect of debt service for the Project;

(d) ensure and procure that its Developer comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;

(e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;

(f) support, cooperate with and facilitate the Utility in the implementation of this Agreement;

(g) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;

(h) comply with the directions of the Commission issued from time to time under the Act.

5.2 Obligations relating to Project Agreements

It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Supplier from its obligations or liability

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hereunder.

5.3 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Utility.

The provision of Clause 5.3 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provision as contained in Clause 5.3 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to IDBI Trusteeship Services Limited" (Held in Trust for KSK Electricity Financing India Private Limited"). The Supplier shall ensure the compliance of the provision mentioned in this Clause 5.3. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Article 19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.3.

5.4 Obligations relating to operation of the Power Station

5.4.1 The Supplier shall ensure that the Developer shall at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the SLDC may give from time to time in accordance with the provisions of the Act.

5.4.2 The Supplier shall cause the Developer to enter into and comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5 Obligations relating to transmission charges

The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. NIL (Rupees NIL) for and in respect of the Contracted Capacity, which charges shall at all times be due and payable by the Supplier.

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5.6 Obligations relating to transmission losses

5.6.1 The Supplier shall be liable for the transmission losses in all inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.

5.6.2 The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.

5.7 Obligations relating to SLDC and RLDC charges

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Utility.

~~**5.8 Obligation relating to Concessional Fuel**~~

~~Without prejudice to the provisions of clause 12.5, the Supplier acknowledges, agrees and undertakes not to use any concessional Fuel for production of electricity and supply thereof in pursuance of the provisions of this Agreement.~~

Amended as per Maharashtra Electricity Regulatory Commission's Order dated 30th October 2017 in Case No. 144 of 2017 and MA No. 20 of 2017.

5.9 Obligations relating to taxes

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

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with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.

5.10 Obligations relating to reporting requirements

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

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

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ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

6.1.1 The Utility shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non-grant of medium term open access shall be mutually decided by the Utility and Supplier;

b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

c) support, cooperate with and facilitate the Supplier in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.

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

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ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

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

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

(c) along with its Associates, Developer has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement;

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

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

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

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

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

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

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;

(l) the selected bidder and Developer have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

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

(n) the Developer has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement;

~~(o) it shall at no time use Concessional Fuel for production of electricity and supply thereof to the Utility under the Agreement;~~

Amended as per Maharashtra Electricity Regulatory Commission's Order dated 30th October 2017 in Case No. 144 of 2017 and MA No. 20 of 2017.

(p) the Developer has a good and valid right to the Station Premises and the Power Purchase Agreement executed between the Supplier and the Developer is valid and shall remain valid during the Contract Period;

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

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

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

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

7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

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

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

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

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

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

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

7.3 Disclosure

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

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ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Utility makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Utility in this regard.

8.1.2 The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Utility shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.

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

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Utility to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Utility contained in Clause 8.1.1 and shall not in any manner shift to the Utility any risks assumed by the Supplier pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Utility shall not be liable in any manner for such risks or the consequences thereof.

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Part III

Operations

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ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 15 crore (Rupees Fifteen crore) in the form set forth in Schedule-B (the "**Performance Security**") for a period of 6 (six) months.

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

9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 30 (thirty) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

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

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9.3 Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 6 (six) months after the Appointed Date, and shall be released upon the Deemed Performance Security taking effect in accordance with the provisions of Clause 9.4.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the **"Deemed Performance Security"**). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Utility, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

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ARTICLE 10

ALLOCATION OF CAPACITY

10.1 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of 100 MW to the Utility as the capacity contracted hereunder (the "**Contracted Capacity**") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.

10.2 Dispatch of unutilised Contracted Capacity

10.2.1 In the event that the Utility does not require the supply of the whole or part of the Contracted Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% (twenty five percent) of the Fixed Charge payable for Availability thereof and the waived Fixed Charge under Clause 10.2.2. Provided, however, that any reduction in supply under Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours.

10.2.2 In the event that any part of the Contracted Capacity, which is not utilised by the Utility or its nominees, and is, therefore, utilised for production of electricity and sale thereof to any Buyer, the Fixed Charge due and payable for and in respect of such Contracted Capacity shall deemed to be waived and accordingly, no Fixed Charge shall be due or payable by the Utility in respect thereof; provided that Utility may, in its sole discretion, agree to pay to the Supplier such proportion of the waived Fixed Charge, and in such manner, as it may determine from time to time. For the avoidance of doubt, the Parties agree that supply of electricity to a nominee of the Utility shall be subject to provisions of adequate payment security either by the nominee or by the Utility.

10.3 Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.

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Part IV

Financial Covenants

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ARTICLE 11

TARIFF

11.1 Tariff

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

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

11.2 Base Fixed Charge

The Parties agree that the fixed charge payable for Availability shall, in accordance with the offer of the Supplier for the Base Year, be Rs. 1.97 (One Rupee Ninety Seven Paisa) per kWh (the "**Base Fixed Charge**"), which shall be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.

11.3 Fixed Charge

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

11.4 Computation of Fixed Charge

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

11.4.2 The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) computed with reference to the Contracted Capacity (the "**Capacity Charge**"). Provided, however, that in the event of Despatch of the Power Station beyond such 85% (eighty five per cent), Incentive shall be payable in accordance with the provisions of Clause 11.6.1.

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11.4.3 Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof, and in the event it supplies electricity to the Utility in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge, save and except the payment of Incentive due under the provisions of Clause 11.4.2.

11.4.4 In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. The Parties further agree that any and all revenues received from Buyers shall be applied first towards reduction of Fixed Charge payable by the Utility hereunder and only the balance remaining shall be appropriated by the Supplier.

11.4.5 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.

11.5 Declaration of Availability

11.5.1 Unless otherwise notified by the Developer through the Supplier the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.

11.5.2 In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in transmission between the Point of Grid Connection and Delivery Point, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the

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Non-Availability hereunder shall be notified by the Developer through the Supplier to the Utility forthwith.

11.5.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the Developer through the Supplier to the Utility forthwith.

11.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, Developer's maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of Developer's maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.

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

11.5.6 Notwithstanding the provisions of Clause 11.5.5, any reduction in Availability arising out of de-commissioning due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses 17.5.

11.6 Incentive and Damages

11.6.1 In the event that the Availability in any month exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Availability in excess of Normative Availability. Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Power Station. For the avoidance of doubt and by way of illustration, in the event the Availability in any month shall exceed the Normative Availability by 3% (three per cent) of the Contracted Capacity but the Despatch during that month shall exceed 1% (one per cent) of the Contracted Capacity, the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

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

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

11.7 Variable Charge

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

11.8 Taxes and duties

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

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

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

11.9 Billing and Payment

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

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Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6; and (l) the net amount payable under the Monthly Invoice.

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

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

11.10 Disputed Amounts

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

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11.10.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 25.4.

11.11 Discount for early payment

The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.

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ARTICLE 12

Variable CHARGE

12.1 Variable Charge

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

12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. 1.97 (One Rupees Ninety Seven Paisa) per kWh, [comprising Rs. 1.97 (One Rupees Ninety Seven Paisa) per kWh as the cost of Fuel/generating cost and Rs NIL (Rupees NIL) per kWh as the cost of transmission charges and Rs NIL (Rupees NIL) per kWh as the cost of transmission loss] (the "**Base Variable Charge**") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period. For the avoidance of doubt, the Parties expressly agree that the Variable Charge shall include the transmission charges and transmission losses as on Bid Date upto the Delivery Point.

12.3 Computation of Variable Charge

[*Option j: Lumpsum Tariff*]

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

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

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12.4 Shortage of Fuel

In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from Contracted Capacity on account of a shortfall in Fuel for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of Fuel, notify the Utility of the nature, extent and period of shortage of Fuel and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Availability occurring on account of shortage of Fuel, save and except as provided in Clause 11.4.5.

~~**12.5 Restrictions on use of Concessional Fuel**~~

~~The Supplier undertakes that the Developer shall not use Concessional Fuel for production and supply of electricity in pursuance of this Agreement. The Supplier further acknowledges and agrees that in the event of any breach of the provisions of this Clause 12.5, the Utility shall be entitled to deduct, withhold and appropriate 60% (sixty per cent) of the Tariff as Damages for and in respect of the electricity produced and supplied by use of Concessional Fuel, without prejudice to the rights of the Utility to appropriate the Performance Security and terminate this Agreement as if a Supplier Default has occurred.~~

~~Provided, however, that in case gas in supplied by ONGC/GAIL on concessional terms, the Utility and the Supplier may, with prior approval of the Government, use such gas for production of electricity and supply thereof under this Agreement.~~

Amended as per Maharashtra Electricity Regulatory Commission's Order dated 30th October 2017 in Case No. 144 of 2017 and MA No. 20 of 2017.

12.6 Take or Pay supply of Fuel

The Parties expressly acknowledge and agree that the Developer shall produce electricity for supply thereof under this Agreement by utilising gas procured under a fixed supply contract which shall require the Supplier to pay for supply of gas even if it is not utilised, and in the event such electricity is not Dispatched by the Utility or sold to a Buyer in accordance with the provisions of this Agreement, the Utility shall pay to the Supplier the cost incurred by it for the gas that has remained unutilised.

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ARTICLE 13

PAYMENT SECURITY

13.1 Default Escrow Account

13.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 30% (thirty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.

13.1.2 The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "**Deed of Hypothecation**"), whereby the Utility shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

13.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "Minimum Monthly Payment") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.

13.1.4 The Utility shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

13.2 Letter of Credit

13.2.1 The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and

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irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "**Letter of Credit**"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement.

13.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.2.3 In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:

a) a copy of the Monthly Invoice which has remained unpaid; and

b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

13.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Utility shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 13.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Minimum Monthly Payment, except to give effect to such revision once every year.

13.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

13.3 Recovery from sale of Contracted Capacity

13.3.1 In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to

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appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility.

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

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

13.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

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ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1 Despatch of Contracted Capacity

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

14.1.2 Pursuant to the provisions of Clause 14.1.1, the Supplier shall cause the Developer to plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.

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

14.2 Settlement of UI charges

14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the UI Regulations (the "**Unscheduled Interchange**" or "**UI**") shall be solely to the account of and borne by the Supplier, save and except as provided in Clause 14.2.2 and 14.2.3.

14.2.2 Subject to the provisions of the Applicable Laws, the Utility shall have the first right to despatch, in the form of UI, any surplus electricity generated from the contracted Capacity, and 90% (ninety per cent) of the revenues accruing from such UI charges, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier.

14.2.3 Subject to the provisions of Clause 14.2.2, the Supplier may, in addition to the scheduling under Clause 14.1, supply electricity produced from the unutilised Contracted Capacity, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilised hereunder shall be deemed to be waived and shall not be payable by the Utility.

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Provided, that the Parties may with mutual agreement reduce the Fixed Charge to be waived hereunder to such extent as they may determine.

14.3 Overriding powers of the Utility

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

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

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

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

14.4 Ramp up of Despatch

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

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ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

The Supplier shall ensure that Developer shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier and/or the Developer during the Contract Period.

15.2 Insurance Cover

Without prejudice to the provisions contained in Clause 15.1, the Supplier shall, during the Operations Period, procure and maintain and cause the Developer to procure and maintain, Insurance Cover including but not limited to the following:

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

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

c) the Supplier's general liability arising out of the Procurement Contract;

d) liability to third parties for goods or property damage;

e) workmen's compensation insurance; and

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

15.3 Evidence of Insurance Cover

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

15.4 Remedy for failure to insure

If the Supplier and/or the Developer shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the

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option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier [and/or the Developer if Supplier is a Trading Licensee.

15.5 Waiver of subrogation

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

15.6 Supplier's waiver

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

15.7 Application of insurance proceeds

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

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ARTICLE 16

ACCOUNTS AND AUDIT

16.1 Audited accounts

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

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

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

16.2 Appointment of auditors

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

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

16.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Utility shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the **"Additional Auditors"**) of Chartered

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Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

16.3 Certification of claims by Statutory Auditors

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

16.4 Set-off

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

16.5 Dispute resolution

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

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Part V

Force Majeure and Termination

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ARTICLE 17

FORCE MAJEURE

17.1 Force Majeure

As used in this Agreement, the expression **"Force Majeure"** or **"Force Majeure Event"** shall, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Utility(s) and/or the Developer claiming the benefit of Force Majeure (the **"Affected Party"**) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

17.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

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

(b) strikes or boycotts (other than those involving the Supplier, Developer, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Supplier and/or Developer by or on behalf of such Contractor;

(d) any delay or failure of an overseas contractor to deliver equipment in India [or to supply Fuel from an overseas Captive Mine], if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Developer by such contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier and/or Developer in any proceedings for reasons other than (i) failure of the Supplier and/or Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by

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the Utility;

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

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

17.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

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

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

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

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

(e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Supplier and/or Developer by or on behalf of such Contractor;

(f) any Indirect Political Event that causes a Non-Political Event; or

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

17.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

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

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, Developer or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit,

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authorisation, no objection certificate, consent, approval or exemption required by the Supplier, Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Supplier and/or Developer by or on behalf of such Contractor; or

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

17.5 Duty to report Force Majeure Event

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

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

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

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

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

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

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

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17.6 Effect of Force Majeure Event on the Procurement Contract

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

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

17.7 Allocation of costs arising out of Force Majeure

17.7.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Power Station (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and

(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Utility to the Supplier.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations.

17.7.2 Notwithstanding anything contained in this Clause 17.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity or part thereof is deemed Available in accordance with the provisions of Clause 5.1.4, the Utility shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Supplier under this Clause 17.7.

17.7.3 Save and except as expressly provided in this Article 17, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims,

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demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8 Termination Notice for Force Majeure Event

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

17.9 Excuse from performance of obligations

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

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

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

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

17.10 Relief for Unforeseen Events

17.10.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Power Station. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on accordance thereof deal with it in accordance with the provisions of this Clause 17.10.

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17.10.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

17.10.3 The conciliation tribunal referred to in Clause 17.10.2 shall conduct its proceedings in accordance with the provisions of Article 23 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 17.10.

17.10.4 The conciliation tribunal referred to in this Clause 17.10 shall conduct preliminary proceedings to satisfy itself that -

(a) an Unforeseen Event has occurred;
(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part, and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 17.10.

17.10.5 Upon completion of the conciliation proceedings referred to in this Clause 17.10, the conciliation tribunal may by a reasoned order make recommendations which shall be:

(a) based on a fair and transparent justification;
(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
(d) quantified and restricted in terms of relief or remedy.

17.10.6 Within 15 (fifteen) days of receiving the order referred to in Clause 17.10.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may, enter into a Memorandum of Understanding (the "**MoU**") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

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ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier

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

18.2 Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Supplier by way of compensation, all direct costs suffered or incurred by the Supplier as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, and other revenues, debt repayment obligations, or any consequential losses.

18.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Availability, as the case may be, the Utility shall, in addition to payment of compensation under Clause 18.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Availability was reduced on account thereof, as the case may be; and in the event of reduction in Availability below 80% (eighty per cent) of the Normative Availability, the Utility shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Availability. For the avoidance of doubt, loss of 25% (twenty five per cent) of Availability for 4 (four) days shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

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ARTICLE 19

TERMINATION

19.1 Termination for Supplier Default

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

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

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

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

(d) a breach of the Fuel Supply Agreement or any other Project Agreements by the Developer has caused a Material Adverse Effect;

(e) the Supplier or Developer creates any Encumbrance in breach of this Agreement;

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

(g) the Power Purchase Agreement between the Supplier and the Developer stands expired, cancelled or terminated, for any reason whatsoever;

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

(i) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

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(j) the Developer fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4 (four) months within any continuous period of 12 (twelve) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the Developer or (iii) shortage of Fuel occurring for reasons not attributable to the Developer;

~~(k) uses Concessional Fuel for production and supply thereof to the Utility during any 3 (three) days in any month;~~

Amended as per Maharashtra Electricity Regulatory Commission's Order dated 30th October 2017 in Case No. 144 of 2017 and MA No. 20 of 2017.

(l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Developer under any of the Project Agreements, or of all or part of the assets or undertaking of the Supplier and/or the Developer, and such transfer causes a Material Adverse Effect;

(m) an execution levied on any of the assets of the Supplier and/or the Developer has caused a Material Adverse Effect;

(n) the Supplier and/or the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier and/or the Developer or for the whole or material part of its assets that has a material bearing on the Project;

(o) the Supplier and/or the Developer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;

(p) a resolution for winding up of the Supplier and/or the Developer is passed;

(q) any petition for winding up of the Supplier and/or the Developer is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier and/or the Developer is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier and/or the Developer, as the case may be are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier and/or the Developer, as the case may be under this Agreement and the Project Agreements; and provided that:

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

ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier and/or the Developer, as the case may be as at the Appointed Date;

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

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

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

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

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

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

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

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

19.2 Termination for Utility Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the

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"**Utility Default**") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

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

(b) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or

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

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

19.3 Termination Payment

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

19.3.2 Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 3 (three) months as if the Contracted Capacity was Available for such 3 (three) months from the date of Termination.

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

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

19.4 Instructions to RLDC and SLDC

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

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

19.5 Survival of rights

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

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Part VI

Other Provisions

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ARTICLE 20

ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

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

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

20.2 Permitted assignment and charges

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

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

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

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

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

20.3 Assignment by the Utility

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

20.4 Approvals for assignment

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

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ARTICLE 21

CHANGE IN LAW

21.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may by notice require the Utility to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Utility shall pay the amount specified therein; provided that if the Utility shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.2 Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Utility, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Utility may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Supplier shall pay the amount specified therein to the Utility; provided that if the Supplier shall dispute such claim of the

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Utility, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.3 Protection of NPV

Pursuant to the provisions of Clauses 21.1 and 21.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

21.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 21 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

21.5 No claim in the event of recovery from Buyers

Notwithstanding anything to the contrary contained in this Agreement, the Utility shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.

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ARTICLE 22

LIABILITY AND INDEMNITY

22.1 General indemnity

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

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

22.2 Indemnity by the Supplier

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

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

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

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

22.2.2 Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands,

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liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall cause the Developer to promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the Supplier *or* Developer is unable to secure such licence within a reasonable time, the Supplier , *or* Developer shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3 Notice and contest of claims

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

22.4 Defence of claims

22.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying

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Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

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

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

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

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

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

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

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

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

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

22.5 No consequential claims

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

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ARTICLE 23

DISPUTE RESOLUTION

23.1 Dispute resolution

23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 23.2.

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

23.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Utility Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 23.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 23.3.

23.3 Arbitration

23.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 23.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 23.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

23.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

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23.3.3 The arbitral tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 23 shall be final and binding on the Parties as from the date it is made, and the Supplier and the Utility agree and undertake to carry out such Award without delay.

23.3.4 The Supplier and the Utility agree that an Award may be enforced against the Supplier and/or the Utility, as the case may be, and their respective assets wherever situated.

23.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

23.4 Adjudication by the Commission

23.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 23.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

23.4.2 Where any dispute is referred by the Commission to be settled through arbitration the procedure specified in Clause 23.3 shall be followed to the extent applicable.

23.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 23.3 and 23.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

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ARTICLE 24

DISCLOSURE

24.1 Disclosure of Specified Documents

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

24.2 Disclosure of Documents relating to safety

The Supplier shall cause the Developer to make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier's Registered Office and the Power Station. The Supplier shall cause the Developer to make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

24.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 24.1 and 24.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 24.1 and 24.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

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ARTICLE 25

MISCELLANEOUS

25.1 Governing law and jurisdiction

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

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

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

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

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

25.3 Interest

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

25.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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25.5 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

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

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

25.6 Exclusion of implied warranties etc.

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

25.7 Survival

25.7.1 Termination shall:

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

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

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

25.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.

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All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10 No partnership

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

25.11 Third parties

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

25.12 Successors and assigns

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

25.13 Notices

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

(a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to

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

Attention:	Mr. Nishant Singhal
Designation:	AVP-Business Development
Address:	2nd Floor, D21 Corporate Park, Dwarka Sector 21, New Delhi-110077
Fax No:	033-406|0166
Email:	nishant.singhal@manikaranpowerltd.in indranil@manikaranpowerltd.in

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

Name:	Mr. Rajendra Patsute
Designation:	Chief Engineer (Regulatory)
Address:	BEST Undertaking, Multi Storied Annex Building, 1st Floor, Best Marg, Colaba, Mumbai - 400001
Fax No:	
Email:	cerc@bestundertaking.com

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

25.14 Language

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

25.15 Counterparts

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

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ARTICLE 26

DEFINITIONS

26.1 Definitions

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

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

"Act" means the Electricity Act, 2003;

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

"Agreement" or **"Agreement for Procurement of Power"** means this Agreement, its

Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

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

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

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

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

"Availability" shall have the meaning as set forth in Clause 5.1.4 and the term

"Available" shall be construed accordingly;

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

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

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

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

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

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

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

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

"Capacity Certificate" means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

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

"Captive Mine" means a mine, acquired through any form of auction or bidding which specifically allows the owner or allotte, as the case may be, to use the coal for production of electricity and sale thereof to any purchaser; and includes a mine which is owned by a third party that has entered into a long-term agreement with the Supplier for dedicated supply of Fuel for use at the Power Station for a period not less than the Contract Period;

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

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law which has not entered into effect until the Bid Date;

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

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

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

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

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

~~"**Concessional Fuel**" shall mean Fuel which is produced or procured by the Supplier through any form of concessional, preferential or captive allocation or sale of such Fuel or the source thereof by a Government Instrumentality or an entity owned or controlled by the Central Government or the State Government, as the case may be, but does not include Fuel, or the source thereof, which is procured through any form of bidding, auction or other means of procurement where the price of Fuel to be paid by the Supplier is determined by market forces;~~

Amended as per Maharashtra Electricity Regulatory Commission's Order dated 30th October 2017 in Case No. 144 of 2017 and MA No. 20 of 2017.

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

"**Contract Period**" means the period starting on and from the Appointed Date and ending on the earlier of the [5th (fifth)_] anniversary of the Appointed Date and the date of termination of the Agreement;

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

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

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

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

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

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

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

"**Deed of Hypothecation**" shall have the meaning as set forth in Clause 13.1.2;

"**Default Escrow Account**" shall have the meaning as set forth in Clause 13.1.1;

"**Default Escrow Agreement**" shall have the meaning as set forth in Clause 13.1.1;

"**Default Escrow Bank**" shall have the meaning as set forth in Clause 13.1.1;

"**Delivery Point**" means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility;

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

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

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

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

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

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

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

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

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

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

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

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

"GOI" means the Government of India;

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

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

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

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

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

"Incentive" means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

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

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

"Indirect Political Event" shall have the meaning as set forth in Clause 17.3;

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

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

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

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

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

"**Minimum Monthly Payment**" shall have the meaning as set forth in Clause 13.1.3;

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

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

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

"**Non-Political Event**" shall have the meaning as set forth in Clause 17.2;

"**Normative Availability**" shall have the meaning as set forth in Clause 5.1.4;

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

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

"**Performance Security**" shall have the meaning as set forth in Clause 9.1;

"**Point of Grid Connection**" means the point of interconnection at which the electricity generated by the Power Station is transferred to the Grid;

"**Political Event**" shall have the meaning as set forth in Clause 17.4;

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

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

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

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

"**Project Agreements**" means this Agreement, Fuel Supply Agreement, O&M contract and

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any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

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

Project including:

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

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

(c) rights over Captive Mines;

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

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

(f) insurance proceeds; and

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

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

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

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

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

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

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

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

Obligations" means:

(a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;

(b) obligations of the Utility for payment of Tariff and Incentives under and in accordance

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with this Agreement; and

(c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

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

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

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

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

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

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

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

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

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

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

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

"**Trading Licensee**" shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the

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generation source from where the power is proposed to be supplied by the Applicant/Bidder.

"**UI Regulations**" means the CERC Unscheduled Interchange Regulations 2009 or any substitute thereof;

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE UTILITY by:	THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the 15th day of April 2019 hereunto affixed in the presence of Mr Navjeet Singh Kalsi, Director, who has signed these presents in token thereof and Mr Pritthish Sinha, Company Secretary who has countersigned the same in token thereof:

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Signature

Name: Mr. Surendrakumar Bagde

Designation: General Manager

Address: The Brihan-Mumbai Electric Supply & Transport Undertaking, BEST Bhavan, BEST Marg, Colaba, Mumbai- 400001.

E-mail: gm@bestundertaking.com

Signature

Name: Mr. Pravin Lee Abraham

Designation: Director

Address: Manikaran Power Ltd. 302, Above Central Bank, Agrawal Arcade, Khevra Circle, Manpada, Thane, Mumbai – 400610.

E-mail: pravin@manikaranpowerltd.in

In the presence of:

1.

2. Sougata Chatterjee

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SCHEDULE – A

(See Clause 2.1)

SITE OF THE POWER STATION

1. **The Site**

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

2. **Power Station**

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

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Annex – I

(Schedule-A)

Description of Coal-based Power Station

1. **The site**

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

Name of the Generating Station:	Sai Wardha Power Generation Limited
Address of the Plant:	B – 2, Warora Growth Centre, MIDC, Warora, Chandrapur (Dist.), Maharashtra 442907.
Connectivity Details:	MSETCL 220 KV Warora Substation (STU Connected in Maharashtra)
Fuel:	Coal

2. **Capacity of the Power Station**

2.1 The Power Station shall have a generating capacity of not less than 540 MW.

2.2 The configuration of Units is given below:

(a) The number of Units are 04

(b) The nameplate capacity of each Unit is 135 MW.

3. **Dedicated communication**

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

4. **Specifications and Standards**

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

5. **Station Heat Rate**

The Station Heat Rate of the Power station shall be no more than [2,350 (two thousand three hundred and fifty)] kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.

6. **Ramp Rates**

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 3% (three per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.

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

7. **Description of the Power Station**

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

The Power Station is briefly described below:

A. Boiler

(i)	Type--- Single reheat PF boiler (Dongfang make)	
(ii)	Number of steam generators with auxiliaries -	Four
(iii)	Steaming capacity (BMCR)	440 T/hr
(iv)	Pressure at SH outlet	145.31kg/cm^2(abs)
(v)	Temperature at SH outlet	540°C
(vi)	Temperature at RH outlet	540°C

B. Steam Turbine

(i)	Type (Super-high pressure, single reheat, double cylinder and double exhaust, single shaft, condensing steam turbine	
(ii)	Number:	N135-13.7/537/537(Dongfang make)
(iii)	TMCR output	135MW
(iv)	VWO output	- 144.226 MW
(v)	Turbine inlet pressure at TMCR	- 139.91kg/cm^2
(vi)	MS temperature at turbine inlet	537°C
(vii)	RH temperature at turbine inlet	537°C
(viii)	HP/LP by pass	60/60%
(ix)	Boiler feed pump	
	(a) TDBFP Capacity (m3/hr)	- NA (applicable for > 600 MW plant)
	(b) MDBFP Capacity (m3/hr)	-MDBFP 552.5m3/h

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C. **Condenser**

(i)	Type	- Water cooled
(ii)	Design cooling water temperature	- 32.5°C
(iii)	Tube material	- TP -304
(iv)	Type of cooling water	- Raw water
(v)	Condensate polishing plant	N.A. (applicable for > 600 MW plant)

D. **Generator**

(i)	Number	(Harbin make)
(ii)	Capacity	158 MVA
(iii)	Power factor	0.85
(iv)	Cooling-	

(a) Rotor- air cooled

(b) Stator- air cooled

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SCHEDULE -B
(See Clause 9.1.1)

PERFORMANCE SECURITY

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

WHEREAS:

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

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

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

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

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

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

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier

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and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

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

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

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

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

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

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

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the

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Utility that the envelope was so posted shall be conclusive.

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

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

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

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

NOTES:

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

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

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SCHEDULE – C
(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of.... 20....

AMONGST

1 ....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....(hereinafter referred to as the "Supplier" which expression shall, unless repugnant to the context or meaning thereof, include its successors, subsitutes and permitted assigns);

2 ....(name and particulars of the Default Escrow Bank), through its ....branch, and having its registered office at.... (hereinafter referred to as the "Default Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors, subsitutes and permitted assigns); and

3 The.... Distribution Company represented by ....and having its principal offices at ....(hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into a agreement dated .... with the Supplier (the "Agreement for Procurement of **Power**") for supply of .... MW of electricity from the Power Station at.... in the State of...., and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under the Agreement for Procurement of Power, the Utility is required to establish a default escrow account on the terms and conditions stated therein (the "**Default Escrow Account**").

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Agreement**" means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

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"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Utility, and shall commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

"**Default Escrow Account**" shall have the meaning set forth in Recital B of this Agreement;

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

"**Agreement for Procurement of Power**" shall have the meaning set forth in Recital A of this Agreement;

"**Security**" shall have the meaning set forth in Clause 3.1;

"**Utility Account**" shall have the meaning set forth in Clause 2.4;

"**Utility Escrow Default**" shall have the meaning set forth in Clause 8.1;

"**Utility's Lenders**" means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Utility and who have, for the repayment and/or discharge of obligations of the Utility been provided security by way of a charge on the Revenues of the Utility, as specified in Annex-I hereto.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Agreement for Procurement of Power shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Agreement.

2. DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Utility hereby appoints the Default Escrow Bank to act as trustee for the Supplier and the Utility in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

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2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Utility pursuant to the provisions of this Agreement and the Agreement for Procurement of Power. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Utility with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Supplier and the Utility, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the ..... (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

The Default Escrow Bank and the Utility acknowledge that at least 30% (thirty per cent) of the Utility's total monthly Revenues are being deposited in the Utility's existing account at the Default Escrow Bank (the **"Utility Account"**), and the Utility undertakes to maintain the Utility Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

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2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Utility. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Agreement for Procurement of Power, the rights of the Supplier and the Utility in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3. OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Utility expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Utility Account from the Utility Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Utility and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Utility Escrow Default and until delivery of notice that the Utility Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to the Utility and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Utility of the Secured Obligations in the manner contemplated under this Agreement and the Agreement for Procurement of Power.

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3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Utility upon a certificate signed by or on behalf of the Utility;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Utility in connection herewith; and

(d) shall within 5 (five) business days after receipt, deliver a copy to the Utility of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

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4. OBLIGATIONS OF THE UTILITY

4.1 General

4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Agreement for Procurement of Power and this Agreement.

4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

4.2.1 The Utility hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Utility further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Utility's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Utility's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Supplier pursuant to the Deed of Hypothecation. The Utility expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.

4.2.2 The Utility agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Supplier in accordance with Clause 4.2.1.

4.2.3 The Utility may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Supplier over the Revenues routed through

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the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Utility in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Utility Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Utility from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Utility or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Utility

The Utility and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Utility Account, without any further authorisation or instructions from the Utility, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Utility irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Utility Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

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5.4 **Withdrawals during Operation Period**

The Default Escrow Bank shall, during the Contract Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Minimum Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 **Drawal against Letter of Credit**

5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 **Withdrawals upon Termination**

5.6.1 Upon Termination of the Agreement For Procurement of Power, if the Utility fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.

5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Agreement for Procurement of Power .

5.6.3 The Utility expressly acknowledges and agrees that upon Termination of the

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Agreement for Procurement of Power, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Utility Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Utility agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Supplier or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;

(c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;

(d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

(ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;

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(f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;

(g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;

(h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;

(i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and

(j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Utility and the Supplier as of the date of this Agreement and at all times that:

(a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at ..... and its branch among others, at ..... and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;

(c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;

(d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action and will not constitute a violation of:

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(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

(ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and

(c) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favour of any other person other than the Supplier, save and except those created in favour of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Default Escrow Bank and the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Agreement;

(c) the execution, delivery and performance of this Agreement by the Supplier has been duly authorized by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and

(d) there are no actions, suits or proceedings pending or threatened, against or affecting the Supplier before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Supplier to perform its duties and obligations under this Agreement.

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7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

(a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;

(b) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;

(c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation , in favour of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;

(d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Agreement;

(ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and

(iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;

(e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Agreement and the Deed of Hypothecation;

(f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and

(g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

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8. UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

Following events shall constitute an event of default by the Utility (a "**Utility Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

(a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Utility Account as provided herein and fails to cure such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;

(b) the Utility does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.

(c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;

(d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;

(e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;

(f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;

(g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;

(h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Agreement for Procurement of Power; and

(i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

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9. TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Utility in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

(i) cease therewith accepting any payments or deposits into the Default Escrow Account;

(ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;

(iii) when all such amounts have been transferred, close the Default Escrow Account; and

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(iv) within 30 (thirty) days of such closing, provide to the Utility and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Utility and the Supplier, made on or after the payment by the Utility of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Utility. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10. SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Utility shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11. INDEMNITY

11.1 General indemnity

11.1.1 The Utility will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Agreement or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

11.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Utility's obligations under this Agreement, other than any loss, damage, cost and

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expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

11.13 The Default Escrow Bank will indemnify, defend and hold the Utility and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Utility or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12. DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where the headquarter of

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the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

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

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

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

13.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

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

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

13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

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

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger,

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consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and..... Company Secretary / Authorised Officer who has countersigned the same in token thereof][f]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of
THE DEFAULT
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of

THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[f] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors

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Annex- I
(Schedule-C)

Utility's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

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SCHEDULE – D

(See Clause 13.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the ....day of ....20....

BETWEEN

1. .... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....(hereinafter referred to as the "Supplier" which expression shall unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. The .... Distribution Company represented by .... and having its principal offices at.... (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into a agreement dated.... with the Supplier (the "**Agreement for Procurement of Power**") for supply of .... MW of electricity from the Power Station at .... in the State of .... and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under and in accordance with the Agreement for Procurement of Power, the Utility is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated .... entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.

(C) To further secure the Secured Obligations, the Utility has agreed to grant a charge and security interest in favour of the Supplier on the Utility's right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Deed**" means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

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"**Default Escrow Agreement**" shall have the meaning set forth in Recital B of this Deed;

"**Hypothecated Interest**" shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

"**Agreement for Procurement of Power**" shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Agreement for Procurement of Power or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Deed.

2. SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Agreement for Procurement of Power and agreeing to make available to the Utility the Contracted Capacity, subject to the terms and conditions set out in the Agreement for Procurement of Power, the Utility hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Agreement for Procurement of Power.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Agreement for Procurement of Power, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the "**Hypothecated Interest**").

2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

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Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Utility Escrow Default.

2.2.3 At any time after a Utility Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Agreement for Procurement of Power.

2.2.4 Following the occurrence of a Utility Escrow Default, the Supplier shall not, save and except as may be required under the Agreement for Procurement of Power, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:

(a) take action or obtain judgement or any arbitration award against the Utility in any court or before any arbitrator;

(b) make or file any claim or proof in a winding up or dissolution of the Utility; and

(c) exercise any legal remedies, which may be available to it under or in respect of the Agreement for Procurement of Power.

2.3 Release of Charge

2.3.1 Upon termination of the Agreement for Procurement of Power in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.

2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:

(a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;

(b) re-assign, retransfer or re-convey to the Utility, or as it may direct, the Hypothecated Interest; and

(c) execute all such documents and do all such other acts as may be required by the Utility in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3. FURTHER ENCUMBRANCES

3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Utility shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Utility, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof

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or do or allow anything that may prejudice this charge on the Hypothecated Interest.

3.2 The Utility shall be entitled to create a subordinate/second charge in favour of the Utility's Lenders or any other entity over the Hypothecated Interest, provided, however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;

(c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Supplier;

(d) based on available records, the Revenues are believed by the Utility to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Utility and the Utility has full right and interest in the Revenues;

(e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;

(f) the execution, delivery and performance of this Deed by the Utility have been duly authorised by all requisite actions and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

(ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Utility routed

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through the Default Escrow Account after the date hereof, except as permitted under this Deed;

(h) as of the date hereof and until the expiry of this Deed, the Utility Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and

(i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;

(b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and

(c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. UTILITY'S COVENANTS

5.1 The Utility covenants that during the term of this Deed:

(a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;

(b) it shall obtain and maintain at its own expense any license, permission,

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consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;

(c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;

(d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;

(e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Deed;

(ii) the validity, binding effect and enforceability of this Deed; and

(iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;

(f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;

(g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;

(h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;

(i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and

(j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

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6. FURTHER ACTIONS

The Utility shall, from time to time, upon the request of the Supplier, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Deed or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

7.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Utility's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

(a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and

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(b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

(a) any time or other indulgence given or agreed to be given by the Supplier to the Utility or to any other party providing Security for the Secured Obligations;

(b) any amendment to the Agreement for Procurement of Power or the Default Escrow Agreement not agreed to by the Supplier;

(c) any release or exchange of Security or obligations granted or undertaken pursuant to the Agreement for Procurement of Power or the Default Escrow Agreement or any documents connected therewith;

(d) any other act, event or omission which but for this provision would impair or discharge the Utility's liability hereunder; and

(e) any change in the structure or organisation of the Utility as a result of a Change in Law, insolvency of the Utility or otherwise.

9. DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Deed.

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10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

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

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

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

10.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in this Deed shall prevail over the Agreement for Procurement of Power.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;

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

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

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of

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the terms, conditions and provisions of this Deed or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder

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without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of..... Director, [who has signed these presents in token thereof and..... company Secretary / Authorised Officer who has countersigned the same in token thereof][$]:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE UTILITY by:

(Signature)

(Name)

(Designation)

(Address) (Fax No.) (e-mail address)

$ To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors

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SCHEDULE –E

(See Clause 13.2.1)

LETTER OF CREDIT

DATE: ....

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

FROM: (Specify the name and address of the bank issuing the Letter of Credit)[5] (the "**Bank**")

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

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. ....Rupees....)[55] (the "**Monthly Payment**"), payable not more than once in a month upon notice received from the Supplier to this effect.

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

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

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

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[5] As provided in Article 13 of the Agreement for Procurement of Power, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement

[55] As provided in the Agreement for Procurement of Power, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the Supplier for Normative Availability of the power station during a period of one month. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of the Agreement

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Agreement for Procurement of Power or agreement into the terms and conditions of this Letter of Credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

numbers) Signed and sealed this.... day of

....20.... at ....

SIGNED, SEALED AND DELIVERED For
and on behalf of
the BANK by:
(Signature)
(Name)
(Designation)
(Code Number)
(Address)

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

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BEST

Power Sale Agreement (PSA)

For procurement of 400 MW Wind - Solar Hybrid Power on Long Term Basis

Between

Solar Energy Corporation of India Limited (SECI)

And

Brihanmumbai Electric Supply & Transport Undertaking (BEST Undertaking)

June 2021

Solar Energy Corporation of India Ltd. New Delhi

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No.	:	IN-DL78995285326622T
Certificate Issued Date	:	24-May-2021 10:51 AM
Account Reference	:	SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL-SELF57341861002015T
Purchased by	:	SOLARENERGYCORPORATIONOF INDIALIMITED
Description of Document	:	Article 5 General Agreement
Property Description	:	NOT APPLICABLE
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	SOLAR ENERGY CORPORATION OF INDIA LIMITED
Second Party	:	NOT APPLICABLE
Stamp Duty Paid By	:	SOLAR ENERGY CORPORATION OF INDIA LIMITED
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

SELF PRINTED CERTIFICATE
TO BE VERIFIED BY THE RECIPIENT

.....Please write or type below this line.....

This Power Sale Agreement is made on the 25th day of June of 2021 at Mumbai.

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai

Solar Energy Corporation of India Ltd. New Delhi

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at "www.shcilestamp.com" or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

Nagar, New Delhi – 110023 (hereinafter referred to as "Buyer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part.

And

Brihanmumbai Electric Supply & Transport Undertaking (BEST Undertaking), statutory Undertaking of the Municipal Corporation of Greater Mumbai and is also encompassed by the definition of a "Local Authority" under Section 2(41) of the Electricity Act, 2003., having its registered office at BEST Bhavan, BEST Marg, Colaba, Mumbai – 400001 (hereinafter referred to as "Buying Entity", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

Buyer and Buying Entity are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

A. The Government of India has announced the Policy for promotion of the Wind and Solar Power in the country and has provided a target to achieve an aggregate installed capacity of 160 GW out of these two sources by the year 2022. The Ministry of New & Renewable Energy (MNRE), Government of India has issued the "Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects" issued by the Ministry of New and Renewable Energy vide F.No. 238/78/2017-Wind dated 14.10.2020, under the National Wind-Solar Hybrid Policy issued by MNRE dated 14.05.2018, including subsequent amendments and clarifications, if any.

B. SECI will sign Power Purchase Agreements (PPAs) with the selected Hybrid Power Developers (hereinafter referred to as "HPDs") for procurement of 1110 MW hybrid power or the total capacity of projects selected under the provisions of Request for Selection (RfS) issued by RfS No SECI/C&P/HPD/T3/1200MW/RfS/012020 dated 14/01/2020 if it is less than 1110 MW, on a long term basis, as indicated at Schedule-1 and Schedule-2 respectively

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C. Buying Entity has agreed to purchase hybrid power from the Buyer under the Scheme and accordingly, Buyer has agreed to sign Power Purchase Agreements (PPAs) with Hybrid Power developers for procurement of 1110 MW Hybrid Power on a long-term basis, as indicated at Schedule-1&2. This allocated capacity shall be used for solar and non-solar RPO requirement of Buying Utility. SECI shall intimate the same to CTU (PGCIL) for open access. Based on input from PGCIL and corridor availability, quantity (MW) may be revised.

D. Copy of the PPA(s) shall be submitted to Buying Entity within 30 days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (Buyer-Buying Entity PSA).

E. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Sale Agreement ("**PSA**") i.e. a definitive agreement, regarding purchase of power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PSA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

F. To establish the commitment of Buying Entity to purchase and Buyer to sale power from the Project, the Parties have entered into this Agreement.

G. A bidder which has been selected as successful Bidder based on this RfS can also execute the Project through Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated to execute the project. SECI shall enter into PPA with Project Company as per the terms and condition of RfS.

H. Discom(s) acknowledge(s) and accept(s) that SECI is only an Intermediary Company and is facilitating the purchase of sale of electricity generated from the Projects and, therefore, cannot assume independently, any obligation, financial or otherwise, either to the HPD or to Discom(s), (unless otherwise specifically provided otherwise in the PPA), except on a back to back basis, namely, that whatever obligation is enforced by the HPD under the PPA against SECI, Discom(s)shall be bound to fulfil the obligation on a back to back basis towards SECI and similarly, whatever rights that Discom(s) may claim under this

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Agreement against SECI, shall be subject to due enforcement of the corresponding rights on a back to back basis by SECI against HPD, without an independent obligation on the part of SECI.

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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:

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 defined in the Buyer HPD PPA and as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Adjusted Equity"	shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date; i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date; ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base(the "Base Adjusted Equity"); iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date; For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.

"Agreement" or "Power Sale Agreement" or "PSA"	shall mean this Power Sale Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall mean Central Electricity Regulatory Commission;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Buyer and Buying Entity, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State of Maharashtra and Delhi
"Buying Entity"	means an Entity that requires Hybrid Power to fulfil its solar and non-solar RPO under respective RPO regulations and intend to buy at least 400 MW of Hybrid Power under this RfS.
"Buyer-HPD PPA"	Shall mean the power purchase agreement signed between Buyer and HPD for procurement of 1110MW Hybrid Power by Buyer from HPD and annexed hereto as Schedule 1& 2 of this Agreement;
"Capacity Utilisation Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if 'X' MWh of energy has been metered out at the Delivery Point for 'Y'MW Project capacity, CUF= (X MWh/(YMW*8766)) X100%;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Central Transmission Utility" or "CTU"	Shall mean the utility notified by the Central Government under Sub-Section (1) of Section-38 of the Electricity Act 2003;
"Change in Law"	shall have the meaning ascribed thereto in Article 8 of this Agreement;
"Commercial Operation Date"	shall mean the actual date of commissioning of the project as declared by the Commissioning Committee constituted by the State Nodal Agency (SNA). In case of part commissioning, COD will be declared only for that part of project capacity;
"Commissioning" or "Project Commissioning"	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the Guidelines/PPA;

"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consultation Period"	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Buyer Preliminary Default Notice or Buying Entity Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
"Contracted Capacity"	shall mean 400MW of Hybrid Power contracted with Buying Entity for sale of such power by Buyer to Buying Entity at the Delivery Point from the Hybrid Power Project;
"Debt Due"	shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date: i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date; ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost. Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the

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	purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken. Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.
"Delivery Point"	shall mean a single point or multiple points at 220 kV or above, where power from the Project is injected into the identified ISTS Substation (including the dedicated transmission line connecting the Projects with the substation system) as specified in the RfS document. Interconnection at 132kV will be allowed exclusively in case the project is granted connectivity at an available bay of an existing ISTS substation, if any. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e. the Delivery point. For interconnection with grid and metering, the HPD shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time;
"Dispute"	shall mean any dispute or difference of any kind between Buyer and the Buying Entity in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 12 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by Buying Entity or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by Buying Entity;
"Effective Date"	Shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 9 of this Agreement;
"Expiry Date"	shall mean the date as on the expiry of 25 years from the SCD.
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 7 of this Agreement;

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"Guidelines: or "Scheme"	shall mean "Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects" issued by the Ministry of New and Renewable Energy vide F.No. 238/78/2017-Wind dated 14.10.2020, including subsequent amendments and clarifications, if any
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state(s), where the Power Projects, Buyer and Buying Entity are located and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Interconnection Facilities"	shall mean the facilities on HPD's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice /Supplementary Bill by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement;
"Law"	Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 6.4 of this Agreement;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
" Open Access"	shall have the same meaning as provided in the Electricity Act 2003 as amended from time to time;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;

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"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 6.4 of this Agreement;
"Pooling Substation/ Pooling Point"	Means a point where more than one Hybrid Power project may connect to a common transmission system. Multiple projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the developer(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual projects for the purpose of billing.
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 9 of this Agreement;
"Project" or "Power Project"	shall mean the Wind-Solar hybrid power generation facility of Contracted Capacity of 1110MW, location as per details in signed PPA. The tentative installed capacities of the various Project components are as follows: Solar PV component: 1062.5MW Wind power component: 370.1MW
"Project Capacity"	Shall mean the maximum AC capacity of the Project at the point of injection on which the Power Sale Agreement has been signed.
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 6.3.4 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees" ,"Rs.", "₹ "	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date" or "SCD"	shall mean 18 months from the Effective Date of the SECI-HPD PPA;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors.

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	and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs on Buying Entity;
"SECI"	shall mean Solar Energy Corporation of India Limited;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	Shall have the same meaning as provided for in Article 5 of this Agreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
Unit Commercial Operation Date (UCOD)	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning and also start of injection and scheduling power from the Power Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Solar Power Project"	shall mean the solar photovoltaic project that uses sunlight for direct conversion into electricity and that is being set up by the HPD to provide Solar Power to SECI;
"Solar Power"	Shall mean power generated from the Solar Power Project;
"Wind Power Project"	shall mean the project that uses wind for direct conversion into electricity and that is being set up by the HPD to provide Wind Power to Buyer;
"Wind Power"	Shall mean power generated from the Wind Power Project;
"Wind Solar Hybrid Power Project" or "Hybrid Power Project"	means the wind-solar hybrid power project where the rated power capacity of one resource is at least 33% of the Contracted Capacity.

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1.2 *Interpretation*

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

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

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3 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);

1.2.4 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;

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

1.2.6 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;

1.2.7 "Rupee", "Rupees" "Rs." or new rupee symbol "₹"shall denote Indian Rupees, the lawful currency of India;

1.2.8 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;

1.2.9 Words importing the singular shall include the plural and vice versa;

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1.2.10 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 only if agreed to between the parties;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 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;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and 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;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner.

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ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from the date of signing of this Agreement and such date shall be referred to as the Effective Date.

2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and SECI's trading margin, and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 120 days after Effective Date of the PPA, SECI and/or the Buying Entity (ies) shall obtain adoption of tariff from its State Electricity Regulatory Commission and/ or CERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity(ies). The Parties agree that in the event, the order of adoption of tariff as mentioned above is not issued by the SERC and/ or CERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply.

2.1.4 If parties have mutually extended the time period as stipulated under Article 2.1.3 and the order from the SERC and/ or CERC (as applicable) is issued within the timeline as per Article 2.1.3, no extension for Financial Closure or Scheduled Commissioning Date shall be given. However, if the requisite SERC and/ or CERC (as applicable) order is issued after the timeline as per Article 2.1.3, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date for equal number of days for which the SERC and / or CERC order has been delayed beyond such period as specified in Article 2.1.3.

2.2 Term of Agreement

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

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2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date:

I. if either SECI or Buying Entity terminates this Agreement, pursuant to Article 9 of this Agreement, or

II. if any SECI-HPD PPA gets terminated, the capacity under this agreement shall automatically be reduced but only to the extent of that particular SECI-HPD PPA capacity.

2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under, Article 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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ARTICLE 3: SUPPLY OF POWER TO BUYING ENTITY

3.1 *Obligations of Buying Entity:*

3.1.1 Buying Entity undertakes that it shall:-

(a) Ensure off take of the available capacity from the Commercial Operation Date/SCD of the Project as applicable.

(b) Ensure availability of the interconnection facility and evacuation of power from the CTUSTU interface of Buying Entity's state periphery from the Commercial Operation Date of the Project.

(c) be responsible for payment of the transmission related charges and applicable RLDC/SLDC Charges, limited to the charges applicable to the Contracted Capacity of Buying Entity under this Agreement, as determined by CERC from time to time.

(d) Make payment of the Monthly Bill/Supplementary Bill by the Due Date.

(e) Open and maintain Payment Security Mechanism as per Article 6.4 for the entire Term of the Agreement.

(f) Arrange for required consent/NOC from STU/SLDC/concerned agencies in the State of Maharashtra for availing open access/scheduling of the power, within 30 days of acceptance of such application from the HPD.

(g) Obtain necessary approvals of the PSA including trading margin from the SERC,

(h) Fulfil all the obligations undertaken by Buying Entity under this Agreement.

3.2 *Charges*

3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges as determined by Appropriate Commission from time to time pertaining to open access, CTU charges scheduling charges (if any) and any other charges from injection/delivery point to the receiving substation(s)of Buying Entity if any, shall be directly paid or reimbursed by Buying Entity. Invoicing for all transmission related charges shall be done through Supplementary Bills.

3.2.2 Buyer shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/CTU by Buying Entity.

3.2.3 Government of India from time to time issues order for waiver of interstate transmission system (ISTS) charges and losses on transmission of wind/solar power till a certain date. In case the commissioning of the Project gets delayed beyond the applicable date of ISTS

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waiver, arising out of any reasons whatsoever, SECI shall bear no liability with respect to transmission charges and losses levied, if any. Further, in case SCD of the Project is prior to the above deadline of waiver of ISTS charges, and commissioning of the Project is delayed beyond the above date for the reasons attributable to the HPD, the applicable transmission charges shall be borne by the HPD. In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the Project is granted extension in the SCD on account of Force Majeure, or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time, or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of interstate transmission charges. However, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver/extended SCD as above, due to reasons attributable to the HPD, the liability of transmission charges would be to the account of the HPD.

3.3 ***Losses***

3.3.1 Buying Entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the Delivery Points to its receiving substation(s).

3.3.2 Not Used.

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ARTICLE 4: METERING, ENERGY ACCONTING AND SCHEDULING

4.1 *Metering*

4.1.1 The metering arrangements for metering the electrical energy supplied at the Delivery Point and Delivery Point shall be as per the provisions identified in the Buyer-HPDPPA respectively. The metering arrangement shall comply with the norms of SERC / CERC/ CEA as applicable.

4.1.2 The energy details obtained from Energy Accounts issued by the RPC of the buying entity, shall be provided to Buying Entity by Buyer along with Monthly Bill validating the total energy for which the Monthly Bill is generated.

4.1.3 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

4.2 *Energy Accounting & Scheduling*

4.2.1 The scheduling and energy accounting of Hybrid Power shall be as per the provisions of the Buyer-HPD PPA and Grid Code.

4.2.2 The HPD shall be responsible for deviations made by it from the dispatch schedule and for any resultant liabilities on account of charges for deviation as per applicable regulations.

4.2.3 HPD shall be responsible for any deviation related to scheduling and actual generation.

4.2.4 No back-down/ curtailment to be ordered without giving formal/ written instruction to the HPD as detailed in Schedule 1. Back-down/ curtailment (if any) including justification of such curtailment/ back-down to be made public by the concerned Load Dispatch Centre.

4.2.5 Energy procured from the Project under the PPA shall be allocated on a pro-rata basis, to all the Buying Entities which have signed their respective Power Sale Agreements with SECI under the referred RfS.

4.2.6 As part of scheduling of power from the Project, the HPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/Discom, as per the Regulations in force, under intimation to SECI. SECI may facilitate in identification of any discrepancy and assist the HPD for its early rectification without any

liability on SECI. The HPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD, the Buying Entity shall pay the fixed tariff of Rs 2.41/kWh (Two Rupees and Forty one paise) plus trading margin of Rs. 0.07/ kWh for the entire term of 25 years.

5.1.2 Not used

5.1.3 Not Used.

5.1.4 As per provisions of the PPA, the HPDs are permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In cases of early commissioning, Buying Entity shall purchase the power at tariff as per article 5.1.1 plus Trading Margin of Rs 0.07/kWh, (Seven Paisa per kWh)].

Such intimation for early commissioning shall be provided to Buying Entity by SECI upon receipt of such intimation by HPD to SECI. In case there is no response provided by Buying Entity to SECI within 15 days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been refused by Buying Entity.

5.1.5 Any excess generation over and above energy specified in Article 6.8.3, may be purchased at 75% of the tariff as mentioned in Article 5.1.1 as applicable provided the Buying Entity consents for purchase of such excess generation with Trading Margin of Rs 0.07/kWh (Seven Paisa per kWh). In case of any excess generation as indicated by the HPD under the PPA, SECI shall intimate the Buying Entity regarding the proposed quantum of excess generation, at least 30 days prior to the scheduled excess generation proposed. The Buying Entity shall be required to grant its consent/refusal for the proposed excess generation within 15 days from the receipt of the above intimation from SECI (through email). In case the consent/refusal as sought by SECI for the same is not issued by the Buying Entity within the above stipulated timelines, it shall be deemed that the Buying Entity has granted its consent for purchase of such excess generation as per the terms of this Agreement.

5.1.6 SECI shall submit the monthly invoice to the Buying Entity based on the Tariff of individual Project commissioned.

5.1.7 Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery

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Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCD of the Project, and it is established that:

(i) The HPD has complied with the complete application formalities as per RfS,

(ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and

(iii) The delay in grant of connectivity/LTA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the HPD;

The above shall be treated as delays beyond the control of the HPD and SCD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by SECI.

Further, any delay in adoption of tariff by the Appropriate Commission, beyond 120 (one hundred and twenty) days after Effective Date of the PPA, shall entail a corresponding extension in Scheduled Commissioning Date.

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ARTICLE 6: BILLING AND PAYMENT

6.1 *General*

6.1.1 From UCOD/COD of the Project, Buying Entity shall pay to Buyer the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by Buying Entity shall be in Indian Rupees.

6.2 *Delivery and Content of Monthly Bills*

6.2.1 Buyer shall issue to Buying Entity a signed Monthly Bill on the 1st Business Day of the month.

6.2.2 The Monthly Bill prepared as detailed in Schedule-3 of the PSA, shall include the following;

i) Monthly bill may be raised based on the provisional REA

ii) The final adjustments if any may be done on the basis of the final REA along with the next month bill

iii) Taxes, Duties, Levies etc as applicable.

Final billing may be done based on published REA.

6.3 Payment of Monthly Bills

6.3.1 Buying Entity shall pay the amount payable under the Monthly Bill on the Due Date to such account of Buyer, as shall have been previously notified to Buying Entity in accordance with Article 6.3.2 below.

6.3.2. Buyer shall open a bank account at New Delhi ("Buyer's Designated Account") for all Tariff Payments to be made by Buying Entity to Buyer, and notify Buying Entity of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buying Entity shall also designate a bank account at Mumbai (the "Buying Entity's Designated Account") for payments to be made by Buyer to Buying Entity, if any, and notify Buyer of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. Buyer and Buying Entity shall instruct their respective bankers to make all payments under this Agreement to Buying Entity's Designated Account or Buyer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

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6.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buying Entity beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable by Buying Entity to Buyer at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by Buyer through the Supplementary Bill.

6.3.4 **Rebate**

For payment of any Bill including supplementary bill on or before Due Date, the Rebate shall be paid by Buyer to the Buying Entity in the following manner.

a) A Rebate of 1.5 % shall be payable to Buying Entity for the payments made within a period of five (5)working days of the presentation of Bill through e-mail.

b) Any payments made after five (5) working days of the date of presentation of bill through e-mail up to the due date shall be allowed a rebate of 1 %.

c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and Late Payment Surcharge.

6.4 Payment Security Mechanism

A. Letter of Credit (LC):

6.4.1 Buying Entity shall provide to Buyer, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit as a backup arrangement which is to be negotiated only on default conditions ("Letter of Credit"), opened and maintained by Buying Entity, which may be drawn upon by Buyer in accordance with this Article. Buying Entity shall provide Buyer draft of the Letter of Credit proposed to be provided to Buyer two (2) months before the Scheduled Commissioning Date.

6.4.2 Not later than one (1) Month before the Start of Supply, Buying Entity shall through a scheduled bank at Mumbai open a Letter of Credit in favour of Buyer, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. Pursuant to Article 6.4.B the Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every 6 months, in the month of January and July and revised w.e.f. April and Sept. for an amount equal to:

i) for the first Contract Year, equal to 105% of the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to 105% of the average of the monthly Tariff Payments of the previous Contract Year.

6.4.3 Provided that Buyer shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill, and shall not make more than one drawl in a Month.

6.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.4.2 due to any reason whatsoever, Buying Entity shall restore such shortfall within seven (7) days.

6.4.5 Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimate Buyer, in writing regarding establishing of such irrevocable Letter of Credit.

6.4.6 Buying Entity shall ensure that the Letter of Credit shall be renewed prior to its expiry.

6.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Buying Entity.

6.4.8 If Buying Entity fails to pay a Monthly Bill or part thereof within and including 30 days beyond its Due Date, then, subject to Article 6.4.3 and 6.6.2, Buyer may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buying Entity, an amount equal to such Monthly Bill or part thereof, 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 Buying Entity;

ii) a certificate from Buyer to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid after 30 days beyond the Due Date;

B. State Government Guarantee

The Buying Entity shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. The Buyer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the HPD(s),

to the extent the payments to the HPD(s) in terms of the PPA are due. Provided that where the Buying Entity is not covered by the Tri-Partite Agreement and is not in a position to provide the State Government Guarantee, the phrase "monthly billing" in Article 6.4.2(i) shall be read as "twice the monthly billing" and the phrase "monthly Tariff Payments" in Article 6.4.2(ii) shall be read as "twice the monthly Tariff Payments".

C. Payment Security Fund

In addition to provisions contained in Article 6.4 (A) and 6.4. (B) Above, the Buying Utility may also choose to provide Payment Security Fund, not later than the commencement of supply of Power to the Buying Utility under this Agreement, which shall be suitable to support Payment of at least 3 (three) months' billing of all the Projects tied up with such fund.

6.5 Third Party Sales by Buyer

6.5.1 Notwithstanding anything to the contrary contained in this Agreement, Buyer shall be entitled to but not obliged to regulate power supply of power of Buying Entity in case of Default in making payment by the 30th day of the Due Date by Buying Entity.

6.5.2 Buyer shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16th day.

6.5.3 Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.

6.5.4 In order to avoid any doubts, it is illustrated that:

In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, Buyer would have a right to regulate and sell Buying Entity's allocation of the power to third parties to the extent of 40% (i.e. 10/25x100).

6.5.5 Buyer/HPD shall have the right to divert the Solar Power or part thereof and sell it to any third party namely;

i) Any consumer, subject to applicable Law; or

ii) Any licensee under the Act;

Buyer shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

6.5.6 Provided that such sale of power to third party shall not absolve Buying Entity from its obligation to pay in full to Buyer for the hybrid power as per Schedule-3 of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement.

6.5.7 The amount realized from the diversion and sale of power to third party over and above the trading margin, open access charges and costs/RLDC/SLDC etc. shall be adjusted first adjusted against the pending liability of Buying Entity & any other costs and the deficit if any shall be made good by Buying Entity.

6.5.8 Sales to any third party shall cease and regular supply of electricity to Buying Entity shall commence and be restored within seven (7) days from the date of clearing all outstanding dues payable to Buyer for the Solar Power under this Agreement.

6.5.9 Further, the liability of Buying Entity to make the Tariff Payments to Buyer as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by HPD for usage by Buying Entity.

6.6 Disputed Bill

6.6.1 If Buying Entity does not dispute a Monthly Bill raised by the other Party within thirty (30) days of receiving such Bill shall be taken as conclusive.

6.6.2 If Buying Entity disputes the amount payable under a Monthly Bill it shall pay 50% of the invoice amount and it shall within fifteen (15) 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.

6.6.3 If the Buyer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, the Buyer shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by Buying Entity and up to and including the date on which such payment has been received as refund.

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6.6.4 If the Buyer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement 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.

6.6.5 Upon receipt of the Bill Disagreement Notice by Buying Entity under Article 6.6.4, authorized representative(s) or a director of the board of directors/ member of board of Buying Entity and Buyer shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

6.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt ofBill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.

6.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Buying Entity shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 50% of the invoice amount in the Monthly Bill.

6.7 *Quarterly and Annual Reconciliation*

6.7.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

6.7.2 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, Buying Entity and Buyer shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the Buyer shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been

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made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.

6.8 Renewable purchase obligation

6.8.1 Buying Entity may identify the energy procured from the Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of Buying Entity shall be considered to be met by Buying Entity only if there is no payment default for such energy procured by Buying Entity and a certificate to such effect is provided by Buyer to Buying Entity.

6.8.2 Buyer shall provide such certificate identifying the quantum of hybrid energy supplied by Buyer and being met by Buying Entity for each year within thirty (30) days after the end of such year.

6.8.3 **Criteria for Generation**

6.8.3**a** The HPD will declare the CUF of the Project and will be allowed to revise the same once within three years after COD of the full project capacity. Subsequent to commissioning/part-commissioning of the Project, Buying Entity, in any Contract Year, shall not be obliged to purchase any additional energy from the Buyer/HPD beyond 1644.4902 Million kWh (MU) from the Hybrid Power Project. The above limits shall be considered on pro-rata basis with respect to the individual projects commissioned until commissioning of the entire Project capacity allocated under this Agreement. Further, for the first year of operation, the above limits shall be considered on pro-rata basis.

6.8.3**b** If for any Contract Year subsequent to the commissioning/part-commissioning of allocated Project capacity, it is found that the HPD has not been able to generate minimum energy of 1233.3676 Million kWh (MU) on account of reasons solely attributable to the HPD, the noncompliance by the HPD shall make the HPD liable to pay the compensation and shall duly pay such compensation to the Buyer to enable the Buyer to remit the amount to the Buying Entity. The above limits shall be considered on pro-rata basis with respect to the individual projects commissioned until commissioning of the entire Project capacity allocated under this Agreement. For the first year of operation of the Project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the

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annual CUF shall be calculated every year from 1st April of the year to 31st March next year. The lower limit will, however be relaxable by Buyer to the extent of grid non-availability for evacuation which is beyond the control of the Solar Power Developer. The amount of such compensation shall be equal to 50% (fifty percent) of the PPA tariff for the shortfall in energy terms, which shall in turn, be remitted to the Buying Entity.

6.8.4 Notwithstanding Article 6.8.3, the Buyer/HPD is free to sell such power to any third party which is in excess of the quantum of power as per Article 6.8.3 of this Agreement from SCD or date of commissioning of the full project capacity, whichever is earlier. Any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the Buying Utility at the tariff as per Article 5.1.5, and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.

6.8.5 The compensation as per Article 6.8.3 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under this Agreement affecting supply of Hybrid Power by Buyer/HPD.

6.9 ***Payment of Supplementary Bill***

6.9.1 Buyer/Buying Entity may raise a "Supplementary Bill" for payment on account of:

i) Change in Law as provided in Article 8, or

ii) pertaining to open access and scheduling related charges if any, for transmission of the power, as determined by CERC from time to time or

iii) payment under Article 6.10 and other charges, if any.

and such Supplementary Bill shall be paid by the other Party.

6.9.2 Buyer/Buying Entity shall remit all amounts due under a Supplementary Bill raised by the Buyer/Buying Entity to the Buyer's/Buying Entity's Designated Account by the Due Date.

6.9.3 In the event of delay in payment of a Supplementary Bill by either Party within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 6.3.3.

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6.10. **Offtake constraints due to Grid Unavailability & Backdown**

6.10.1 Not Used.

6.10.2 Offtake constraints due to Backdown: The HPD and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), provides for status of "must-run" to wind and solar power projects. Accordingly, no wind-solar hybrid power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, including non-dispatch of power due to non-compliance with "Order No. 23/22/2019-R&R dated 28.06.2019 of Ministry of Power regarding Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees" and any clarifications or amendment thereto, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Buying Entity shall pay to the HPD, a Minimum Generation Compensation, from the Procurer, in the manner detailed below:

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown during a monthly billing cycle.	***Minimum Generation Compensation = 100% of [(Average Generation per hour during the month) (number of backdown hours during the month) X PPA tariff*** Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh)÷ Total hours of generation in the month

The Generation Compensation as calculated above will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Article 6.8.3 and the same will be settled on annual basis. No trading margin shall be applicable on the Generation Compensation provided as per Article 6.10.2. The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA).

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No compensation shall be payable, however, if the backdown/ curtailment is on account of considerations of grid security/ safety. Such a backdown will be recorded and reported to RLDC/ NLDC. RLDC/ NLDC will examine the issue of grid safety/ security and give a finding that the issue of grid safety existed.

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ARTICLE 7: FORCE MAJEURE

7.1 *Definition of Force Majeure*

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant Power Purchase 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.

An affected Party means SECI or the Buying Entity whose performance has been adversely affected by an event of Force Majeure.

Provisions of Force Majeure provided in SECI-HPD PPA shall mutatis-mutandis apply to this Agreement and all associated obligations and liabilities shall be implemented on back to back basis. Further, in case Force Majeure provisions detailed hereunder are in conflict with SECI-HPD PPA provisions, the provisions detailed in the SECI-HPD PPA shall prevail.

7.2 Categorization of Force Majeure Events:

7.2.1 Natural Force Majeure Event

a) 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 or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;

b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;

c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or

d) any event or circumstances of a nature analogous to any of the events as specified under Article 7.2.1 (a), 7.2.1 (b) and 7.2.1 (c).

7.2.2 Non-Natural Force Majeure Event

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;

b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;

c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the HPD, as a result of which the HPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the HPD or the HPD related parties;

d) action of a Government Authority having Material Adverse Effect including but not limited to Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 8of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the HPD/SECI or any of the clearance, licence, authorization to be obtained by the contractors to perform their respective obligations under the relevant PPA/PSA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the SECI's/HPD's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

7.2.3 Other Force Majeure Event

a) An event of force majeure identified under Buyer-HPD PPA thereby affecting supply of power by HPD.

b) An event of force majeure affecting the concerned STU/ CTU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by Buying Entity;

7.3 Force Majeure Exclusions

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7.3.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) 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 or consumables for the Power Project;

b. Delay in the performance of any contractor, sub-contractor or their agents;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d. Strikes 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

iii. Breach of, or default under this Agreement.

g. Exclusions as identified under SECI-HPD PPA

7.4 Notification of Force Majeure Event

7.4.1 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 fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure and the Procurer shall take a decision on the Affected Party's claim within 15 days of the receipt of the intimation. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notices soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

7.4.2 provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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7.4.3 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 the PPA, as soon as practicable after becoming aware of each of these cessations.

7.5 Performance Excused

7.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PSA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

7.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PSA period, as the case may be.

7.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

7.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

7.6 No Liability for Other Losses

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

7.7 Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PSA. The Affected Party shall also make efforts to resume performance of its obligations under this

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Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

7.8 **Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 7.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in line with provisions of Article 7.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

7.9 **Available Relief for a Force Majeure Event**

Subject to this Article 7:

a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

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ARTICLE 8: CHANGE IN LAW

8.1 *Definitions*

In this Article 8, the following terms shall have the following meanings:

8.1.1 In this Article 8, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after 26.11.2020 including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Hybrid Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax/cess/duty made applicable for setting up the hybrid power project and supply of power from the Project by the HPD which have a direct effect on the Project. It is further clarified that, in case the applicability of Safeguard Duty on "Solar Cells whether or not assembled in modules or panels", which is currently applicable until 29.07.2021, gets extended and has a direct effect on the Project, resulting in change in Project Cost, such extension will also qualify under "Change in Law" as per timeline and procedure indicated under this Article.

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD.

8.1.2 In the event of occurrence of any of events as provided under Article 8.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the HPD towards supply and services only for the Project concerned, upto Actual Commissioning Date of the last part capacity, or Scheduled Commissioning Date/extended Scheduled Commissioning Date, whichever is earlier),the HPD/ SECI / Buying Utility(ies) shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as

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may be decided by the Appropriate Commission. For eg., in case the Actual Commissioning Date of the last part capacity is 15.04.2022, Scheduled Commissioning Date is 15.03.2022 and extended Scheduled Commissioning Date is 01.04.2022, the Project Cost shall be determined as the cost incurred by the HPD upto 01.04.2022.

8.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 26.11.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 8.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on HPD and Buying Entity.

8.2 *Relief for Change in Law*

8.2.1 Save and except as provided under Article 8.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.

8.2.2 The decision of the Hon'ble CERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on HPD and Buying Entity.

8.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 8.2.1 or as provided under Article 8.1.3, the HPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs.1 lakh per MW in the Project Cost, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be, shall be liable for corresponding increase/decrease of an amount equal to Rs 0.0049 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

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For e.g. in case the change in tariff payable is calculated as Rs. 0.14678 kWh, it shall be modified as Rs. 0.146 kWh

8.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the SECI under intimation to the Buying Entities may provide suitable time-extension in Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the case may be.

8.2.5 It the event of any decrease in the project cost by the HPD or any income to the HPD on account of any of the events as indicated above, HPD shall pass on the benefit of such reduction at a rate as provided in Article 8.2.3 to SECI which shall be further passed on to the Buying Entity. In the event of the HPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, HPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 8.

8.3 Notification of Change in Law

8.3.1 If the HPD is affected by Change in Law in accordance with Article 8 and wishes to claim a Change in Law under this Article, it shall give notice to the SECI and Buying Utility (s) of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).

8.3.2 Any notice service pursuant to this Article 8.3.1 and 8.1.3, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

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ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION

9.1 *Buying Entity Event of Default*

9.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event shall constitute a Buying Entity Event of Default:

(i) Any amount, subject to Article 6.6 remains outstanding beyond a period of ninety (90) days after the Due Date and Buyer is unable to recover the amount outstanding from Buying Entity through the Letter of Credit; or

(ii) Buying Entity fails to off-take power from the Delivery Point for a continuous period of one year.

(iii) if (a) Buying Entity becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Entity, or (c) the Buying Entity goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of Buying Entity will not be a Buying Entity Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Buying Entity and expressly assumes all obligations of the Buying Entity under this Agreement and is in a position to perform them; or

(iv) Buying Entity repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Buyer in this regard; or

(v) except where due to any Buyer's failure to comply with its material obligations, Buying Entity is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by Buying Entity within thirty (30) days of receipt of first notice in this regard given by Buyer.

(vi) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of Buying Entity.

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9.2 SECI Event of Default

9.2.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SECI's Event of Default:

(i) SECI fails to supply power to the Delivery Points for a continuous period of one year.

(ii) if (a) the SECI becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SECI, or (c) the SECI goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the SECI will not be a SECI's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SECI and expressly assumes all obligations of the SECI under this Agreement and is in a position to perform them; or

(iii) SECI repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SECI in this regard; or

(iv) except where due to any SECI's failure to comply with its material obligations, the SECI is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SECI within thirty (30) days of receipt of first notice in this regard given by the Buying Utility.

(v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SECI.

9.3 ***Procedure for Event of Default***

9.3.1 Upon the occurrence and continuation of any Event of Default under Article 9.1 & 9.2, the Party affected by such occurrence shall have the right to deliver the notice to the other Party, stating its intention to terminate this Agreement (Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

9.3.2 Following the issue of Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view

to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

9.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Party may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the other Party.

9.3.5 Subject to the occurrence and continuation of default by as contained under Article9.1.1 or Article 9.2.1 and expiry of time period as per Article 9.3.4,

9.3.5.1 Subject to the prior consent of the SECI, the Buying Utility shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period as per Article 9.3.4,

9.3.5.2 In the event the aforesaid novation is not acceptable to SECI, or if no offer of novation is made by the defaulting Buying Utility within the stipulated period as per Article 9.3.5.1, then SECI may terminate the PSA and at its discretion require the defaulting Buying Utility to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, less Insurance Cover, if any, or, (ii) pay to the HPD/SECI(as applicable), damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the HPD.

9.3.6 In the event of occurrence of an HPD Event of Default under the SECI-HPD PPA, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the HPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the HPD and performing the obligations of the HPD. However, in the event the lenders are unable to substitute the defaulting HPD within the stipulated period, SECI may terminate the PPA and the Buying Entity may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that any

substitution under this Agreement can only be made with the prior consent of SECI including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts the terms and conditions of this Agreement.

9.4 *Termination due to Force Majeure*

9.4.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

9.5 *Termination of back to back agreements*

In case of termination of Buyer-HPD PPA, this Agreement shall automatically terminate but only to the extent of that particular Buyer-HPD PPA. Provided that in case of such termination, any pending monetary liabilities of either Party shall survive the termination of this Agreement.

9.6 *Specific Performance of the Agreement*

9.6.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this Agreement is specifically enforceable at the instance of either Party.

9.6.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.

9.6.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.

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ARTICLE 10: LIABILITY AND INDEMNIFICATION

10.1 *Indemnity*

10.1.1 Buying Entity shall indemnify, defend and hold Buyer/HPD harmless against:

a) any and all third party claims against Buyer/HPD 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 Buyer/HPD of any of its obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/HPD from third party claims arising by reason of a breach by the Buyer/HPD of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buyer/HPD, for which specific remedies have been provided for under this Agreement).

10.1.2 Buyer shall cause the HPD to indemnify, defend and hold Buying Entity harmless against:

a) any and all third party claims against Buying Entity, 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 HPD of any of their obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by Buying Entity from third party claims arising by reason of a breach by HPD of any of its obligations. Buyer shall incorporate appropriate covenants in the PPA for the above obligations of HPD. In so far as indemnity to Buying Entity is concerned, HPD shall be the indemnifying party and not Buyer.

10.2 Procedure for claiming Indemnity

10.2.1 Third party claims

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a) or 10.1.2 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) or 10.1.2(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. The Indemnifying

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Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

i) the Parties choose to refer the dispute in accordance withArticle 12.3; 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 the claim for which it is entitled to be Indemnified under Article 10.1.1(a) or 10.1.2(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 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.

10.3 ***Indemnifiable Losses***

10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b) or 10.1.2 (b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 10.3, such event shall constitute a payment default under Article 9.

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10.4 *Limitation on Liability*

10.4.1 Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/HPD nor its/ 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 permitted 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 properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the HPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

10.4.2 Buyer/HPD shall have no recourse against any officer, director or shareholder of Buying Entity or any Affiliate of Buying Entity or any of its officers, directors or shareholders for such claims excluded under this Article. Buying Entity shall have no recourse against any officer, director or shareholder of Buyer or HPD, or any affiliate of Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

10.5 ***Duty to Mitigate***

10.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 10.

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ARTICLE 11: ASSIGNMENTS AND CHARGES

11.1 *Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing. Provided that, such consent shall not be withheld if Buyer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

11.2 *Permitted Charges*

11.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

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ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION

12.1 *Governing Law*

12.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

12.2 *Amicable Settlement and Dispute Resolution*

12.2.1 *Amicable Settlement*

i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute 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.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 12.2.1 (i), furnish:

(i) counter-claim and defences, if any, regarding the Dispute; and

(ii) all written material in support of its defences and counter-claim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article12.2.1(i) if the other Party does not furnish any counter claim or defence under Article 12.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 12.2.1(iii), the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

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12.3 *Dispute Resolution*

12.3.1 Dispute Resolution by the Appropriate Commission

i. Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to bereferred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

ii. The obligations of Buying Entity under this Agreement towards Buyer shall not be affected in any manner by reason of inter-se disputes amongst Buying Entity.

iii. Buyer shall be entitled to co-opt the HPD as a supporting party in such proceedings before the Appropriate Commission.

12.3.2 Not Used

12.4 ***Parties to Perform Obligations***

12.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission as provided in Article 12.3 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 (which are not in dispute) under this Agreement.

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ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 *Amendment*

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

13.2 *Third Party Beneficiaries*

13.2.1 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.

13.3 *Waiver*

13.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

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

13.4 *Confidentiality*

13.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

a) to their professional advisors;

b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

c) disclosures required under Law

without the prior written consent of the other Parties.

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13.5 *Severability*

13.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

13.6 *Notices*

13.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

13.6.2 If to Buying Entity, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : BEST Undertaking, Multi storied Annex Building, 1st Floor, BEST Marg, Colaba, Mumbai – 400001

Attention : Chief Engineer (Regulatory)

Email : dcrc@bestundertaking.com

Telephone No. : 022-22799567

13.6.3 If to Buyer, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address: 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023

Attention: General Manager (Power Trading)

Email: aknaik@seci.co.in

Telephone No.:011-24666215

13.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice

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can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

13.7 ***Language***

13.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

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

13.8 ***Restriction of Shareholders / Owners' Liability***

13.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956/2013.

13.9 ***Taxes and Duties***

13.9.1 Buying Entity shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on Buying Entity, contractors or their employees, that are required to be paid by Buying Entity as per the Law in relation to the execution of the Agreement.

13.9.2 Buyer shall be indemnified and held harmless by Buying Entity against any claims that may be made against Buyer in relation to the matters set out in Article 13.9.1.

13.9.3 Buyer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of Buying Entity by Buyer on behalf of Buying Entity or its personnel.

13.10 *No Consequential or Indirect Losses*

13.10.1 The liability of Buying Entity and Buyer shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall Buyer or Buying Entity claim from one another any indirect or consequential losses or damages.

13.11 ***Order of priority in application***

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

i. applicable Law, rules and regulations framed thereunder;
ii. the Grid Code; and
iii. the terms and conditions of this Agreement;

13.12 ***Independent Entity***

13.12.1 Buying Entity/Buyer shall be an independent entity performing its obligations pursuant to the Agreement.

13.12.2 Subject to the provisions of the Agreement, Buying Entity/Buyer shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of Buying Entity in connection with the performance of the Agreement shall be under the complete control of Buying Entity and shall not be deemed to be employees, representatives, of Buyer and nothing contained in the Agreement or in any agreement or contract awarded by Buying Entity shall be construed to create any contractual relationship between any such employees, representatives or contractors and Buyer.

13.13 ***Compliance with Law***

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent

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required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[SECI]

अतुल्य कुमार नायक/ Atulya Kumar Naik
महाप्रबंधक/ General Manager
विद्युत व्यापार और वाणिज्यिक विभाग
Power Trading & Commercial Department
सोलर एनर्जी कॉर्पोरेशन ऑफ इंडिया लि. / Solar Energy Corp. of India Ltd.
(भारत सरकार का उद्यम) / (A Govt. of India Enterprise)
छठी मंजिल, प्लेट-बी, एनबीसीसी कार्यालय ब्लॉक टावर-2, पूर्वी किदवई नगर, नई दिल्ली-23
6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-23

Signature with seal

Witness:

1. Shibasish Das
Sr. Manager (PS)

2. Mudit Jain
Sr. Engineer

For and on behalf of
[BEST]

Lokesh Chandra IAS
General Manager
BEST.

Signature with seal

Witness:

1. Mr. Mahendra B. Urunkar.
AGM (ES), BEST.

2. Mr. Netaji Namdeo Chougule
CER (Regulatory),
BEST.

SCHEDULE 1: LIST OF LOAs ISSUED TO HPDs

Sl. No.	HPD Name	Project Capacity (MW)	Applicable Tariff as per SECI-HPD PPA(Rs/kWh)
1.	ABC Renewable Energy Private Limited	380	2.41
2.	Adani Renewable Energy Holding Eight Limited	600	2.41
3.	AMP Energy Green Private Limited	130	2.41
Total (MW)		1110	

2 ***SCHEDULE 2: BUYER-HPD PPA***

[Shall be provided to Buying Entity within 30 Days of signing of PPA with HPD]

3 ***SCHEDUE 3: AMOUNT REALISATION FOR SALE OF HYBRID POWER***

(i) The billing to Buying Entity shall be done by Buyer for realisation of amount for Hybrid Power.
(ii) The payments to be made by Buying Entity to Buyer for the Hybrid Power in a Monthly Invoice shall comprise of amounts to be realized for Hybrid Power.
(iii) The Bills shall be raised by Buyer on Buying Entity as mentioned in Article 6.2

4 SCHEDUE 4: NO OBJECTION CERTIFICATE" FROM CORRESPONDING STU

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5 *SCHEDULE 5: FORMAT of certificate from DISCOM(s) to generation projects based on solar and wind resources regarding waiver of transmission charges*

[to be signed on official letterhead of the concerned Entity(ies) / DISCOM(s)]

This is to certify that M/s .....(Name of generating company/trader such as SECI/PTC etc..) has entered into PPA/PSA dated.....with.....(name of entity purchasing power/DISCOM) for sale of .....MW power generated from wind/solar/hybrid generation power plant of M/s .....(Name of generating company) situated at.....(location)for compliance of Solar and/or Non-Solar Renewable Purchase Obligations (RPO).

(Signature & Stamp)
Name of the Authorized Signatory :
Designation :
Name of the entity / DISCOM :

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Power Sale Agreement (PSA)

For procurement of 234 MW Solar Power

on Long Term Basis

Between

Solar Energy Corporation of India Limited

(SECI Ltd)

And

Brihanmumbai Electric Supply & Transport

Undertaking (BEST Undertaking)

December 2022

Solar Energy Corporation of India Ltd. New Delhi

9/12/22

भारतीय गैर न्यायिक

BUYER-BUYING ENTITY PSA

एक सौ रुपये

Rs. 100

रु. 100

ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◑ 2022 ◑ 29AA 726623

प्रधान मुद्रांक कार्यालय, मुंबई
प.म.वि.क. 1000090
24 NOV 2022
सक्षम अधिकारी
श्री. दिलीप गवई

This Power Sale Agreement is made on the 9th day of December of 2022 at Colaba, Mumbai.

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023(hereinafter referred to as "Buyer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part.

And

Brihanmumbai Electric Supply & Transport Undertaking (BEST Undertaking), statutory Undertaking of the Municipal Corporation of Greater Mumbai and is also encompassed by the definition of a "Local Authority" under Section 2(41) of the Electricity Act, 2003 (hereinafter referred to as "Buying Entity or BEST"), which expression shall, unless repugnant to the context

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परिशिष्ट-५ Annexure I

फक्त प्रतिज्ञापत्रासाठी

मुद्रांक विकत घेणाऱ्याचे नाव Netaji Chaugule,

मुद्रांक विकत घेणाऱ्याचे रहिवाशी पत्ता Beed, MH

मुद्रांक विक्रिबाबतची नोंद वही अनु. क्रमांक _____ दिनांक _____

मुद्रांक विकत घेणाऱ्याची सही परवानाधारक मुद्रांक विक्रेत्याची सही

परवाना क्रमांक : ८०००९०

मुद्रांक विक्रीचे नाव/पत्ता : श्री. कल्पेश प्रेमजी गाला

शॉप नं.४, भाग्योदय बिल्डींग, ७९ नगीनदास मास्टर रोड,फोर्ट, मुंबई-४०० ००१. - 5 DEC 2022

शासकीय कार्यालयासमोर/न्यायालयासमोर प्रतिज्ञापत्र सादर करणेसाठी मुद्रांक कागदाची आवश्यकता नाही. (शासन परिपत्रक क्र. मुद्रांक-२०७/२००४) नुसार

5 DEC 2022

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.

or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

Buyer and Buying Entity are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

A. Solar Energy Corporation of India Limited (SECI) has been identified by the Govt. of India as the nodal agency for implementation of MNRE Scheme for Setting up of ISTS connected Solar Power Projects linked with Manufacturing and shall act as the Intermediary Procurer under the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects.

B. SECI will sign Power Purchase Agreements (PPAs) with the selected Solar Power Developers (hereinafter referred to as "SPDs") for procurement of 3000 MW Solar Power or the total capacity of projects selected under the provisions of Request for Selection (RfS) issued by RfS No. SECI/C&P/RfS/2GWMANUFACTURING/P-3/R1/062019 dated 25.06.2019, if it is less than 3000 MW, on a long term basis, as indicated at Schedule-1 and Schedule-2 respectively

C. Buying Entity has agreed to purchase Solar Power from the Buyer under the Scheme and accordingly, Buyer has agreed to sign Power Purchase Agreements (PPAs) with Solar Power developers (hereinafter referred to as "SPDs") for procurement of 3000 MW Solar Power on a long term basis, as indicated at Schedule-1 & 2. This allocated capacity shall be used for solar RPO requirement of Buying Utility. SECI shall intimate the same to CTU (PGCIL) for open access. Based on input from PGCIL and corridor availability, quantity (MW) may be revised.

D. Copy of the PPA(s) shall be submitted to Buying Entity within **30** days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (Buyer-Buying Entity PSA).

E. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Sale Agreement ("**PSA**") i.e. a definitive agreement, regarding purchase of power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PSA

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setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

F. To establish the commitment of Buying Entity to purchase and Buyer to sale power from the Project, the Parties have entered into this Agreement.

G. A bidder which has been selected as successful Bidder based on this RfS can also execute the Project through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated to execute the project. SECI shall enter into PPA with Project Company as per the terms and condition of RfS.

H. Discom(s) acknowledge(s) and accept(s) that SECI is only an Intermediary Company and is facilitating the purchase of sale of electricity generated from the Solar Power Projects and, therefore, cannot assume independently, any obligation, financial or otherwise, either to the SPD or to Discom(s), (unless otherwise specifically provided otherwise in the PPA), except on a back to back basis, namely, that whatever obligation is enforced by the SPD under the PPA against SECI, Discom(s) shall be bound to fulfil the obligation on a back to back basis towards SECI and similarly, whatever rights that Discom(s) may claim under this Agreement against SECI, shall be subject to due enforcement of the corresponding rights on a back to back basis by SECI against SPD, without an independent obligation on the part of SECI.

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:

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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 defined in the Buyer SPD PPA and as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Sale Agreement" or "PSA"	shall mean this Power Sale Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall be Hon'ble Central Electricity Regulatory Commission;
"Adjusted Equity"	Shall have the same meaning as contained in the SECI-SPD PPA
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding aMonthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Buyer and Buying Entity, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in the State of **Maharashtra** and Delhi.
"Buying Entity"	means an Entity that requires Solar Power to fulfil its solar RPO under respective RPO regulations and intend to buy at least 234 MW of Solar Power under this RfS.
"Buyer-SPD PPA"	Shall mean the power purchase agreement(s) signed between Buyer and SPD(s) for procurement of 3000 MW Solar Power by Buyer from SPD and annexed hereto as Schedule 2 of this Agreement;
"Capacity Utilisation Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if 'X' MWh of energy hasbeen metered out at the Delivery Point for 'Y'MW Project capacity, CUF= (X MWh/(YMW*8766)) X100%;

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"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Central Transmission Utility" or "CTU"	Shall mean the utility notified by the Central Government underSection-38 of the Electricity Act 2003;
"Change in Law"	shall have the meaning ascribed thereto in Article 8 of thisAgreement;
"Commercial Operation Date"	shall mean the actual date of commissioning of the project as declared by the Commissioning Committee constituted by the State Nodal Agency (SNA). In case of part commissioning, COD will be declared only for that part of project capacity;
"Commissioning" or "Project Commissioning"	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the Guidelines/PPA;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consultation Period"	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Buyer Preliminary Default Notice or Buying Entity Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
"Contracted Capacity"	shall mean 234 MW of Solar Power contracted with Buying Entity for sale of such power by Buyer to Buying Entity at theDelivery Point from the Solar Power Project;
"Debt Due"	shall have the same meaning as contained in the SECI-SPD PPA

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"Delivery Point"	shall mean the point at 220 kV or above where the power from the Solar Power project(s) will be injected into the ISTS as per SECI-SPD PPA. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e. the Delivery point. For interconnection with grid and metering, the SPD shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity AuthorityRegulations as amended from time to time.;
"Dispute"	shall mean any dispute or difference of any kind between Buyer and the Buying Entity in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 12 of thisAgreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by Buying Entity or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by Buying Entity;
"Effective Date"	Shall have the meaning ascribed thereto in Article 2.1 of thisAgreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 9 of this Agreement;
"Expiry Date"	shall mean the date as on the expiry of 25 years from the SCD or from the date of full commissioning of the projects, whichever is earlier.
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 7 of thisAgreement;
"Guidelines: or "Scheme"	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PVPower Projects issued by the Ministry of Power on 3rd August 2017 including its amendment(s), corrigendum(s) and clarification(s) (if any) issued by GOI
"Grid Code"/ "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned StateCommission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;

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"Incremental Receivables"	Shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state(s), where the Power Projects, Buyer and Buying Entity are located and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Interconnection Facilities"	shall mean the facilities on SPD's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice/Supplementary Bill by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 6.3.3 of thisAgreement;
"Law"	Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 6.4 of thisAgreement;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Open Access"	shall have the same meaning as provided in the Electricity Act 2003 as amended from time to time;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 6.4 of thisAgreement;

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"Pooling Substation/ Pooling Point"	Means a point where more than one Solar Power projects may connect to a common transmission system. Multiple projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the developer(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual projects for the purpose of billing.
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 9 of this Agreement;
"Project" or "Power Project"	shall mean the Solar Power generation facility as per Schedule-I having separate points of injection into the grid at interconnection/metering point at ISTS substation or in case of sharing of transmission lines, by separateinjection at pooling point. Each project must also have separate control systems and metering.
"Project Capacity"	Shall mean the maximum AC capacity of the Project at the point of injection on which the Power Sale Agreement has been signed.
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 6.3.4 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees","Rs.", "₹ "	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date" or "SCD"	Shall mean the Date that is mentioned in the SECI-SPD PPA;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs on Buying Entity;

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"SECI"	shall mean Solar Energy Corporation of India Limited;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	Shall have the same meaning as provided for in Article 5 of thisAgreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of thisAgreement in accordance with Article 9 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Trading Margin"	shall mean margin payable towards the services provided by SECI for re-sale of power to Buying Utilities under this Agreement, which shall be Rs 0.07/kWh fixed for the entire term of the Agreement
Unit Commercial Operation Date (UCOD)	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning and also start of injection and scheduling power from the Power Project to the Delivery Point and availability/ installation of all necessary arrangements/ equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours ofMonday, and ending at 24:00 hours of the following Sunday;
"Solar Power Project"	shall mean the solar photovoltaic project that uses sunlight for direct conversion into electricity and that is being set up by the SPD to provide Solar Power to SECI;
"Solar Power"	Shall mean power generated from the Solar Power Project;

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1.2 ***Interpretation***

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

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

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3 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);

1.2.4 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;

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

1.2.6 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;

1.2.7 "Rupee", "Rupees" "Rs." or new rupee symbol "₹"shall denote Indian Rupees, the lawful currency of India;

1.2.8 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;

1.2.9 Words importing the singular shall include the plural and vice versa;

1.2.10 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

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from time to time be, amended, varied, novated, replaced or supplemented only if agreed to between the parties;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 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;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and 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;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.18 All the terms and expressions in capitalized form not defined herein in this Agreement shall have meaning as provided therein in the RfS documents and PPA

1.2.18 This Agreement and other documents like Request for Selection Documents, Guidelinesincluding subsequent clarifications, amendments and further clarifications in regard to the Scheme for PPA linked Manufacturing and Power Purchase Agreement entered by SECI with SPDs shall be read in conjunction with each other and interpreted in harmonious manner.

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ARTICLE 2:TERM OF AGREEMENT

2.1 *Effective Date& Conditions Precedent*

2.1.1 This Agreement shall come into effect from the date of signing of this Agreement and such date shall be referred to as the Effective Date.

2.1.2 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under SECI-SPD PPA shall be that within 60 days from the date of submission to the Appropriate Commission, the Buying Entity (ies) shall obtain all requisite approvals including approval of PSA (including adoption of tariff and trading margin) from its State Electricity Regulatory Commission and/ or CERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity(ies). The Parties agree that in the event, the order of adoption of tariff, trading margin and the approval of PPA & PSA, as mentioned above is not issued by the SERC and/ or CERC (as applicable) within the time specified above, the provisions of Article 2.1.3 of SECI SPD PPA shall apply.

2.1.3 SECI/Buying Entity as the case may be, shall obtain the order of the Appropriate Commission adopting the tariff and approving the procurement of the contracted capacity on the terms and conditions contained in this agreement entered into between SECI and Buying Entity read with the terms and conditions contained in the PPA to be entered into between SECI and the SPD. The Trading Margin shall be applicable as per Article 5 of the PSA.

2.1.4 Both Parties agree that under SECI- SPD PPA, SECI may be required to grant an extension in time as per provisions of the PPA under intimation to Buying Entity

2.2 *Term of Agreement*

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

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2.3 ***Early Termination***

2.3.1 This Agreement shall terminate before the Expiry Date:

I. if either SECI or Buying Entity terminates this Agreement, pursuant to Article 9 of this Agreement. or

II. if any SECI-SPD PPA gets terminated, the capacity under this agreement shall automatically be reduced but only to the extent of that particular SECI-SPD PPA capacity without any liability on SECI.

2.4 **Survival**

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under, Article 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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ARTICLE 3: SUPPLY OF POWER TO BUYING ENTITY

3.1 *Obligations of Buying Entity:*

3.1.1 Buying Entity undertakes that it shall: -

(a) Ensure off take of the available capacity from the Scheduled Commissioning Date/ Commercial Operation Dateof the Project, subject to grant of NOC from Maharashtra STU. In case Maharashtra STU issues conditional NOC for LTA due to transmission constraint and if the SCD is prior to completion of transmission lines, under these circumstances BEST will give its consent to SECI/SPD to sell the power generated to any other third parties/Utilities/Buyers.

In such matters and any other related circumstances, SECI/SPD shall not claim any compensation or damages from BEST Undertaking.

(b) Ensure availability of the interconnection facility and evacuation of power from the CTU/STU interface of Buying Entity's state periphery from the Scheduled Commissioning Date / Commercial Operation Date of the Project.
In case Maharashtra STU issues conditional NOC for LTA due to transmission constraint and if the SCD is prior to completion of transmission lines, under these circumstances BEST will give its consent to SECI/SPD to sell the power generated to any other third parties/Utilities/Buyers.

In such matters and any other related circumstances, SECI/SPD shall not claim any compensation or damages from BEST Undertaking.

(c) be responsible for payment of the applicable intra state transmission charges, RLDC/SLDC Charges, limited to the charges applicable to the Contracted Capacity of Buying Entity under this Agreement, as determined by CERC from time to time.

(d) Make payment of the Monthly Bill/Supplementary Bill by the Due Date.

(e) Open and maintain Payment Security Mechanism as per Article 6.4 for the entire Term of the Agreement.

(f) Arrange for required consent/NOC from STU/SLDC/concerned agenciesin the State of **Maharashtra** for availing open access/scheduling of the power.

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(g) Obtain necessary approval/adoption of PSA along with tariff, trading margin and contracted capacity

(h) Fulfil all the obligations undertaken by Buying Entity under this Agreement.

3.2 ***Charges***

3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges as determined by Appropriate Commission from time to time pertaining to open access, CTU charges,scheduling charges (if any) and any other charges from injection/delivery point to the receiving substation(s) of Buying Entity if any, shall be directly paid or reimbursed by Buying Entity.

3.2.2 Buyer shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/CTU by Buying Entity.

3.2.3 Government of India from time to time issues order for waiver of interstate transmission system (ISTS) charges and losses on transmission of wind/solar power till a certain date. Further, in case SCD of the Project is prior to the above deadline of waiver of ISTS charges and losses, and commissioning of the Project is delayed beyond the above date for the reasons attributable to the SPD, the applicable transmission charges and losses shall be borne by the SPD. In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the Project is granted extension in the SCD on account of Force Majeure, or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time, or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of interstate transmission charges and losses . However, in case the commissioning of the project gets delayed beyond the applicable date of ISTS waiver/extended SCD as above, due to reasons attributable to the SPD, the liability of transmission charges and losses would be to the account of the SPD.

3.3 ***Losses***

3.3.1 Buying Entity shall be liable to bear all the transmission lossesas determined by Appropriate Commission from time to timein respect of the power evacuated from the Delivery Points to its receiving substation(s).

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ARTICLE 4: METERING, ENERGY ACCONTING AND SCHEDULING

4.1 *Metering*

4.1.1 The metering arrangements for metering the electrical energy supplied at the Delivery Point and Delivery Point shall be as per the provisions identified in the Buyer-SPD PPA respectively. The metering arrangement shall comply with the norms of SERC / CERC/ CEA as applicable.

4.1.2 The energy details obtained from Energy Accountsissued by the RPC of the buying entity,shall be provided to Buying Entity by Buyer along with Monthly Bill validating the total energy for which the Monthly Bill is generated.

4.1.3 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

4.2 *Energy Accounting & Scheduling*

4.2.1 The scheduling and energy accounting of Solar Power shall be as per the provisions of the Buyer-SPD PPA and Grid Code.

4.2.2 The SPD shall be responsible for deviations made by it from the dispatch schedule and for any resultant liabilities on account of charges for deviation as per applicable regulations.

4.2.3 SPD shall be responsible for any deviation related to scheduling and actual generation.

4.2.4 No back-down/ curtailment to be ordered without giving formal/ written instruction to the SPD as detailed in Schedule 1. Back-down/ curtailment (if any) including justification of such curtailment/ back-down to be made public by the concerned Load Dispatch Centre.

4.2.5 As part of scheduling of power from the Project, the SPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/Discom, as per the Regulations in force, under intimation to SECI. SECI may facilitate in identification of any discrepancy and assist the SPD for its early rectification without any liability on SECI. The SPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

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ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the fixed tariff of Rs. 2.54/kWh plus trading margin of Rs. 0.07/ kWh for the entire term of this agreement.

5.1.2 Not used

5.1.3 Benefits on account of any reduction in tariff as per provisions of SECI-SPD PPA, shall be passed on to the Buying Utility.

5.1.4 As per provisions of the PPA, the SPDs are permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In cases of early part-commissioning, till the achievement of full commissioning or SCD, whichever is earlier, the Buying Entityshall purchase the generation till SCD, at 75% (seventy-five per cent) of the tariff as mentioned in the Article 5.1.1 plus Trading Margin of Rs 0.07/kWh, (Seven Paisa per kWh). In case of full commissioning of the Project(s) prior to SCD, Buying Entityshall purchase the power at tariff as per article 5.1.1 plus Trading Margin of Rs 0.07/kWh, (Seven Paisa per kWh)].

5.1.5 Any excess generation over and above energy specified in Article 6.8.3, may be purchased at a tariff of 75% of the tariff as mentioned in Article 5.1.1 provided the Buying Entity consents for purchase of such excess generation with Trading Margin of Rs 0.07/kWh (Seven Paisa per kWh). In case of any excess generation as indicated by the SPD under the PPA, SECI shall intimate the Buying Entity regarding the proposed quantum of excess generation, at least 1 month prior to the scheduled excess generation proposed. The Buying Entity shall be required to grant its consent/refusal for the proposed excess generation within 15 days from the receipt of the above intimation from SECI (through email). In case the consent/refusal as sought by SECI for the same is not issued by the Buying Entity within the above stipulated timelines, it shall be deemed that the Buying Entity has granted its consent for purchase of such excess generation as per the terms of this Agreement.

5.1.6 Not used

5.1.7 Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the CTU and/or there is a delay in readiness of the ISTS substation at the

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Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCD of the Project, and it is established that:

(i) The SPD has complied with the complete application formalities as per RfS,

(ii) The SPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and

(iii) The delay in grant of connectivity/LTA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the SPD;

The above shall be treated as delays beyond the control of the SPD and SCD shall be extended for such Projects upto 15 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by SECI.

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ARTICLE 6: BILLING AND PAYMENT

6.1 *General*

6.1.1 From UCOD/COD of the Project, Buying Entity shall pay to Buyer the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by Buying Entity shall be in Indian Rupees.

6.2 *Delivery and Content of Monthly Bills*

6.2.1 Buyer shall issue to Buying Entity a signed Monthly Bill on the 1st Business Day of the month.

6.2.2 The Monthly Bill prepared as detailed in Schedule-3 of the PSA, shall include the following;

i) Monthly bill may be raised based on the provisional REA

ii) The final adjustments if any may be done on the basis of the final REA along with the next month bill

iii) Taxes, Duties, Levies etc. as applicable.

Final billing may be done based on published REA.

6.3 Payment of Monthly Bills

6.3.1 Buying Entity shall pay the amount payable under the Monthly Bill on the Due Date to such account of Buyer, as shall have been previously notified to Buying Entity in accordance with Article 6.3.2 below.

6.3.2. Buyer shall open a bank account at New Delhi ("Buyer's Designated Account") for all Tariff Payments to be made by Buying Entity to Buyer, and notify Buying Entity of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buying Entity shall also designate a bank account at **Mumbai** (the "Buying Entity's Designated Account") for payments to be made by Buyer to Buying Entity, if any, and notify Buyer of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. Buyer and Buying Entity shall instruct their respective bankers to make all payments under this Agreement to Buying Entity' Designated Account or Buyer's Designated Account,as the case may be, and shall notify either Party of such instructions on the same day.

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6.3.3 Late Payment Surcharge

In the event of payment of a Monthly Bill by the Buying Entity beyond 30 days of its due date, a Late Payment Surcharge (LPS) shall be payable by the Buying Entity to SECI on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default. "Base rate of Late Payment Surcharge" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent (500 bps) and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify: The Late Payment Surcharge shall be claimed by SECI through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding Payment beyond 30 days of its due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

(a) Provided that the rate at which Late Payment Surcharge shall be payable shall not be higher than 1.25% per month at any time for purchase of power.

(b) Provided further that, if a distribution licensee has any payment including Late Payment Surcharge outstanding against a bill after the expiry of seven months from the 30 days beyond Due Date of the bill, it shall be debarred from procuring power from a power exchange or grant of short-term open access till such bill is paid.

(c) All payments by Buying Entityto Buyer for power procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

(d) If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years. The Late Payment Surcharge shall be claimed by Procurer through the Supplementary Bill.

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6.3.4 Rebate

For payment of any Billincluding supplementary bill on or before Due Date, the Rebate shall be paid by Buyer to the Buying Entity in the following manner.

a) A Rebate of 2% shall be payable to Buying Entity for the payments made within a period of 5 (five)working days of the presentation of Bill through e-mail.

b) Any payments made after 5(five)working days of the presentation of Bill through e-mail up to the due date shall be allowed a rebate of 1 %.

c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and Late Payment Surcharge.

6.4 Payment Security Mechanism

A. Letter of Credit (LC):

6.4.1 Buying Entity shall provide to Buyer, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of creditas a backup arrangement which is to be negotiated only on default conditions ("Letter of Credit"), opened and maintained by Buying Entity, which may be drawn upon by Buyer in accordance with this Article. Buying Entity shall provide Buyer draft of the Letter of Credit proposed to be provided to Buyer two (2) months before the Scheduled Commissioning Date.

6.4.2 Not later than one (1) Month before the Start of Supply, Buying Entity shall through a scheduled bank at **Mumbai** open a Letter of Credit in favour of Buyer, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every 6 months, in the month of January and July and revised w.e.f. April and Sept. for an amount equal to:

i) for the first Contract Year, equal to 110% of the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to 110% of the average of the monthly TariffPayments of the previous Contract Year.

6.4.3 Provided that Buyer shall not draw upon such Letter of Credit prior to the 30 days beyond itsDue Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.

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6.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.4.2 due to any reason whatsoever, Buying Entity shall restore such shortfall within seven (7) days.

6.4.5 Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimateBuyer, in writing regarding establishing of such irrevocable Letter of Credit.

6.4.6 Buying Entity shall ensure that the Letter of Credit shall be renewed prior to its expiry.

6.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Buying Entity.

6.4.8 If Buying Entity fails to pay a Monthly Bill or part thereof within and including30 days beyond its Due Date, then, subject to Article 6.4.3 and 6.6.2, Buyer may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buying Entity, an amount equal to such Monthly Bill or part thereof, 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 Buying Entity;

ii) a certificate from Buyer to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid after 30 days beyondthe Due Date;

B. State Government Guarantee

The Buying Entity shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. The Buyer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the SPD(s), to the extent the payments to the SPD(s) in terms of the PPA are due. Provided that in cases where the Buying Entity is neither covered by Tri-Partite Agreement (TPA) nor is able to provide the State Government Guarantee, the Buying Entity shall pay to SECI an additional risk premium of Rs 0.10/kWh, which shall be credited to the payment security fund maintained by the SECI.

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C. Payment Security Fund

In addition to provisions contained in Article 6.4 (A) and 6.4. (B) Above, the Buying Utility may also choose to provide Payment Security Fund, not later than the commencement of supply of Power to the Buying Utility under this Agreement, which shall be suitable to support Payment of at least 3 (three) months' billing of all the Projects tied up with such fund.

6.5 Third Party Sales by Buyer

6.5.1 Notwithstanding anything to the contrary contained in this Agreement, Buyer shall be entitled to but not obliged to regulate power supply of Solar Power of BuyingEntity in case of Default in making payment by the 30th day of the Due Date by Buying Entity.

6.5.2 Buyer shall issue the Notice for Regulation of Power Supply on the date above and shallgive a notice of 15 days to start the regulation on the 16th day.

6.5.3 Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.

6.5.4 In order to avoid any doubts, it is illustrated that:

In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, Buyer would have a right to regulate and sell Buying Entity's allocation of the power to third parties to the extent of 40% (i.e. 10/25x100).

6.5.5 Buyer/SPD shall have the right to divert the Solar Power or part thereof and sell it to any third party namely;

i) Any consumer, subject to applicable Law; or

ii) Any licensee under the Act;

Buyer shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

6.5.6 Provided that such sale of power to third party shall not absolve Buying Entity from its obligation to pay in full to Buyer for the Solar Power as per Schedule-3 of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement.

6.5.7 The amount realized from the diversion and sale of power to third party over and above the trading margin, open access charges and costs/RLDC/SLDC etc. shall be adjusted first

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adjusted against the pending liability of Buying Entity & any other costs and the deficit if any shall be made good by Buying Entity.

6.5.8 Sales to any third party shall cease and regular supply of electricity to Buying Entity shall commence and be restored within seven (7) days from the date of clearing all outstanding dues payable to Buyer for the Solar Power under this Agreement.

6.5.9 Further, the liability of Buying Entity to make the Tariff Payments to Buyer as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by SPD for usage by Buying Entity.

6.6 Disputed Bill

6.6.1 If Buying Entity does not dispute a Monthly Bill raised by the other Party within Thirty (30) days of receiving such Bill shall be taken as conclusive.

6.6.2 If Buying Entity disputes the amount payable under a Monthly Bill it shall pay 50% of the invoice amount and it shall within fifteen (15) 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.

6.6.3 If the Buyer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, the Buyer shall make appropriate adjustment in the next Monthly Bill. Insuch a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by Buying Entity and up to and including the date on which such payment has been received as refund.

6.6.4 If the Buyer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

i) reasons for its disagreement;

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

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

6.6.5 Upon receipt of the Bill Disagreement Notice by Buying Entity under Article 6.6.4, authorized representative(s) or a director of the board of directors/ member of board of Buying Entity and Buyer shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

6.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt ofBill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.

6.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Buying Entity shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 50% of the invoice amount in the Monthly Bill.

6.7 *Quarterly and Annual Reconciliation*

6.7.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

6.7.2 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, Buying Entity and Buyer shall jointly sign such reconciliation statement. Aftersigning of a reconciliation statement, the Buyer shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.

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6.8 Renewable purchase obligation

6.8.1 Buying Entity may identify the energy procured from the Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of Buying Entity shall be considered to be met by Buying Entity only if there is no payment default for such energy procured by Buying Entity and a certificate to such effect is provided by Buyer to Buying Entity.

6.8.2 Buyer shall provide such certificate identifying the quantum of solar energy supplied by Buyer and being met by Buying Entity for each year within thirty (30) days after the end of such year.

6.8.3 **Criteria for Generation**

6.8.3**a** The SPD will declare the CUF of the Project and will be allowed to revise the same once within first year after COD of the full project capacity. Subsequent to commissioning of the Project, Buying Entity, in any Contract Year, shall not be obliged to purchase any additional energy from the Buyer/SPD beyond **631.78 Million kWh (MU)** corresponding to maximum CUF of **30.8 %** from the Solar Power Project. The above limits shall be considered on pro-rata basis with respect to the individual projects commissioned until commissioning of the entire Project capacity allocated under this Agreement. Further, for the first year of operation, the above limits shall be considered on pro-rata basis.

6.8.3**b** If for any Contract Year subsequent to the commissioning of allocated Project capacity, it is found that the SPD has not been able to generate minimum energy of **488.20 Million kWh (MU)** corresponding to minimum CUF of **23.8 %** till the end of 10 years from the SCD and **459.48 Million kWh (MU)** corresponding to minimum CUF of **22.4 %** for the rest of the Term of the Agreement on account of reasons solely attributable to the SPD, the noncompliance by the SPD shall make the SPD liable to pay the compensation and shall duly pay such compensation to the Buyer to enable the Buyer to remit the amount to the Buying Entity. The above limits shall be considered on pro-rata basis with respect to the individual projects commissioned until commissioning of the entire Project capacity allocated under this Agreement. For the first year of operation of the Project, the annual CUF shall be calculated for the complete year after COD of the Project.

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Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31st March next year. The lower limit will, however be relaxable by Buyer to the extent of grid non-availability for evacuation which is beyond the control of the Solar Power Developer. The amount of such compensation shall be as determined by the Appropriate Commission/Authority, and such compensation shall ensure the Buying Entity is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to the Buyer by the SPD shall be 25% (twenty-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Entity.

6.8.4 Notwithstanding Article 6.8.3, the Buyer/SPD is free to sell such power to any third party which is in excess of the quantum of power as per Article 6.8.3 of this Agreement from SCD or date of commissioning of the full project capacity, whichever is earlier. Any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the Buying Utility at the tariff as per Article 5.1.5, and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.

6.8.5 The compensation as per Article 6.8.3 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under this Agreement affecting supply of Solar Power by Buyer/SPD.

6.9 ***Payment of Supplementary Bill***

6.9.1 Buyer/Buying Entity may raise a "Supplementary Bill" for payment on account of:

i) Change in Law as provided in Article 8, or

ii) pertaining to open access and scheduling related charges if any,for transmissionof the power, as determined by CERC from time to time or

iii)payment under Article 6.10 and other charges, if any.

and such Supplementary Bill shall be paid by the other Party.

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6.9.2 Buyer/Buying Entity shall remit all amounts due under a Supplementary Bill raised by the Buyer/Buying Entity to the Buyer's/Buying Entity's Designated Account by the Due Date.

6.9.3 In the event of delay in payment of a Supplementary Bill by either Partywithin thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 6.3.3.

6.10. **Offtake constraints due to Transmission Infrastructure /Grid Unavailability & Generation compensation for Off-take constraints**

6.10. Generation Compensation in offtake constraint due to Transmission Infrastructurenot complete/ ready (Transmission constraint): After the Scheduled Commissioning Date, subject to the submission of documentary evidences from the Competent Authority, if the plant is ready in all respects including the dedicated transmission line to be established by the SPD to connect to the grid but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against SECI:

Transmission Constraint	**Provision for Generation Compensation**
If the Project is ready but the necessary power evacuation/transmission infrastructure is not ready, leading to offtake constraint	a.The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by SECI at the PPA tariff so as to offset this loss. b.If the transmission delay is directly attributable to the organization building the transmission network and

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	some penalty is imposed on him, then a part of that penalty may be utilized by SECI for compensating the generation loss.

However, it is clarified that if the project is ready for commissioning prior to the Scheduled Commissioning Date, but the offtake is constrained because of inadequate/incomplete power evacuation infrastructure, no compensation shall be permissible.

Backdown

6.10.1 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the Project, there can be some periods where the Project can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable to the SPD. In such cases the generation compensation shall be addressed in following manner:

Duration of Grid unavailability	**Provision for Generati Compensation**
Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):	***Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]*** Where, Average Generation per hour during the Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ Total hours of generation in the Contract Year.

The excess generation by the SPD equal to this generation loss shall be procured by the Buying Entity at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years. (Contract Year, shall be as defined in the PPA.)

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6.10.2 Offtake constraints due to Backdown: The SPD and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), provides for status of "must-run" to solar power projects. Accordingly, no solar power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, including non-dispatch of power due to non-compliance with "Order No. 23/22/2019-R&R dated 28.06.2019 of Ministry of Power regarding Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees" and any clarifications or amendment thereto, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Buying Entity shall pay to the SPD, a Minimum Generation Compensation, from the Procurer, in the manner detailed below.

Duration of Backdown	**Provision for Generation Compensation**
Hours of Backdown during a monthly billing cycle.	***Generation Compensation = 100% of [(Average Generation per hour during the month) X (number of backdown hours during the month)] X PPA tariff*** Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month

The Generation Compensation shall be claimed as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA)/ SEA/ JMR. No Trading Margin shall be applicable on the Generation Compensation as provided in Article 6.10.2 only.

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ARTICLE 7: FORCE MAJEURE

7.1 *Definitions*

7.1.1 Provisions of Force Majeure provided in SECI-SPD PPA shall mutatis-mutandis apply to this Agreement and all associated obligations and liabilities shall be implemented on back to back basis. Further, in case Force Majeure provisions detailed hereunder are in conflict with SECI-SPD PPA provisions, the provisions detailed in the SECI-SPD PPA shall prevail:

7.2 *Affected Party*

7.2.1 An affected Party means Buyer or the Buying Entity whose performance has been adversely affected by an event of Force Majeure.

7.3 *Force Majeure*

7.3.1 A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof as specified below, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant 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:

7.3.1.1 Categorization of Force Majeure Events

7.3.1.1.1 Natural Force Majeure Event

a) 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 or tornado if it is declared/ notified by the competent state/ central authority/ agency (as applicable), or verified to the satisfaction of Procurer;

b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding

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circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party;

c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or

d) any event or circumstances of a nature analogous to any of the events as specified under Article 7.3.1.1.1 (a), 7.3.1.1.1 (b) and 7.3.1.1.1 (c).

7.3.1.1.2 Non-Natural Force Majeure Event

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action

b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;

c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully excised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Generator or the Generator related parties.

d) action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and

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in accordance with the provisions of Article 12 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be

7.3.1.1.3 Other Force Majeure Event

a) An event of force majeure identified under Buyer-SPD PPA thereby affecting supply of power by SPD.

b) An event of force majeure affecting the concerned STU/CTU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by Buying Entity;

7.4 *Force Majeure Exclusions*

7.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
b. Strikes at the facilities of the Affected Party;
c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
d. Non-performance caused by, or connected with, the Affected Part y's:
   i. Negligent or intentional acts, errors or omissions;
   ii. Failure to comply with an Indian Law; or
   iii. Breach of, or default under this Agreement.
e. Exclusions as identified under SECI-SPD PPA

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7.5 *Notification of Force Majeure Event*

7.5.1 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 unreasonable 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.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. 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 Force Majeure Event.

7.5.2 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.

7.6 *Duty to Perform and Duty to Mitigate*

7.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, 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 Force Majeure Event as soon as practicable.

7.7 *Available Relief for a Force Majeure Event*

7.7.1 Subject to this Article 7:

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(a) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;

(c) For avoidance of doubt, neither Part y's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

(d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event;

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ARTICLE 8: CHANGE IN LAW

8.1 *Definitions*

In this Article 8, the following terms shall have the following meanings:

8.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is the Bid Submission Date resulting into any additional recurring/ nonrecurring expenditure by SPD or any income to SPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;

- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;

- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;

- any change in tax or introduction of any tax made applicable for sale of power by Buyer to Buying Entity as per the terms of this Agreement.

but shall not include (i) any change in tax on corporate income on account of regulatory measures by the Appropriate Commission including calculation of Capacity Utilization factor.

8.2 *Relief for Change in Law*

8.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

8.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

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8.2.3 The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been notified through MNRE OM dated 09.03.2021

Items	CTH	Upto 31.03.2022	w.e.f. 01.04.2022
Solar Module	85414012	0 %	40%
Solar Cell	85414011	0 %	25 %

As per commitment from SPD, there will not be any revision in their final offered tariff i.e. INR 2.54/ kWh in case of imposition of BCD (of up to 40% on Modules and up to 25% on Cells). Further, No Change in Law on account of BCD will be claimed by either party, as per the MNRE OM dated 09.03.2021.

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ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION

9.1 *Buying Entity Event of Default*

9.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event shall constitute a Buying Entity Event of Default:

(i) Any amount, subject to Article 6.6 remains outstanding beyond a period of ninety (90) days after the Due Date and Buyer is unable to recover the amount outstanding from Buying Entity through the Letter of Credit; or

(ii) Buying Entity fails to off-take power from the Delivery Point for a continuous period of 72 hours with a maximum cumulative period of60 (sixty) days in a Contract Year.

(iii) if (a) Buying Entity becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Entity, or (c) the Buying Entity goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of Buying Entity will not be a Buying Entity Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Buying Entity and expressly assumes all obligations of the Buying Entity under this Agreement and is in a position to perform them; or

(iv) Buying Entity repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Buyer in this regard; or

(v) except where due to any Buyer's failure to comply with its material obligations, Buying Entity is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by Buying Entity within thirty (30) days of receipt of first notice in this regard given by Buyer.

(vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of Buying Entity.

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9.2 SECI Event of Default

9.2.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SECI's Event of Default:

(i) SECI fails to supply power to the Delivery Points for a continuous period of one year.

(ii) if (a) the SECI becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SECI, or (c) the SECI goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the SECI will not be a SECI's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SECI and expressly assumes all obligations of the SECI under this Agreement and is in a position to perform them; or

(iii) SECI repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SECI in this regard; or

(iv) except where due to any SECI's failure to comply with its material obligations, the SECI is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SECI within thirty (30) days of receipt of first notice in this regard given by the Buying Utility.

(v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SECI.

9.3 *Procedure for Event of Default*

9.3.1 Upon the occurrence and continuation of any Event of Default under Article 9.1 & 9.2, the Party affected by such occurrence shall have the right to deliver the notice to the other Party, stating its intention to terminate this Agreement (Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

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9.3.2 Following the issue of Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

9.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Party may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the other Party.

9.3.5 Subject to the occurrence and continuation of default by as contained under Article9.1.1 or Article 9.2.1 and expiry of time period as per Article 9.3.4,

9.3.5.1 Subject to the prior consent of the SECI, the Buying Utility shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period as per Article 9.3.4,

9.3.5.2 In the event the aforesaid novation is not acceptable to SECI, or if no offer of novation is made by the defaulting Buying Utility within the stipulated period as per Article 9.3.5.1, then SECI may terminate the PSA and at its discretion require the defaulting Buying Utility to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the Adjusted Equity less Insurance Cover, if any as detailed in the Buyer-SPD PPA or, (ii) pay to the SPD/SECI(as applicable), damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPD. In such event, any damages/ charges payable to the STU/ CTU for the connectivity of the Project shall be borne by the Buying Utility.

9.4 ***Termination due to Force Majeure***

9.4.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

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9.5 ***Termination of back to back agreements***

In case of termination of Buyer-SPD PPA, this Agreement shall automatically terminate but only to the extent of that particular Buyer-SPD PPA. Provided that in case of such termination, any pending monetary liabilities of either Party shall survive the termination of this Agreement.

9.6 ***Specific Performance of the Agreement***

9.6.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this Agreement is specifically enforceable at the instance of either Party.

9.6.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.

9.6.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.

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ARTICLE 10: LIABILITY AND INDEMNIFICATION

10.1 *Indemnity*

10.1.1 Buying Entity shall indemnify, defend and hold Buyer/SPD harmless against:

a) any and all third party claims against Buyer/SPD 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 Buying Entityof any of its obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/SPD from third party claims arising by reason of a breach by the Buying Entityof any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buying Entity, for which specific remedies have been provided for under this Agreement).

10.1.2 Buyer shall cause the SPD to indemnify, defend and hold Buying Entity harmless against:

a) any and all third party claims against Buying Entity, 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 SPD of any of their obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by Buying Entity from third party claims arising by reason of a breach by SPD of any of its obligations. Buyer shall incorporate appropriate covenants in the PPA for the above obligations of SPD. In so far as indemnity to Buying Entity is concerned, SPD shall be the indemnifying party and not Buyer.

10.2 Procedure for claiming Indemnity

10.2.1 Third party claims

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a) or 10.1.2 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) or 10.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as

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reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

i) the Parties choose to refer the dispute in accordance withArticle 12.3; 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 the claim for which it is entitled to be Indemnified under Article 10.1.1(a) or 10.1.2(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 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.

10.3 ***Indemnifiable Losses***

10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b) or 10.1.2 (b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the

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Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 10.3, such event shall constitute a payment default under Article 9.

10.4 ***Limitation on Liability***

10.4.1 Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/SPD nor its/ 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 permitted 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 properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise. The Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and resell the electricity to the Buying Entity (ies) to enable Buying Entity (ies) to fulfill the Renewable Purchase Obligations (RPO) as per provisions of this Agreement and, therefore, the performance of the obligations of the SECI under this Agreement shall be subject to the ability of the SECI to enforce the corresponding obligations under PPA on back to back basis. Further, any liability arising out of PPA shall be passed on to the Buying Entity under this Agreement on back to back basis.

10.4.2 Buyer/SPD shall have no recourse against any officer, director or shareholder of Buying Entity or any Affiliate of Buying Entity or any of its officers, directors or shareholders for such claims excluded under this Article. Buying Entity shall have no recourse against any officer, director or shareholder of Buyer or SPD, or any affiliate of Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

10.5 ***Duty to Mitigate***

10.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 10.

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ARTICLE 11: ASSIGNMENTS AND CHARGES

11.1 *Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing.

Provided that, such consent shall not be withheld if Buyer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

11.2 *Permitted Charges*

11.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

Solar Energy Corporation of India Ltd. New Delhi

ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION

12.1 *Governing Law*

12.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

12.2 *Amicable Settlement and Dispute Resolution*

12.2.1 ***Amicable Settlement***

i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute 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.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 12.2.1 (i), furnish:

(i) counter-claim and defences, if any, regarding the Dispute; and

(ii) all written material in support of its defences and counter-claim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article12.2.1(i) if the other Party does not furnish any counter claim or defence under Article 12.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 12.2.1(iii), the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

Solar Energy Corporation of India Ltd. New Delhi

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12.3 ***Dispute Resolution***

12.3.1 Dispute Resolution by the Appropriate Commission

i. Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to bereferred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

ii. The obligations of Buying Entity under this Agreement towards Buyer shall not be affected in any manner by reason of inter-se disputes amongst Buying Entity.

iii. Buyer shall be entitled to co-opt the SPDas a supporting party in such proceedings before the Appropriate Commission.

12.3.2 Not Used

12.4 ***Parties to Perform Obligations***

12.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission as provided in Article 12.3 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 (which are not in dispute) under this Agreement.

Solar Energy Corporation of India Ltd. New Delhi

9/12/22

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 *Amendment*

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

13.2 *Third Party Beneficiaries*

13.2.1 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.

13.3 *Waiver*

13.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

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

13.4 *Confidentiality*

13.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

a) to their professional advisors;

b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

c) disclosures required under Law

without the prior written consent of the other Parties.

Solar Energy Corporation of India Ltd. New Delhi

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13.5 ***Severability***

13.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

13.6 ***Notices***

13.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

13.6.2 If to Buying Entity, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : BEST Undertaking, Multi storied Annex Building, 1st Floor,
BEST Marg, Colaba, Mumbai- 400001
Attention: Chief Engineer(Regulatory)
Email : derc@bestundertaking.com
Telephone No. : 022-22799567

13.6.3 If to Buyer, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address : 6th Floor, Plate-B, NBCC Office Block Tower-2,
East KidwaiNagar, New Delhi-110023

Attention : General Manager (Power Trading)
Email : aknaik@seci.co.in
Telephone No. : 011-24666-215

13.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for

Solar Energy Corporation of India Ltd. New Delhi

delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

13.7 ***Language***

13.7.1 All agreements, correspondence and communications between the Parties relating this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

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

13.8 ***Restriction of Shareholders / Owners' Liability***

13.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956/2013.

13.9 ***Taxes and Duties***

13.9.1 Buying Entity shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on Buying Entity, contractors or their employees, that are required to be paid by Buying Entity as per the Law in relation to the execution of the Agreement.

13.9.2 Buyer shall be indemnified and held harmless by Buying Entity against any claims that may be made against Buyer in relation to the matters set out in Article 13.9.1.

Solar Energy Corporation of India Ltd. New Delhi

13.9.3 Buyer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of Buying Entity by Buyer on behalf of Buying Entity or its personnel.

13.10 ***No Consequential or Indirect Losses***

13.10.1The liability of Buying Entity and Buyer shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall Buyer or Buying Entity claim from one another any indirect or consequential losses or damages.

13.11 ***Order of priority in application***

In case of inconsistencies between the agreement(s) executed between the Parties, applicableLaw including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

i. applicable Law, rules and regulations framed thereunder;
ii. the Grid Code; and
iii.the terms and conditions of this Agreement read along with SECI-SPD PPA;

13.12 ***Independent Entity***

13.12.1 Buying Entity/Buyer shall be an independent entity performing its obligations pursuant to the Agreement.

13.12.2 Subject to the provisions of the Agreement, Buying Entity/Buyer shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of Buying Entity in connection with the performance of the Agreement shall be under the complete control of Buying Entity and shall not be deemed to be employees, representatives, of Buyer and nothing contained in the Agreement or in any agreement or contract awarded by Buying Entity shall be construed to create any contractual relationship between any such employees, representatives or contractors and Buyer.

Solar Energy Corporation of India Ltd. New Delhi

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13.13 ***Compliance with Law***

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

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[**SECI**]

अतुल्य कुमार नायक / Atulya Kumar Naik
महाप्रबंधक / General Manager
विद्युत व्यापार और वाणिज्यिक विभाग
Power Trading & Commercial Department
सोलर एनर्जी कॉर्पोरेशन ऑफ इंडिया लि. / Solar Energy Cop. of India Ltd
(भारत सरकार का उद्यम) / (A Govt. of India Enterprise)
6वी मंजिल, प्लेट-बी, एनबीसीसी कार्यालय ब्लॉक टावर.२,
6th Floor, Plate-B, NBCC Office Block Tower-2,
पूर्वी किदवई नगर, नई दिल्ली-110023/East Kidwai Nagar, New Delhi-110023

Signature with seal

Witness:

1. Shibasish Das
Sr. manager (PT)

2.

For and on behalf of
[**BEST**]

N. M. Herlekar
Asst. General Manager (ESupply)

Signature with seal

Witness:

1. N. N. Chavgule
CER.

2. Sanjay S. Bansode
DEPP.

SCHEDULE 1: LIST OF LOAs ISSUED TO SPDs

Sl. No.	SPD Name	Project Capacity (MW)	Applicable Tariff as per SECI-SPD PPA(Rs/kWh)
1.	Adani Green Energy Four Limited *	2000	2.54
2.	Azure Power India Private Limited	1000	2.54
Weighted Average Tariff(kWh)			2.54

* - BEST Undertaking will receive the solar energy from the project of Adani Green Energy Four Limited.

2 ***SCHEDULE 2: BUYER-SPD PPA***

[Shall be provided to Buying Entity within 30 Days of signing of PPA with SPD]

3 ***SCHEDUE 3: AMOUNT REALISATION FOR SALE OF SOLAR POWER***

(i) The billing to Buying Entity shall be done by Buyer for realisation of amount for Solar Power.

(ii) The payments to be made by Buying Entity to Buyer for the Solar Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power.

(iii) The Bills shall be raised by Buyer on Buying Entity as mentioned in clause 6.2

Solar Energy Corporation of India Ltd. New Delhi

9/12/22

The Brihan Mumbai Electric Supply & Transport Undertaking

(OF THE BRIHAN MUMBAI MAHANAGARPALIKA)

TELEPHONE : (022) 22856262
FAX : (022) 22851244
TELEX : 1185755 BEST IN
TELEGRAM : BEST, MUMBAI-400 001.

BEST BHAVAN,
BEST MARG,
POST BOX NO. 192.
MUMBAI - 400 001.

ADDRESS ALL COMMUNICATION BY TITLE NOT BY NAME

OUR REF. : CER / PP / 14 / 2024

DATE : 11 MAR 2024

To,

The Secretary,
Maharashtra Electricity Regulatory Commission,
13th Floor, World Trade Centre,
Centre No.1, Cuffe Parade,
Colaba, Mumbai – 400 005.

Sub: Extension of Power Purchase Agreement between BEST and TPC(G).

Ref: 1) Hon'ble Commission's Order dated 03.11.2022 in Case No. 29 of 2022.
2) Hon'ble Commission's Order dated 28.11.2023 in Case No. 39 of 2023.
3) Hon'ble Commission's Order dated 28.12.2023 in Case No. 189 of 2023.

Sir,

As per Hon'ble Commission's Orders in Case No. 39 of 2023 and Case No. 189 of 2023, BEST Undertaking has signed extension of unit wise power purchase agreement with Tata Power Company Limited – Generation Business (TPCG) for total 676.69 MW Power on 06.03.2024 for 5 years from 1st April 2024 to 31st March 2029. Copies of the same are enclosed herewith.

The terms and conditions are same as the earlier arrangements, including all the changes effective up to 31st March 2024. With respect to the arrangement for Bhira Hydro Generating Station, the directions of the Hon'ble Commission in the Order in Case No. 29 of 2022 have been incorporated in addition to the existing terms and conditions.

We request the Hon'ble Commission to take this on record, please.

Yours faithfully,

(Dr. R. D. Patsute)
Chief Engineer (Regulatory)

Encl: *As above

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited - Generation Business (Tata Power-G)

For

Part Capacity from 500 MW Unit [5] at Trombay Thermal Power Station, Mumbai

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March, 2019)

THE TATA POWER COMPANY LIMITED ★ MUMBAI

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 246745

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२४
18 JAN 2024
सक्षम अधिकारी

श्रीमती सुषमा चव्हाण

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day .....06th..... .of ..March 2024

between

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"**), which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहात का ?	YES/NO
मिळकतीचे वर्णन -	The Tata Power Co. Ltd.
मुद्रांक विकत घेणाऱ्याचे नाव	Sant Tukaram Road,
दुसऱ्या पक्षकाराचे नाव	Bunder, Masjid, Mumbai - 400 009.
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री नोंद वही अनु. क्रमांक/दिनांक	054
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	[illegible]
परवाना क्रमांक : ८०००[illegible]	
मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे [illegible] कोर्ट [illegible] कॉर्पोरेशन एस्प्लेनेड कोर्ट, महापालिका [illegible] - ४०० ००१.	
ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.	

30 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001(hereinafter referred to as **"Tata Power-G"**) which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as **"BEST")** is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as **"Hon'ble MERC")** on 6th November, 2007 and is in force thereafter.

THE TATA POWER COMPANY LIMITED MUMBAI

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. lst April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year upto 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G

THE TATA POWER COMPANY LIMITED MUMBAI

for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

j) Further, Tata Power-D has also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-35. The Hon'ble commission in its Order dated 28th November 2023 directed BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is (Afferent and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tare' is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in spirit of the order dated 28th November 2023 in Case No 39 of 2023 has therefore decided to enter into the present extension of existing PPA for 255.85 MW (i. e. 51.17%) from 500 MW unit 5 at Trombay Thermal Power Station, Mumbai

1) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations/Orders of the Hon'ble MERC, as amended/passed from time to time.

THE TATA POWER COMPANY LIMITED MUMBAI

m) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of power 255.85 MW (i. e. 51.17%) from 500 MW unit 5 at Trombay Thermal Power Station, Mumbai in accordance with the direction of the Hon'ble MERC Order dated 28th November 2023 passed in Case No.39 of 2023. Further, in case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly.The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall
prevail in case of any material inconsistency. The existing PPAs dated 28th March 2019, 21st December 2006, 5th February 2010 and 26th March 2018 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**

2. The Power PurchaseAgreement shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreementsand in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

THE TATA POWER COMPANY LIMITED MUMBAI

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory DR. ASHWINI JOSHI, IAS GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President - Generation	1. Bilal. A. W. Shaikh AGM (LEC) BEST.
2. Mr. Shirish Kamat Chief - Trombay	2. Dr. R. D. Patsute Chief Engineer (Regulatory)

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited - Generation Business (Tata Power-G)

For

Part Capacity from 180 MW Unit [7] at Trombay Thermal Power Station, Mumbai

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March 2019)

THE TATA POWER COMPANY LIMITED MUMBAI

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 246747

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२४
18 JAN 2024
सक्षम अधिकारी

श्रीमती सुषमा चव्हाण

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day .....06th.....of .March.2024

between

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"**), which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहेत का ?	YES/NO
मिळकतीचे वर्णन -	The Tata Power Co. Ltd.
मुद्रांक विकत घेणाऱ्याचे नाव	34, Sant Tukaram Road, Carnac Bunder, Masjid, Mumbai - 400 009.
दुसऱ्या पक्षकाराचे नाव	
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री नोंद वही अनु. क्रमांक/दिनांक	056
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	डी. डी. पाटणकर
परवाना क्रमांक : ८००००	
मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे मेट्रोपॉलिटीन मॅजिस्ट्रेटस कोर्टस बार असोसिएशन एस्प्लेनेड कोर्ट, महापालिका जवळ, मुंबई-४००००	

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.

30 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001(hereinafter referred to as **"Tata Power-G"**) which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as **"BEST")** is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit 4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referredto as **"Hon'ble MERC")** on 6th November, 2007 and is in force thereafter.

THE TATA POWER COMPANY LIMITED MUMBAI

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. 1st April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year upto 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G

THE TATA POWER COMPANY LIMITED MUMBAI

for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

j) Further, Tata Power-D has also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-35. The Hon'ble commission in its Order dated 28th November 2023 directed BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is different and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tariff is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in spirit of the order dated 28th November 2023 in Case No 39 of 2023 has therefore decided to enter into the present extension of existing PPA for 92.11 MW (i.e. 51.17%) from 180 MW unit 7 at Trombay Thermal Power Station, Mumbai.

l) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations/Orders of the Hon'ble MERC, as amended/passed from time to time.

THE TATA POWER COMPANY LIMITED MUMBAI

m) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of power 92.11 MW (i.e. 51.17%) from 180 MW unit 7 at Trombay Thermal Power Station, Mumbai in accordance with the direction of the Hon'ble MERC Order dated 28th November 2023 passed in Case No.39 of 2023. Further, in case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly.The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall
prevail in case of any material inconsistency. The existing PPAs dated 28th March 2019, 21st December 2006, 5th February 2010 and 26th March 2018 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**

2. The Power PurchaseAgreement shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreementsand in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

THE TATA POWER COMPANY LIMITED MUMBAI

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory DR. ASHWINI JOSHI, IAS. GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President - Generation	1. Bilal. A.W. Shaikh AGM(ES)
2. Mr. Shirish Kamat Chief - Trombay	2. Dr. R.D. Patsute **Chief Engineer (Regulatory)**

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited - Generation Business (Tata Power-G)

For

Part Capacity from 250 MW Unit [8] at Trombay Thermal Power Station, Mumbai

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March, 2019)

THE TATA POWER COMPANY LIMITED MUMBAI

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भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100

ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 246748

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२४
18 JAN 2024
सक्षम अधिकारी

श्रीमती सुषमा चव्हाण

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day .....06th..... .of .March 2024

between

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"**, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहेत का ?	YES/NO
मिळकतीचे वर्णन	The Tata Power Co. Ltd.
मुद्रांक विकत घेणाऱ्याचे नाव	34, Sant Tukaram Road,
दुसऱ्या पक्षकाराचे नाव	Carnac Bunder, Masjid, Mumbai - 400 009.
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक दिनांक नोंद वही अनु. क्रमांक/दिनांक	057
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	डी. डी. पाटणकर

परवाना क्रमांक : ८०००० २४

मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे मेट्रोपॉलिटन मॅजिस्ट्रेट्स कोर्ट, बार असोसिएशन एस्प्लेनेड कोर्ट, महापालिका मार्ग, मुंबई - ४०

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्या कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.

10 JAN 2024

10 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001(hereinafter referred to as **"Tata Power-G"** which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as **"BEST")** is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as **"Hon'ble MERC")** on 6th November, 2007 and is in force thereafter.

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. 1st April 2010,

THE TATA POWER COMPANY LIMITED MUMBAI

which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year upto 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

j) Further, Tata Power-D has also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-

35. The Hon'ble commission in its Order dated 28th November 2023 directed BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is different and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tariff is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in spirit of the order dated 28th November 2023 in Case No 39 of 2023 has therefore decided to enter into the present extension of existing PPAfor 100 MW (i.e. 40.00 %) from 250 MW unit 8 at Trombay Thermal Power Station, Mumbai.

1) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations/Orders of the Hon'ble MERC, as amended/passed from time to time.

m) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

THE TATA POWER COMPANY LIMITED MUMBAI

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of power 100 MW (i.e. 40.00%) from 250 MW unit 8 at Trombay Thermal Power Station, Mumbai in accordance with the direction of the Hon'ble MERC Order dated 28th November 2023 passed in Case No.39 of 2023. Further, in case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly. The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall
prevail in case of any material inconsistency. The existing PPAs dated 28th March 2019, 21st December 2006, 5th February 2010 and 26th March 2018 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**

2. The Power Purchase Agreement shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreements and in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

THE TATA POWER COMPANY LIMITED MUMBAI

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 ---------- DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 ---------- MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory ---------- DR. ASHWINI JOSHI, IAS. GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President - Generation	1. Bilal. A-W. Shaikh AGM (ES) BEST
2. Mr. Shirish Kamat Chief - Trombay	2. Dr. R.D. Patsute Chief Engineer (Regulatory)

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited - Generation Business (Tata Power-G)

For

Part Capacity from 72 MW at Khopoli Hydro Generating Station, in the State of Maharashtra

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March, 2019)

THE TATA POWER COMPANY LIMITED
MUMBAI

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 648556

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२४
25 JAN 2024
सक्षम अधिकारी
श्रीमती लता सांगळे

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day ....06th.....of ..March 2024

between

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"),** which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहेत का ?	YES/NO
मिळकतीचे वर्णन -	The Tata Power Co. Ltd.
मुद्रांक विक्रेत्याचे नाव	34, Sant Tukaram Road, Carnac Bunder, Masjid, Mumbai - 400 009.
दुसऱ्या पक्षकाराचे नाव	
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री नोंद वही अनु. क्रमांक/दिनांक	301
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	डी. डी. पाडणकर
परवाना क्रमांक : ८०००० २४	
मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे मेट्रोपॉलिटीन मॅजिस्ट्रेटस कोर्टस् बार असोसिएशन एस्प्लेनेड कोर्ट, महापालिका मार्ग, मुंबई - ४००००१.	
ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्या कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.	

31 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001(hereinafter referred to as **"Tata Power-G"**) which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as **"BEST")** is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit 4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as **"Hon'ble MERC")** on 6th November, 2007 and is in force thereafter.

THE TATA POWER COMPANY LIMITED MUMBAI

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. lst April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year upto 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

THE TATA POWER COMPANY LIMITED MUMBAI

j) Further, Tata Power-D has also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-35. The Hon'ble commission in its Order dated 28th November 2023 directed BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is different and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tariff is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in spirit of the order dated 28th November 2023 in Case No 39 of 2023 has therefore decided to enter into the present extension of existing PPA for 36.84 MW (i.e. 51.17%) from 72 MW at Khopoli Hydro Power Station, Maharashtra.

1) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations/Orders of the Hon'ble MERC, as amended/passed from time to time.

m) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance

THE TATA POWER COMPANY LIMITED MUMBAI

with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of power 36.84 MW (i. e. 51.17%) from 72 MW at Khopoli Hydro Power Station, Maharashtra in accordance with the direction of the Hon'ble MERC Order dated 28th November 2023 passed in Case No.39 of 2023.Further, subject to mutual agreement, it can be extended for longer period say 15 / 20 years based of life assessment studyin accordance with the observation of the Hon'ble MERC Order dated 28th November 2023 in Case No. 39 of 2023.In case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly.The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency. The existing PPAs dated 28th March 2019, 21st December 2006, 5th February 2010 and 26th March 2018 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**

2. The Power PurchaseAgreement shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreementsand in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

THE TATA POWER COMPANY LIMITED MUMBAI

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 ---------- DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 ---------- MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory ---------- DR. ASHWINI JOSHI, IAS. GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President - Generation	1. Bilal A.W. Shaikh AAM(ES) BEST
2. Mr. Prabhakar Kale Chief - Hydro	2. Dr. R. D. Patsute **Chief Engineer (Regulatory)**

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited - Generation Business (Tata Power-G)

For

Part Capacity from75 MW at Bhivpuri Hydro Generating Station, in the State of Maharashtra

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March 2019)

THE TATA POWER COMPANY LIMITED ★ MUMBAI

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 246750

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२४
18 JAN 2024
सक्षम आधिकारी

श्रीमती सुषमा चव्हाण

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day .....06th..... .of .March 2024

between

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"**), which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहेत का ?	YES/NO
मिळकतीचे वर्णन -	
मुद्रांक विकत घेणाऱ्याचे नाव	The Tata Power Co. Ltd. 34, Sant Tukaram Road, Carnac Bunder, Masjid, Mumbai - 400 009.
दुसऱ्या कलमाचे नाव	
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री नोंद वही अनु. क्रमांक/दिनांक	059
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	डी. डी. पाटणकर
परवाना क्रमांक : ८०००२४	
मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे मेट्रोपॉलिटीन मॅजिस्ट्रेट कोर्टस् बार असोसिएशन एस्प्लेनेड कोर्ट, महापालिका मार्ग, मुंबई - ४०० ००१.	
ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला ज्यांचे त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्याते वापरणे बंधनकारक आहे.	

30 JAN 2024

30 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001 (hereinafter referred to as **"Tata Power-G"**) which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as **"BEST")** is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as **"Hon'ble MERC")** on 6th November, 2007 and is in force thereafter.

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. lst April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had

THE TATA POWER COMPANY LIMITED MUMBAI

accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one yearupto 31st March, 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

j) Further, Tata Power-D has also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-35. The Hon'ble commission in its Order dated 28th November 2023 directed

THE TATA POWER COMPANY LIMITED MUMBAI

BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is different and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tariff is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in spirit of the order dated 28th November 2023 in Case No. 39 of 2023 has therefore decided to enter into the present extension of existing PPAfor38.38 MW (i.e. 51.17%) from 75 MW at Bhivpuri Hydro Power Station, Maharashtra.

1) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations/Orders of the Hon'ble MERC, as amended/passed from time to time.

m) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

THE TATA POWER COMPANY LIMITED MUMBAI

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of power 38.38 MW (i.e. 51.17%) from 75 MW at Bhivpuri Hydro Power Station, Maharashtra in accordance with the direction of the Hon'ble MERC Order dated 28th November 2023 passed in Case No.39 of 2023. Further, subject to mutual agreement, it can be extended for longer period say 15 / 20 years based of life assessment studyin accordance with the observation of the Hon'ble MERC Order dated 28th November 2023 in Case No. 39 of 2023. In case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly. The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency. The existing PPAs dated 28th March 2019, 21st December 2006, 5th February 2010 and 26th March 2018 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**

2. The Power PurchaseAgreement shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreementsand in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

THE TATA POWER COMPANY LIMITED MUMBAI

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 ---------- DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 ---------- MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory ---------- DR. ASHWINI JOSHI, IAS. GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President - Generation	1. Bilal A.W. Shaikh AAMLES)
2. Mr. Prabhakar Kale Chief - Hydros	2. Dr. R.D. Patsute **Chief Engineer (Regulatory)**

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihanmumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited – Generation Business (Tata Power-G)

For

Part Capacity from 300 MW at Bhira Hydro Generating Station, in the State of Maharashtra

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010, 26th March, 2018 and 28th March, 2019)

THE TATA POWER COMPANY LIMITED
MUMBAI

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◐ 2023 ◐ 86AA 648552

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८००००२४
25 JAN 2024
सक्षम अधिकारी

श्रीमती लता सांगळे

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day ....06th.....of.March.2024 **between**

1. **Brihanmumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai-400001 (hereinafter referred to as the **"BEST"**), which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

THE TATA POWER COMPANY LIMITED MUMBAI

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	AGREEMENT
दस्त नोंदणी करणार आहेत का ?	YES/NO
मिळकतीचे वर्णन -	The Tata Power Co. Ltd.
मुद्रांक विकत घेणाऱ्याचे नाव	34, Sant Tukaram Road, Carnac Bunder, Masjid, Mumbai - 400 009.
दुसऱ्या पक्षकाराचे नाव	
हस्ते असल्यास त्याचे नाव व पत्ता	BEST
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री नोंद वही अनु. क्रमांक/दिनांक	297
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	जी. डी. पाटणकर

परवाना क्रमांक : ८०००००२४

मुद्रांक विक्रीचे ठिकाण/पत्ता : दि बॉम्बे मेट्रोपोलिटीन मॅजिस्ट्रेटस कोर्टस् बार असोसिएशन एस्प्लेनेड कोर्ट, महापालिका मार्ग, मुंबई - ४०००१.

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यांत वापरणे बंधनकारक आहे.

31 JAN 2024

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2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai-400001 (hereinafter referred to as **"Tata Power-G"**) which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as "**BEST**") is deemed distribution licensee under the proviso of Section 14 of Electricity Act, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the Order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit 4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity

THE TATA POWER COMPANY LIMITED MUMBAI

Regulatory Commission (hereinafter referred to as **"Hon'ble MERC"**) on 6th November, 2007 and is in force thereafter.

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. 1st April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year up to 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW vide its Order dated 2nd January 2019 in case no 249 of 2018.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

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i) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the PPA between BEST and Tata Power-G for 676.69 MW for a period of five years from 1st April 2019 to 31st March 2024 (i.e. upto 31st March 2024).

j) Subsequently, Tata Power-G also filed a Petition bearing Case No. 29 of 2022 for approval of the methodology of operation of Bhira Pump Storage unit (BPSU) and related commercial settlement. In its order dated 3rd November 2022, Hon'ble MERC directed as below: -

> *"22.13 The Commission is of the view that TPC-D and BEST may explore the exchange of surplus power capacity among themselves which has been enabled through the aforesaid Regulation.*
>
> *22.14 Having said that, the Commission notes that it is likely that operationalization of the BPSU may commence after expiry of the current PPA period. Further, the Commission, in later part of this Order (para. 24.4 (viii)) has issued a direction regarding supplementary PPAs that may be entered into between TPC-G and the Distribution Licensees (TPC-D and BEST). Accordingly, TPC-G may incorporate appropriate clauses regarding flexible proportion of pumping power, in its supplementary PPAs which may be entered into between TPC-G and the Distribution Licensees.*
>
> ...
>
> *24.4 Billing mechanism of the power generated on account of pumped power:*
>
> ...
>
> > *viii. The Commission further notes that it is the claim of TPC-G that the BPSU is the existing pumped Storage unit since it was commissioned in year 1997. If that is the case, then its billing methodology should have been as per the PPA entered into with the beneficiaries. However, the existing PPAs executed between TPC-G and BEST/TPC-D do not provide any billing methodology for BPSU. Be as it may, the Commission notes that the implementation of the proposed scheme i.e. " Operationalization of Bhira Pumped Storage Unit in pumping mode" would have execution period of around two years and by that time the existing PPAs with BEST and TPC-D would get expired. Accordingly, it is directed that the billing methodology approved in this Order shall be incorporated in the supplementary PPAs, wherever same will be entered into with the Distribution Licensees."*

k) Further, Tata Power- D had also filed a Petition bearing Case No. 39 of 2023 for approval of its power procurement plan for the period FY 2024-25 to FY 2034-

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35. The Hon'ble commission in its Order dated 28th November 2023 directed BEST and Tata Power- D to extend the existing PPA for next five years i.e., from 1st April 2024 to 31st March 2029. Hon'ble MERC in the Order, directed as follows:

> *"24.10 In view of above, the Commission directs TPC-D to extend existing PPA with TPC-G for 5 years from 1 April 2024 i.e. 31 March 2029. While extending such PPA for 5 more years, it is also important to prepare for gradual phase out if sufficient transmission capacity becomes ready. The Commission notes that TPC-G has different type of units i.e. Coal based, Gas based and Hydro units, life of each generating unit of is different and the Commission has been determining unit wise tariff for all units of TPC-G. However, PPA signed by TPC-G with Distribution Licensee i.e. TPC-D and BEST Undertaking is bundled PPA for all units. But considering the fact that tariff is not bundled tariff and is being determined unit wise, the Commission is of the opinion that PPA should also be signed unit wise. This will help while decided about next extension of PPA. At that point of time, based on available transmission capacity, PPA for certain costly embedded units can be discontinued. Also, PPA for cheaper Hydro units can be extended for longer period say 15/20 years based on life assessment study. Such arrangement would also enable TPC-G to undertake long term capital investment on their generating units. Hence, the Commission directs TPC-D to sign unit wise PPA with TPC-G for extended period of 5 years. While signing such PPA, existing unit wise allocation between BEST Undertaking and TPC-D shall be maintain. Based on same principles, BEST Undertaking shall also sign unit wise PPA with TPC-G."*

l) In view of the foregoing, the parties have therefore decided to enter into the present extension of existing PPA for 153.51 MW (i.e. 51.17% share) out of 300 MW Bhira Hydro Generating Station in the state of Maharashtra.

m) The Pump Storage Facility at Bhira Hydro Generating Station is scheduled to commence commercial operations in the FY 2024-25 for which the actual date of operationalisation will be communicated separately.

n) Accordingly, the commercial operations, settlement and billing will be guided by the principles set in the Order dated 3rd November 2022 in Case No. 29 of 2022 and operational methodology released by Maharashtra State Load Despatch Centre (MSLDC).

o) The Energy sharing and related commercial settlement will be based on the mutual agreement with BEST and Tata Power -D as stipulated in the Order dated 3rd November 2022 in Case No. 29 of 2022.

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p) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations of the Hon'ble MERC, as amended from time to time.

q) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA, including recovery of Capital expenditure (Capex) during the PPA period, shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years Only from 1st April, 2024 to 31st March, 2029, on the terms and conditions as stated therein for supply of 51.17 % share i.e. 153.51 MW out of 300 MW Bhira Hydro Generating Station in the State of Maharashtra in accordance with the directions of the Hon'ble MERC in Case No. 29 of 2022. Further, subject to mutual agreement, it can be extended for longer period say 15 / 20 years based of life assessment study in accordance with the observation of the Hon'ble MERC Order dated 28th November 2023 in Case No. 39 of 2023. Further, in case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 and its amendment from time to time, the same shall stand modified accordingly. The PPA is subject to the relevant provisions of the Tariff Regulations and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency. The existing PPAs dated 21st December 2006, 5th February 2010 and 26th March 2018 and 28th March 2019 are attached as **Annexure-1, Annexure-2, Annexure-3 and Annexure-4.**
   Provided that the storage facility will be available only for the period of the PPA, as services payable as per terms of this PPA.

2. The PPA shall come into force from the date of **1st April 2024** for all-purpose and intent and shall remain operative till **31st March 2029** or till any further

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date of extension on mutually agreed terms as per Article 3.3 of the existing agreements and in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory-1 DR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory-2 MR. VISPI PATEL COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED MUMBAI	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory DR. ASHWINI JOSHI, IAS. GENERAL MANAGER THE B. E. S. & T. UNDERTAKING Name & Designation Common Seal
In the presence of	In the presence of
1. Mr. Ashish Khanna President-Generation	1. Bilal. A.W. Shaikh AGM (ES)
2. Mr. Prabhakar Kale Chief - Hydro	2. Dr. R.D. Patsute **Chief Engineer (Regulatory)**

BEST 2019-2024

Extension of

POWER PURCHASE AGREEMENT

BETWEEN

Brihan-Mumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited – Generation Business (Tata Power-G)

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006, 5th February, 2010 & 26th March, 2018)

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◑ 2019 ◑ UY 734658

मुख्य मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८००००१८
12 FEB 2019
सक्षम अधिकारी

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "Extension of Power Purchase Agreements") is made this day 28th March of 2019, **between**

1. **BrihanMumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihanmumbai Municipal Corporation (BMC), a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai – 400 001 (hereinafter referred to as the **"BEST"**, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai – 400001(hereinafter referred to as **"Tata Power-G"** which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

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BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihanmumbai Electric Supply and Transport Undertaking (hereinafter referred as "BEST") is deemed distribution licensee under the proviso of Section 14 of EA, 2003 and engaged in distribution and supply of electricity to consumers within its licence area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements.

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G") within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensees/Companies including BEST;

c) BEST and Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA, it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned and subsequently, capacity of 67.53 MW of Unit 4 will get reduced once the Unit4 is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as "MERC") on 6th November, 2007 in force thereafter.

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. 1st April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016, the

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contracted capacity of BEST from the generating units of Tata Power-G was 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2010) less 68 MW Unit 4 decommissioning). Both the PPAs were coterminous and expired on 31st March, 2018.

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Case No. 176 of 2017, inter alia seeking extension of the existing PPAs between BEST and Tata Power-G for one year in terms of clause 3.3 of the existing PPAs.

f) The Hon'ble MERC vide its order in Case No. 176 of 2017 dated 27th February 2018, had approved extension of the validity of the PPA between BEST and Tata Power-G for one year up to 31st March 2019.

g) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27th February 2018 in Case No. 176 of 2017, executed the Supplementary Power Purchase Agreement on 26th March, 2018 between BEST and Tata Power-G for the period of one year upto 31st March, 2019. The Hon'ble MERC approved the Supplementary PPA for the revised quantum of 676.69 MW.

h) During the subsistence of the above mentioned extended PPA, from 1st April 2018 to 31st of March, 2019, BEST filed a Petition before the Hon'ble MERC being Case No. 249 of 2018, inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the PPA dated 21st December, 2006 and in terms of Clause 3 of the Supplementary PPA dated 26th March, 2018.

i) As a part of the proceedings in the Case No. 249 of 2018, Tata Power and BEST conclusively reached following points of consensus, confirmed vide email dated 28 November, 2018 and were reproduced in the Order in Case No. 249 of 2018. The same is reproduced below:

3.1 That BEST and Tata Power agree for an extension of PPA with existing terms and conditions for total demand of 676.69 MW in different Tata Power Generating units for a period of five years effective from 1st April,2019 as follows:

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Sr. No	Generating Unit of Tata Power	Total Capacity (MW)	BEST's share (%)	Quantum tie up of BEST (MW)
1	Trombay Unit 5	500	51.17	255.85
2	Trombay Unit 7	180	51.17	92.11
3	Trombay Unit 8	250	40.00	100.00
4	Bhira Hydro	300	51.17	
5	Bhivpuri Hydro	75	51.17	228.73
6	Khopoli Hydro	72	51.17	
	Total	1377		676.69

The power will be purchased by BEST under Sec. 62 of Electricity Act 2003 with tariff being determined by MERC. The above option is deduced to be the least power purchase cost for BEST in the present scenario. Also it takes into consideration technical issues of necessity of Tata Power units for stable grid operation as recommended by STU/MSLDC.

3.2 On the background that the 100 year old Hydro power plants have been supplying power to the Mumbai city consumers who have in a way contributed to the cost realization of the plants through BEST and Tata Power and that now the energy is available at a cheap rate and likely to be cheaper in the future years also, BEST proposed that they would like to continue Hydro Power generation capacity tie up on a continual basis beyond year FY2023-24 in order to give benefit of the cheaper power to Mumbai city consumers of BEST and Tata Power while ensuring capex required for reliability and upgradation necessary for hydro plants.

Tata Power expressed that beyond the present extension of 5 years, the tie up of Hydro power and power from the operational thermal Unit 7 and Unit 8 of Trombay can be continued in the same ratio (51.17% of Hydro & Unit 7 and 40% of Unit 8) for blocks of 5 years each based on approval of cost of Life extensions of Unit 7 as approved by MERC and APM gas availability, which are reviewed every 5 years. Hydro power tie-up with BEST to continue even after completion of life of unit 7 and 8 through first right to avail Hydro power to be given to BEST and Tata Power on equitable basis from all the three hydro power plants mentioned in the above table. The extensions will be subject to applicable statutory approval as per the Electricity Act, 2003.

3.3 Mumbai island region has a typical circumstance arising out of tie-line constraints which have been endorsed by the STU / MSLDC report. Because of the tie line constraints the commercial tie ups cannot be done freely with any supplier whosoever. STU / MSLDC report has clearly indicated the importance of embedded generation and necessity of BEST to tie up with this embedded generation. Also retail competition has been promoted between licensees BEST and Tata Power in the region. BEST further expressed that in presence of tie-

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line constraints; fair retail competition has limitations as the two tend to contradict each other as the constraints do not allow free sourcing of power.

BEST mentioned that they would seek necessary relief from the Hon'ble Commission since the issue is governed by the relevant statutory provisions of the Electricity Act & Regulations.

However Tata Power expressed that this fear of BEST is unfounded in view of fair competition existing for more than a decade although major source of supply is from same plants at most competitive rates with unique benefit of cheapest hydro peaking power.

3.4 BEST further expressed that both parties shall continue to follow ethical and fair practices and that giving supply without substation wherever substation space has already been asked for as per the DC regulations will be avoided. Both the companies agree to set up contact persons for speedy resolution of any such issues which may come up.

3.5 Both the parties shall endeavor to resolve the issues if any amicably and in an environment of mutual support in interest of the electricity consumers of Mumbai city.

j) The Hon'ble MERC vide its Order in Case No. 249 of 2018 dated 2nd January 2019, had approved extension of the validity of the PPA between BEST and Tata Power-G for five years upto 31st March 2024.

k) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under Section 62 of the Electricity Act 2003 and as per the applicable Regulations of the Hon'ble MERC, as amended from time to time.

l) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

m) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 2nd January 2019 in Case No 249 of 2018 has therefore decided to enter into the present extension of existing Power Purchase Agreements.

This extension of Power Purchase agreement therefore witnesseth as under:

1. That the term of the existing PPAs stands extended for a further period of five years from 1st April, 2019 to 31st March, 2024, on the terms and conditions as stated therein for supply of 676.69 MW in accordance with the direction of the Hon'ble MERC in Case No

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249 of 2018. Further, in case any terms and conditions of existing PPAs are inconsistent with the relevant provisions of prevailing "Tariff Regulations" currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015 and its amendment from time to time, the same shall stand modified accordingly. The Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency. The MERC Order in Case No. 249 of 2018, existing PPAs for 800 MW, 100 MW and Supplementary PPA are attached as **Annexure 1** and **Annexure 2, Annexure 3 and Annexure 4** along with this Power Purchase Agreement.

2. The Power Purchase Agreement shall come into force from the date of **1st April 2019** for all-purpose and intent and shall remain operative **till 31st March 2024** or till any further date of extension on mutually agreed terms as per Article 3.3 of the existing agreements and in terms of Clause 3 of the Supplementary Agreement dated 26th March, 2018.

3. The Unit wise allocation of revised contracted capacity of 676.69 MW (excluding 256 MW of Unit 6) from Tata Power-G to BEST in line with the points of consensus arrived between the parties and as mentioned in the Order in Case No. 249 of 2018, is as given below:

Table: Revised Generation Capacity Allocation by Tata Power-G to BEST from 1st April, 2019 to 31st March, 2024.

Sr. No.	Name of Generating Station	Type of Plant	Installed Capacity (MW)	Generating Capacity contracted to BEST (MW)
1	Khopoli	Hydro	72	228.73
2	Bhivpuri	Hydro	75	
3	Bhira	Hydro	300	
4	Trombay			
4.2	Unit 5	Thermal	500	255.85
4.4	Unit 7	Thermal	180	92.11
4.5	Unit 8	Thermal	250	100
	Total		1377	676.69

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4. This extension of Power Purchase Agreement shall be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of **The Tata Power Company Limited** Authorised Signatory 1 MR. PRAVEER SINHA CEO & MANAGING DIRECTOR Name & Designation Authorised Signatory 2 MR. HAMOZ M. MISTRY COMPANY SECRETARY Name & Designation Common Seal	For and on behalf of **Brihanmumbai Electric Supply And Transport Undertaking (BEST)** Authorised Signatory Name & Designation Common Seal
In the presence of	In the presence of
1. BHASKAR SARKAR CHIEF STRATEGIC PROJECTS (T&D)	1. R.J. Singh DGM(ES), BEST
2. SWATI MEHENDALE HEAD REGULATORY WR	2. M. B. Umalkar AGM CES.

ANNEXURE 2

POWER PURCHASE AGREEMENT

BETWEEN

Brihan-Mumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited – Generation Business (TPC (G))

Abbreviations

ABT	Availability Based Tariff
ARR	Annual Revenue Requirement
BEST	Brihan-Mumbai Electric Supply and Transport Undertaking
BMC	Brihan Mumbai Municipal Corporation
BPTA	Bulk Power Transmission Agreement
CC	Capacity Charges
COD	Commercial Operation Date
CTs	Current Transformers
CTU	Central Transmission Utility
DC	Declared Capacity
EC	Energy Charges
EHV	Extra High Voltage
FCA	Fuel Cost Adjustment
FTR	Frequency Trend Relay
FY	Financial Year
GCV	Gross Calorific Value
GoM	Government of Maharashtra
HV	High Voltage
IC	Installed Capacity
IEGC	Indian Electricity Grid Code
InSTS	Intra-State Transmission System
IRLC	Irrevocable Letter of Credit
kV	Kilo Volt
L/C	Letter of Credit
MERC	Maharashtra Electricity Regulatory Commission

MSEB	Maharashtra State Electricity Board
MVA	Mega Volt Ampere
MW	Mega Watt
PLF	Plant Load Factor
PPA	Power Purchase Agreement
PTs	Potential Transformers
SGC	State Grid Code
SHR	Station Heat Rate
SLDC	State Load Despatch Centre
STU	State Transmission Utility
TPC (G)	The Tata Power Company Limited- Generation Business
TPC-(T)	The Tata Power Company Limited- Transmission Business
TPC-(D)	The Tata Power Company Limited- Distribution Business
UFR	Under Frequency Relay
UI	Unscheduled Interchange
VC	Variable Charge
WRLDC	Western Regional Load Despatch Centre

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PARTIES TO AGREEMENT AND RECITAL

This Power Purchase Agreement (here in after referred as the "PPA" or "Agreement") is made this day ....of....., between

1. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) for and on behalf of the Brihan Mumbai Municipal Corporation (BMC) a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai – 400 001 (hereinafter referred to as the BEST, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

2. The Tata Power Company Limited (TPC) a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai – 400001 which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

WHEREAS;

a) Brihan Mumbai Electric Supply and Transport Undertaking (hereinafter referred as BEST) is deemed distribution licensee under the proviso of Section 14 of EA, 2003 and engaged in distribution and supply of electricity to consumers within its license area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements

b) The Tata Power Company Limited (TPC) by the order dated 18th October, 2000 passed by the Hon'ble Bombay High court in company petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay, and supplying power generated from these stations though generation business of Tata Power Company Limited (hereinafter referred as TPC(G)) to Distribution Licensee/Companies including BEST;

c) BEST and the Original Licensee Companies had entered into an Agreement dated 1st October, 1987 for bulk supply of electricity as per the terms and conditions contained in

that Agreement. And the said agreement dated 1st October, 1987 has completed its full term on 15th August 2004 and the parties not having specifically terminated the said Agreement and the Agreement continuing to be in force on a month to month basis thereafter;

d) BEST vide its Petition dated 13th July, 2005 submitted the Draft Power Purchase Agreement for period of 10 years to be executed between the Tata Power Company Limited (TPC) and BEST for approval of the Commission;

e) The Commission in its order dated 7th July 2006 against the said petition directed BEST to submit revised Draft of Power Purchase Agreement to be executed between TPC as Generation Company and BEST as Distribution Licensee duly incorporating the additional provisions and changes suggested, and indicated in Sections 23 to 34 of the said Order of the Commission;

f) BEST enters into a power purchase agreement with TPC (G) in compliance to directions of the Commission's order dated 7th July 2006 and shall submit the same to the Commission under clause 24 of the Maharashtra Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2005 for approval within 30 days from the date of signing this agreement.

NOW THEREFORE, in view of the foregoing premises and in consideration of the mutual covenants and agreements herein after set forth, the Tata Power Company Limited (Generation Business) and the BEST hereby agree as follows:

1: ARTICLE: DEFINITIONS & INTERPRETATIONS

1.1 Definitions

The words/expressions mentioned below unless repugnant to the context shall have the meanings respectively as assigned hereunder:

(a) "Act" means the Electricity Act, 2003 (Central Act No.36 of 2003) and amended from time to time;

(b) "Agreement" means this Power Purchase Agreement (PPA) including its schedules, as amended, supplemented or modified from time to time in accordance with the terms and conditions herein and approved by the Commission thereof;

(c) "Auxiliary (Energy) Consumption" in relation to a period, means the quantum of energy consumed by auxiliary equipment of the generating station and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the unit(s) of the generating station. The auxiliary consumption for a thermal generating station shall include transformation losses within the generating station;

(d) "Availability" for any period means the average of the daily average Declared Capacities (DCs) for all the days during that period expressed as a percentage of the installed capacity of the generating station minus auxiliary consumption in MW, and shall be computed in accordance with the following formula:

$$Availability = 10000 \times \sum_{i=1}^{N} DCI / \{N \times IC \times (100 - AUX)\}\%$$

Where

IC = Installed Capacity of the generating station in MW

DCI = Average declared capacity for the ith time block in such period in MWs,

N = Number of time blocks in the given period,

AUX = Normative Auxiliary Energy Consumption in MW for each Unit / Plant of TPC expressed as a percentage of gross Generation as specified by the Commission from time to time;

(e) "Availability Based Tariff" means the tariff structure based on the availability of generating units and having three components which is Capacity Charges(CC), Energy Charge (EC) or Variable Charges (VC) and charges for Unscheduled Interchange (UI);

(f) "Billing Date" means the date on which the bill is presented by TPC (G) ;

(g) "Billing Month" means the calendar month for which bill is raised by TPC (G);

(h) "Check Meter" means the meter defined as "Check Meter" in the Metering Code for intra-state transmission system approved by the Commission;

(i) "Commission" means the Maharashtra Electricity Regulatory Commission;

(j) "Connection Agreement" means an agreement setting out the terms and conditions relating to connection to and / or use of the intra-State transmission system, as per MERC (State Grid Code) Regulations, 2006;

(k) "Contracted Capacity" means the capacity at the generator terminals contracted to be delivered by TPC (G) to BEST and more particularly defined in Article 4.1 of this Agreement;

(l) "Daily Capacity Index" means the declared capacity expressed as a percentage of the maximum available capacity for the day and shall be calculated in accordance with the following formula:

Daily Capacity Index = Declared Capacity (MW) x 100 / Maximum Available Capacity (MW)

and the term "Capacity Index" for any period shall be the average of the daily capacity indices calculated as above, for such period;

(m) "Declared Capacity (DC)" means as defined in the MERC (Terms and Conditions of Tariff) Regulations, 2005 including any amendment from time to time

(n) "Delivery points" means the physical point or points at which the transfer of electrical power occurs between the TPC-(G) and Intra-State transmission system for utilisation by BEST.

(o) "Designated Officer(s)" means the Officer(s) in TPC (G) and BEST designated by the respective parties for matters relating to Billing and Payment;

(p) "Dispatch Instruction" shall have the meaning given to it in the MERC (State Grid Code) Regulations, 2006;

(q) "Energy Charges" is the monthly amount payable by BEST to TPC (G) in respect of delivered energy and other matters related to the supply of fuel to the power station and shall be computed as specified by the Commission in accordance with regulation 35 of the MERC (Terms & Conditions of Tariff) Regulations 2005;

(r) "Effective Date" means the date on which this Agreement is approved by the Commission or the date on which this Agreement is signed by the Parties, whichever is later;

(s) **"Expiry Date"** means the date on which this Agreement expires and shall be the date which is ten years after the Effective Date;

(t) **"Fixed Charges"** means the fixed charges to be paid by BEST on a monthly basis to TPC (G) as specified by the Commission;

(u) **"Financial Year"** means the period from 1st of April of the year to 31st of March of the next year;

(v) **"Force Majeure"** means as defined in Article 12;

(w) **"Generating Station"** means any station of TPC(G) for generating electricity, including any building and plant with step-up transformer, switch yard, switch-gear, cables or other auxillary equipments, if any used for that purpose and the site thereof, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated, but does not include any sub-station;

(x) **"Generating Unit"** means an electrical Generating Unit coupled to a turbine within a Power Station together with all Plant and Apparatus at that Power Station (up to the Connection Point) which relates exclusively to the operation of that turbo-generator;

(y) **"Interface Meter"** means a meter used for accounting and billing of electricity, connected at the point of interconnection between electrical systems of generating company and the Intra-State Transmission System as specified in Metering Code ;

(z) **"Installed Capacity"** means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating stations (reckoned at the generator terminals) as approved by the Commission from time to time;

(aa) **"License Area of BEST"** shall mean license area for distribution of electricity granted to BEST under the relevant laws and statutes by the relevant authorities;

(bb) **"Main Meter"** means the meter defined as "main meter" in the Metering Code for intra-state transmission system approved by the Commission;

(cc) **"Metering System"** means meters and wherever applicable associated metering apparatus/equipment such as CTs, PTs, communications/SCADA equipment etc; necessary for such recording and communication of metered data and shall also include main meter, check meter and/or standby meters which are provided to enable proper accounting, billing, recording and auditing of energy consumption / energy transfer;

(dd) **"Metering Code"** means the code and/or the metering section of the State Grid Code in force or any amendments approved thereof by the Commission and covering aspects relating to metering equipment, its installations, operation and use;

(ee) "Monthly Bill" means the bill issued by the TPC(G) at the end of month under Article 10 showing (i) Fixed Charges and (ii) Energy Charges payable by BEST for the billing month;

(ff) "Normative Auxiliary Consumption" means the level of auxiliary consumption specified by the Commission from time to time as the norms of operations under MERC (Terms& Conditions of Tariff) regulations, 2005;

(gg) "Plant Load Factor" for a given period, means the total energy sent out corresponding to scheduled generation during the period, expressed as a percentage of sent out energy corresponding to installed capacity in that period and shall be computed in accordance with the following formula:

$$\text{PLF (\%)} = 10000 \times \sum_{i=1}^{N} SGI / \{N \times IC \times (100 - AUX)\}\%$$

Where;

IC	=	Installed Capacity of the generating stations in MW
SGI	=	Scheduled Generation in MW for i^{th} time period in ex bus as given by State Load Despatch Centre.
N	=	Number of time Blocks during the given period
AUX	=	Normative Auxiliary consumption in MW expressed as a percentage of gross generation

(hh) "Power Station" means the Generating Station as defined above;

(ii) "Primary Fuel" means coal/ oil/ gas which is used as the main fuel for firing in the boiler for generation of power;

(jj) "Project" means all activities related to construction, erection, testing and commissioning of a Generating Station undertaken prior to commercial Operation Date (COD);

(kk) "Prudent Utility Practices" means the practices, methods, techniques, and standards that are generally accepted nationally and internationally from time to time and commonly used in the national and international electric utility industry for the operation and maintenance of equipment of a Generating Station in a safe, prudent and reliable manner consistent with the parameters for such operation and maintenance. Such practices, methods, techniques and standards shall be adjusted as necessary to take account of the requirements of Law, physical conditions at the site on which a Generating Station is located and operation and maintenance guidelines of the manufacturers of plant and equipment installed in the Power Station which

TPC (G) is required to follow in order to maintain in effect any warranties, guarantees or insurance policies relating thereto;

(ll) "Reactive Power" means the product of root mean square (rms) voltage, root mean square (rms) current and the sine of the electrical phase angle between the voltage vector and current vector, measured in 'Volt – Ampere reactive' (VAr) and in standard multiples thereof;

(mm) "Referee" means person appointed under Article 13;

(nn) "Special Energy Meter (SEM)" means such meters, of not less than 0.2 class accuracy, as are capable of:-

(i) recording time-differentiated measurements of active energy and voltage differentiated measurement of reactive energy, at intervals of fifteen (15) minutes;

(ii) storing such measurements for not less than thirty-five (35) days; and

(iii) communication of such measurements at such intervals as maybe required by the State Load Despatch Centre for balancing and settlement of energy transactions;

(oo) "Scheduled Generation" at any time or for any given period or time block means the schedule of generation in MW ex-bus given by TPC (G);

(pp) "Secondary Fuel" means the liquid fuel for supplementary firing used during the start up and low load condition of the Generating station and also during stabilisation period;

(qq) "Start Up" means the preparation and activities carried out for synchronisation and connection of the Generating Station to the Grid System;

(rr) "State Grid Code (SGC)" means the MERC (State Grid Code) Regulations 2006 issued by Maharashtra Electricity Regulatory Commission and as amended from time to time;

(ss) "Supplementary Bill" means the bill raised by TPC (G) for any amount due to TPC (G), other than the monthly bill, as stipulated in Article 10 of this agreement;

The terms not defined herein shall have meaning as per the Electricity Act, 2003.

2: ARTICLE: REGULATORY APPROVAL

2.1 This power purchase agreement is subject to approval of the Commission under sections 62 and 86 of the Electricity Act, 2003 read with Regulation 24 of the MERC (Terms & Conditions of Tariff) Regulations, 2005. An application for approval of the Commission under section 86(1) (b) of the Electricity Act, 2003 read with clause 24 of the MERC (Terms & Conditions of Tariff Regulations, 2005) in so far its implication on the consumers and revenue requirement of BEST in the ARR concerned, shall be filed by BEST to the Commission within a period of 30 (Thirty) days of signing of the PPA. TPC (G) shall participate in the proceedings that may be initiated by the Commission for the approval of PPA between the parties. The terms of this Agreement shall stand modified as per the orders passed by the Commission to the power purchase agreement, provided that such modified terms are acceptable to TPC (G), TPC (G) shall inform BEST of the acceptance or non acceptance to the modifications within 30 days of the order of the Commission.

2.2 The parties also agree that any subsequent amendment / modification to this power purchase agreement shall be subject to the approval from the Commission.

3: ARTICLE: TERM OF AGREEMENT

3.1 Effective Date and Term of Agreement

3.1.1 The Agreement shall come into force from the Effective Date for all-purpose and intent and shall remain operative for a period of 10 (Ten) years unless extended as per Article 3.3 or terminated earlier as per Article 3.2.

3.1.2 The Agreement will remain in force even after expiry of this Agreement with mutual consent without further renewal or formal extension thereof and all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced except the tariff which shall be determined by the Commission from time to time.

3.2 Early Termination

This Agreement shall terminate before the Expiry Date:

3.2.1 if either BEST or TPC (G) exercises a right to terminate, pursuant to Article 13; or

3.2.2 in such other circumstances as the TPC (G) and BEST may subsequently agree, in writing.

3.3 Extension of Term

3.3.1 Prior to at least one hundred and eighty days (180) before the Expiry Date, BEST shall give a written notice to the TPC (G) that it wishes to extend this Agreement for an additional period.

3.3.2 Upon the receipt of the notice from BEST under Article 3.3.1 above, the parties shall in good faith negotiate the terms and conditions for extension of the agreement including the revision in tariffs and period of extension and if the parties mutually agree on the above the parties may decide to extend the Agreement with suitable modifications and approval of the Commission.

3.4 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement to the extent they refer to the obligations prior to the termination of the agreement.

4: ARTICLE: OBLIGATION TO SUPPLY AND TAKE ENERGY

4.1 Contracted Capacity

4.1.1 TPC (G) shall allocate 800 MW generating capacity (at TPC's generator terminal) from its power stations for supply to BEST. A total generating capacity of 800 MW shall be allocated and earmarked for use of BEST from the following installed generating capacity owned, operated and maintained by TPC (G):

Table 1: Generation Capacity Allocation to BEST

Sr. No.	Name of Generating Station	Type of Plant	Installed Capacity (MW)	Generating Capacity contracted to BEST (MW)
1.	Khopoli	Hydro	72	800 x 72 / 1777 = 32.41
2.	Bhivpuri	Hydro	75	800 x 75 / 1777 = 33.76
3.	Bhira	Hydro	300	800 x 300 / 1777 = 135.06
4.	Trombay			
4.1	Unit 4	Thermal	150	800 x 150 / 1777 = 67.53
4.2	Unit 5	Thermal	500	800 x 500 / 1777 = 225.10.
4.3	Unit 6	Thermal	500	800 x 500 / 1777 = 225.10
4.4	Unit 7	Thermal	180	800 x 180 / 1777 = 81.04
	Total Capacity Allocation		1777.00	800

4.1.2 The despatch from a generating station for BEST shall be sum of gross energy generated at the generator terminals of all the unit(s) of the generating station less auxiliary energy consumption at normative level approved by the Commission from time to time.

4.1.3 The contracted capacity allocation to BEST shall be from overall aggregate capacity of TPC (G) without any reference specific generating units i.e. the allocation of 800 MW will be constituted through share from each generating units as shown in the table above. Subject to availability, Scheduling and Despatch Code as may be specified by SLDC under State Grid Code, TPC (G) shall operate its power plants and despatch generation from them such that BEST load of 800 MW (at TPC's generator terminal) is met.

4.2 **Priority to BEST**

In the event of break-down of the power system resulting in any partial dislocation of supply to BEST, TPC (G) shall supply the power to BEST as per the priority list of load in BEST distribution as provided by BEST or as much of it as possible in priority to every other person, firm or company, except that TPC (G) shall be bound by the directions of the State Government, MERC and SLDC/ WRLDC if any in this regard.

4.3 **Obligation to Supply and Take Energy**

TPC (G) shall be obligated to supply to BEST its requirement to the extent contracted capacity of 800 MW at the Generator terminals subject to Article 4.1.3. This will amount to 800 MW less the normative auxiliary consumption of the generating station at delivery points. . BEST shall be obligated to take from TPC (G) its requirements to the extent of 800 MW as provided in this Agreement.

4.4 **Surcharge for non-supply of contracted capacity**

4.4.1 Till the time MERC specify billing and settlement code for intra-State transmission, or ABT on intra-State Transmission System, the following provisions shall govern the payment of surcharge by TPC(G) for not generating and supplying contracted capacity ::

4.4.2 Availability for recovery of full fixed cost in case of TPC's thermal and hydro generating stations shall be as per MERC (Terms & Conditions of Tariff) Regulations, 2005

4.4.3 In case the availability of generating stations of TPC(G) falls below 85% on annual basis, the TPC(G) shall compensate BEST at the rate of 10 paisa per kWh for computed as under:

*Annual Surcharge in Rs. = (85% - Actual Availbility) * 8760* 800 * 1000* 0.1*

The surcharge for non-supply of contracted capacity to BEST shall be independent of any recovery of annual fixed charges based on target availability.

4.5 **Right to Electrical Output**

4.5.1 TPC (G) agrees that it shall supply to BEST from its existing installed capacity of 1777 MW, the allocated capacity subject to maximum of 800 MW. In the event of availability less than 1777 MW, TPC (G) shall meet BEST requirement in proportion to the available capacity. (For e.g. if available capacity is 1200 MW at a point of time, the capacity available during that point of time to BEST shall be (800 x 1200)/1777).

4.5.2 TPC (G) shall not sell the power generated out of capacity contracted to BEST directly to third parties before meeting demand of BEST and subject to the limitation provided article 4.1.3 above. Where the total schedules on day ahead basis of BEST becomes less than the contracted capacity of BEST with TPC (G) and TPC (G) is required to back-down generation, under such circumstance TPC (G) may supply such un-availed capacity on short-term basis to third parties other than BEST. In the event, TPC is able to sell such surplus capacity at a price higher than its variable cost, such excess recovery over the variable energy charges shall be reduced from the fixed charges payable by BEST.

4.5.3 TPC shall furnish yearly audited statement for such power sale from the allocated capacity of BEST to third parties.

4.6 **Contracted Capacity from Future Generating Units of TPC**

The parties acknowledge that TPC (G) is in the process of setting up 100 MW DG sets and 250 MW coal based thermal Unit No 8. Subsequent to commissioning of Unit No 8, existing Trombay Unit No 4 will be decommissioned. The contracted capacity allocation from TPC (G) to BEST after commissioning of the proposed generating units and decommissioning of Trombay Unit No 4 shall be as given in Table 2. This shall be in addition to the capacity allocated as on date of this agreement in Table in 1.

Table 2 Addition of Contracted Capacity in Future

Sr. No.	Name of Generating Unit	Type of Plant	Installed Capacity (MW)	Future Generating Capacity contracted to BEST (MW)
1.	D G Sets	Diesel	100	40
2.	Trombay Unit 8	Thermal	250	100
3	Reduction due to decommissioning of Unit No 4	Thermal	-150	-67.53
	Total		200	72.47

5: ARTICLE: EVACUATION & TRANSMISSION OF POWER

5.1 Evacuation and Transmission

TPC-(G) shall supply power from TPC (G) generating stations to BEST at the delivery points. BEST shall make arrangement to transmit this power to their own receiving stations for further distribution. BEST for this purpose shall execute a separate Bulk Power Transmission Agreement (BPTA) and Connection Agreement (CA) with TPC- (T).

5.2 Islanding System for Mumbai City

The BEST shall cooperate with TPC (G) to operate power system of Mumbai City for achieving effective islanding to save Mumbai City from system disturbances transverse from rest of Maharashtra and/or Western Region. The TPC (G) shall design Generator Islanding to salvage the loss of generation in the event of any system disturbance. TPC (G) shall provide frequency dependent relays (FTR, and UFR) on inter-connection points with external system for achieving islanding.

6: ARTICLE: OPERATION AND MAINTENANCE

6.1 Operation and Maintenance of the Power Station

6.1.1 TPC (G) at its own expense shall be responsible for ensuring that the generating stations are 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 and not to have an adverse effect on the Grid System.

6.1.2 TPC (G) shall be responsible at its own expense for obtaining and keeping in force all consents required for the operation of the Generating Stations and new Project(s) in accordance with this Agreement throughout its Operating Period

6.2 Scheduling & Dispatch

6.2.1 TPC (G) and BEST agree to abide by the state grid code and any other Balancing Mechanism/ ABT mechanism established by the Commission.

6.2.2 The scheduling and despatch procedure shall be applicable as prescribed by the Commission from time to time. The existing scheduling and despatch procedure shall continue till such time the same is amended by the Commission.

6.2.3 BEST shall provide to TPC-(G), the month-wise estimate of peak demand in MW and energy requirement in MU for the next financial year by 1st November of each year and in accordance with SLDC demand estimation procedure.

6.2.4 TPC-(G) based on such demand estimate of BEST on 15th November each year shall furnish month-wise generation schedule up to the contracted capacity to BEST for power procurement planning by BEST

6.2.5 TPC-(G) agrees that for the purpose of Scheduling, it shall declare its true plant capability to the SLDC. If requisitioned by BEST through the SLDC, TPC-(G) may require demonstrating the declared capacity of any of its generating unit. Any declaration shall be subjected to provisions of Regulation 40 (Demonstration of Declared Capacity) of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005.

6.3 Scheduled & Maintenance Outages

TPC (G) on year-ahead basis shall furnish to SLDC its generation outage programme as per the SLDC Outage Planning Procedure for next financial year under Grid Code. TPC (G) shall also give the copy of such outage programme to BEST so that it can

plan its power procurement in advance. BEST may request TPC (G) to defer/ reschedule its Annual Outage Programme based on its power requirement. TPC (G) based on the technical considerations may accede or reject such request from BEST for re-scheduling outage plan.

6.4 **Coordinating Committee**

All operational issues shall be discussed and resolved by a Committee constituted with two members each from TPC-(G) and BEST ("Joint Coordination Committee") before resorting to any other mechanism for dispute settlement.

6.5 **Maintenance of Records**

6.5.1 TPC (G) shall keep complete and accurate records of the following :

(a) meter records and other records needed to reflect real and reactive power production for each time block for billing month;

(b) records of Available Capacity and Declared Capacity;

(c) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages (and any other restrictions or limitations affecting Declared Capacity);

(d) any unusual conditions found during inspections;

6.5.2 Any other data required by each of them for the purpose of proper administration of this agreement shall be provided with a prior notice of 30 days or such time period as may be necessary to capture the required data.

6.5.3 All records maintained pursuant to this Article shall be maintained for minimum of sixty months after the creation of such records or data.

6.5.4 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.

7: ARTICLE: METERING AND ENERGY ACCOUNTING

7.1 Installation, Inspection and Testing of Meters

7.1.1 The metering arrangement between TPC (G) generating stations and TPC (T) transmission system shall be compatible with requirement of Metering Code approved by the Commission.

7.1.2 The interface tariff meters conforming to the specification mentioned in the relevant clauses of the Metering Code shall be suitable to measure and store all pertinent parameters, needed for billing as per the applicable tariffs and settlement system as specified by the Commission.

7.1.3 The parties agree for inspection and testing of meters in accordance with the relevant clause of the Metering Code approved by the Commission. The parties also agree that inaccuracies, failures and discrepancies in the interface meters shall be dealt in accordance with the relevant provisions of the Metering Code approved by the Commission.

7.1.4 Other provisions regarding metering system, which are not covered specifically in this agreement, shall be governed by the relevant codes and standards approved by the Commission.

7.2 Meter Reading

7.2.1 Interface Tariff Meters shall be provided at the inter-connection points between TPC (G) and transmission system of TPC (T) to record ex-bus despatch of generating stations of TPC (G) as per Metering Code approved by the Commission.

7.2.2 Meters for interface tariff shall be programmed so as to register and store the readings from 00.00 hrs of 1st day of current month to 00.00 hrs of first day of next month. Joint Monthly meter readings of the meters for interface tariff for recording ex-bus despatch shall be taken / downloaded at by 11.00 hrs on the 1st day of the next month and confirmation signed by the authorised representatives of TPC (G) and BEST. No notice is required to be issued for monthly joint meter readings. In case any party is not able to attend meter readings at specified time, the meter readings taken by the other party (s) shall be considered conclusive and binding on other parties.

7.3 Energy Accounting

7.3.1 State Energy Account: Monthly State Energy Account for intra-State transmission system shall be prepared by the State Load Despatch Centre indicating energy injected into / drawn from intra-State transmission system in pursuance with clause (C) sub-section (2) Section 32 of the Act. The monthly

State energy account issued by the SLDC shall be basis for accounting, billing and settlement amongst the beneficiaries of intra-State transmission system.

7.3.2 SLDC Charges: The scheduling and SLDC charges as specified by the Commission from time to time shall be applicable and payable to SLDC separately by BEST & TPC (G) as the case may be.

8: ARTICLE: PRINCIPLE OF DETERMINATION OF TARIFF & CHARGES

The tariffs for supply of electricity contracted by BEST from the generating stations of TPC (G) under this agreement shall be in line with Part E of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time and various other orders of the Commission as may be necessary to give effect to obligation to supply and take energy under Article 4 of the Agreement. Under the current regulations of the Commission, the charges are determined on two part basis consist of (i) Fixed Charge, (ii) Energy Charge and (iii) Incentives.

8.1 Recovery of Fixed Charges

The "Monthly Fixed charges" payable by BEST for contracted capacity shall be as given below:

$$\text{Monthly Fixed Charge} = \frac{\text{Annual Fixed Charge X Contracted Capacity}}{\text{Installed Capacity X 12}}$$

Where, AFC is determined by MERC under Regulation 28 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

In case of thermal generating stations, target availability for full recovery of annual fixed charges shall be 80 per cent and if the availability during any year is less than target availability of 80%, the recovery of fixed cost shall be on pro-rata basis in accordance with MERC (Terms& Conditions of Tariff) Regulations, 2005.

In case of hydro-generating stations, the normative capacity index for recovery of annual fixed charges shall be as per Regulation 33.2.1 of MERC (Terms & Conditions of Tariff) Regulations, 2005.

8.2 Energy Charges

The energy charges shall be determined unit-wise and payable by BEST as given below:

(a) Thermal generating stations

Energy Charges (Rs) = Rate of Energy Charges in Rs/kWh X Ex-bus energy sent out corresponding to scheduled generation for the month
Where,

Rate of Energy Charges (REC) shall be as computed as per Regulation 35.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

(b) Hydro power generating stations

In case of Hydro power generating stations the Energy Rate shall be determined as per Regulation 35.2.1 of MERC (Terms &Conditions of Tariff) Regulations, 2005.

8.3 Incentives:

(a) Thermal Generating Station:

Incentive for each unit shall be payable as per MERC (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time.

(b) Hydro Generating Station:

Incentive for each unit shall be payable as per MERC (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time.

9: ARTICLE: TARIFF & CHARGES

9.1 The tariff and charges as per Article 8 for supply of electricity by TPC (G) to BEST under this agreement shall be approved by the Commission from time to time. TPC (G) shall raise bills on BEST at monthly interval for tariff and Charges.

9.2 BEST shall continue to pay to TPC (G) as per rates last determined by the Commission on provisional basis till the rates are decided by the commission. After finalisation of rates by the Commission for such period, where provisional rates have been applied, TPC (G) shall issue supplementary bill under Article 10.1 (C) towards the difference amount between provisional rate and tariff finally approved by the Commission.

9.3 The tariff applicable for future generating stations of TPC, as indicated in Article 4.5, shall be based on the sharing of the capacity from these stations by BEST. The actual energy transfer from future generating stations of TPC shall commence only after approval of the tariff by the Commission.

9.4 Fuel adjustment charges shall be levied by TPC (G) and payable by BEST based on the MERC (Terms and Conditions of Tariff) Regulations, 2005

9.5 Payment of reactive energy charges shall be governed by the MERC (Terms and Conditions of Tariff) Regulations, 2005 and payable by BEST as specified by the Commission from time to time

10: ARTICLE: BILLING AND PAYMENT

10.1 All payments under this Agreement shall be billed and paid in accordance with the following provisions:

(a) Monthly Bill: TPC (G) shall raise at monthly interval one or more bills ("Monthly Bills") for 1) Fixed Charges 2) Energy Charges for supply of electricity to BEST from its generating stations based on the amounts derived from Article 8 of this Agreement. The bills shall be raised in the name of designated officer of the BEST.

(b) BEST shall arrange the payment of monthly bill in the following manner through cheque payable at Mumbai and drawn in the name of TPC (G). The date of realisation of cheque by TPC (G) shall be considered as the date of payment for computation of rebate or late payment surcharge payable as the case may be.

Table 10.1(b): Monthly Bill Payments

Sr.No.	Due Date	Amount	Remarks
1.	On 4th	Lump-sum payment of 33% of the previous month bill amount.	If 4th happens to be Saturday, Sunday or Holiday, then this amount to be paid on earlier working day to enable TPC to deposit in the high value clearance on the same day.
2.	On 9th	67% of the current bill amount minus amount paid as per 1. above	If 9th happens to be Saturday, Sunday or Holiday, then this amount to be paid on earlier working day to enable TPC to deposit in the high value clearance of the same day.
3.	On 14th	Balance of the current bill amount after deducting the prompt payment discount amount	If 14th happens to be Saturday, Sunday or Holiday, then this 33% of the bill amount to be paid on next working day to enable TPC to deposit in the high value clearance on the same day.

(i) BEST will avail 1.25% of Bill amount as rebate at the time of the payment of last instalment subject to the payment of 1st and 2nd instalments as prescribed in the above table.

In case the 3rd Instalment payment is made by BEST after 14th day of the month, but within 30 days of billing date, subject to realization of payment of 1st and 2nd instalment (as per Sr. No. 1 & 2 above) in time, the rebate shall be reduced at the rate of 0.078% per day for delay beyond 14 days.

(c) Supplementary Bills: Any amount due to TPC (G) from BEST under this agreement other than amounts set out in a Monthly Bills shall be payable within thirty (30) days of presentation of the Supplementary Bill by TPC (G) to BEST.

Provided the Incentives for thermal unit shall be calculated twice in a year for generation above target PLF of 80% during the period

1) from 1st April to 30th September and billed in monthly Bill for September

2) 1st October to 31st March and billed in monthly Bill for March.

Provided the Incentives for hydro unit shall be calculated once in a year for performance during the period from 1st April to 31st March and billed in monthly Bill for March.

10.2 Notwithstanding any dispute as to all or any portion of a Bill submitted by TPC (G) to BEST, BEST shall pay the full amount of the Bill.

10.3 Surcharge on delayed payments:

Any payment delayed beyond period of 30 days of billing date shall not entitle BEST to any rebate, but a surcharge for late payment computed as under:

Surcharge for late payment = Payment delayed or not paid within 30 days X (number of days taken for payment from billing date - 30) x 1.25% x 1/30

11: ARTICLE: PAYMENT SECURITY MECHANISM:

11.1 Third Party Sales by TPC(G) on BEST default:

In the event of failure of the BEST to make due and admissible payment of TPC (G) for consecutive two months for any reason whatsoever, the TPC (G) shall have the right to stop power supply to BEST and divert such power for sale to any other customer at the risk and cost of BEST. TPC (G) shall however give 7 (seven) days advance notice to the BEST before stopping supply to BEST.

11.2 Sales to any third party other than the BEST shall cease and regular supply of electricity to the BEST shall commence in accordance with all the provisions of this Agreement and be restored on the day on which BEST pays the due payment to the TPC (G).

11.3 Quarterly and Annual Reconciliation

Both Parties acknowledge that all payments made against Monthly and Supplementary Bills shall be subject to reconciliation at the end of each quarter and annual reconciliation at the end of each financial year for energy supplied to BEST from TPC (G) generating stations and other sources, Rebate on prompt payment, Surcharge on delayed 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 or a full financial year as the case may be has been finally verified and adjusted, the Parties shall jointly sign such reconciliation statement. Within fifteen days of signing of a reconciliation statement, TPC (G) shall raise a Supplementary Bill showing credit/ debit of payments.

12: ARTICLE: FORCE MAJEURE

"Force Majeure" means, with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party ("Affected Party") and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:(i) acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood, drought and natural disaster;

(ii) strikes, lockouts, go-slow, bandh or other industrial disturbances;

(iii) acts of public enemy, wars (declared or undeclared), blockades, insurrections, riots, revolution, sabotage, vandalism and civil disturbance;

(iv) unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination;

(v) any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the State Load Despatch Centre; and

(vi) any shut down or interruption, which is required to avoid serious and immediate risks of a significant plant or equipment failure.

12.1 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.

12.2 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.

12.3 In case of force majeure conditions prevails more than 100 days both the parties may mutually agree to rescind/ defer the agreement or portion thereof which have been affected due to such force majeure conditions on such terms and conditions between the parties.

12.4 To the extent not prevented by a force majeure event pursuant to Article 12.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall put their best efforts to mitigate the effect of any event of force majeure as soon as practicable. .

12.5 Available Relief for a force majeure event shall be limited to and extent that 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.

13: ARTICLE: TERMINATION ON EVENT OF DEFAULT

13.1 This agreement may be terminated by BEST as provided hereunder in the event of following defaults by TPC(G)

13.1.1 TPC is adjudicated bankrupt or dissolved or a receiver is appointed for its assets or proceedings for TPC's liquidation (except for the purpose of amalgamation or restructuring on terms not detrimental to BEST) are continuing more than six (6) months after they were commenced

13.1.2 Failure for a continuous period of 90 days relating to obligations to supply under Article 4.2

13.1.3 Failure relating to obligations for contracted capacity under Article 4.1 without taking remedial action within a period of 30 days.

13.2 This agreement may be terminated by TPC (G) as provided hereunder in the event of following defaults by BEST

13.2.1 BEST is adjudicated bankrupt or dissolved or a receiver is appointed of the whole or any part of its assets or proceedings for its liquidation (other than for the purpose of amalgamation or restructuring on terms not detrimental to TPC (G)), which are continuing more than six (6) months after they were commenced

13.2.2 Failure of the BEST to make due and admissible payment of TPC-(G) for consecutive two months under Article 10.

13.3 Termination Procedure

13.3.1 Upon the occurrence and continuation of Event of Default by any Party ("Notice Initiating Party") as specified above then Other Party ("Default Party") shall have the right to deliver to the defaulting Party a "Preliminary Termination Notice", which shall specify in reasonable detail the circumstances giving rise to the issue of such notice;

13.3.2 Following the issue of Preliminary Termination Notice the Parties shall wait for consultation as to what steps shall be taken to remedy the situation having regard to all the circumstances for a period of ninety (90) days ("Consultation Period") or such longer period as the Parties may agree.

13.3.3 Any time after 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 Party may terminate this Agreement by delivering a "Final Termination Notice", whereupon this Agreement shall terminate on the date of such notice.

13.3.4 Till service of final notice of termination, the Parties shall, save as otherwise provided in this Agreement; continue to perform their respective obligations under this Agreement.

13.4 Consequences of Termination

13.4.1 In the event of Termination of this Agreement consequent to default by any Party, the other Party may refer the matter to a Referee as provided hereunder for deciding the compensation payable on account of Termination of Agreement due to event of default.

13.4.2 The Referee shall be an independent reputed person having sound knowledge of power sector. Both the parties within a period of thirty days of issue of final notice of termination agree to a common name for the Referee and if no consensus is reached on the name of the Referee within such period, the name suggested by the affected party shall be binding and acceptable to defaulting party. The Referee after hearing both parties and on examination of such witnesses, evidences and documents as may be put by the parties, shall give his award for determination of compensation payable by defaulting Party to Other Party consequent to termination. The award of the Referee shall indicate the manner and period in which compensation shall be paid by the defaulting party to affected party. The parties agree that the award of the Referee shall be acceptable and binding on them.

13.4.3 The parties shall share the cost associated with Referee proceeding for determination of compensation equally.

14 ARTICLE: PERFORMANCE STANDARDS

14.1 Both BEST and TPC (G) shall maintain respective standards of performance at the point of inter-connection as laid down by the Commission and the CEA under the Electricity Act 2003..

15 ARTICLE: GOVERNING LAW

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

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16. ARTICLE: CHANGE IN LAW

"Change in Law" means the occurrence of any of the following after the date of effectiveness of this agreement:

(a) 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

(b) 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;

16.1 In the event of change of law as defined above, which affects TPC (G) or BEST, then the affected party shall send a notice in writing to other party regarding such event of change of law. Both parties shall meet and endeavour to agree to an amendment to this agreement to pass on the impact of such an event which shall be settled through a supplementary bill.

16.2 If within 90(ninety) days after such notification, the parties are unable to reach agreement on such amendment, or in the event that an agreement to amend has been reached but no amendment has been executed within 30 (thirty) days after reaching of such agreement to amend, either party shall have the right to commence the dispute resolution procedures set forth in Article 17 to determine or implement the appropriate amendment to this agreement.

17 ARTICLE: DISPUTE RESOLUTION & ARBITRATION

17.1 All disputes between the parties herein arising out of or in connection with this Agreement shall be referred to the Commission for adjudication by the Commission and / or for settlement by reference to Arbitration as provided in section 86 (1) (f) read with section 158 of the Electricity Act, 2003

17.2 Notwithstanding the existence of any question, dispute, and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement.

18 ARTICLE: 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

a) 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.

b) 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 between the parties stand as abrogated and withdrawn.

18.6 Succession and Assignment

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and assigns including any entity which may succeed to the rights and obligations of either party under any scheme that may be adopted by the parties after appropriate approval and consents as may be require under Law.

18.7 Confidential Information

The Parties herein shall at all time during the continuance of this Agreement use their reasonable endeavours to keep all information relating to technical and commercial aspects affecting their business as confidential and accordingly no Party shall disclose the same to any other person unless the information which at the time of disclosure was in the public domain.

18.8 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.

18.9 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the TPC (G) and BEST.

18.10 Survival

Notwithstanding anything to the contrary herein, the provisions under Article 12 (Force Majeure), Article 15 (Governing Law), Article 17 (Dispute Resolution & Arbitration), Article 13 (Termination on Event of Default), and Article 18 (Miscellaneous) shall continue and survive any expiry or termination of this Agreement.

18.11 Counterparts

This Agreement may be executed between the parties, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of The Tata Power Company Limited (Generation) Authorised Signatory Name & Designation Common Seal	For and on behalf of Brihan Mumbai Electric Supply And Transport Undertaking (BEST) Authorised Signatory Name & Designation Common Seal
In the presence of	In the presence of
1 21/12/06	1
2 21/12/2006	2

ANNEXURE - 3

POWER PURCHASE AGREEMENT

BETWEEN

Brihan-Mumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited – Generation Business (TPC (G))

Abbreviations

ABT	Availability Based Tariff
ARR	Annual Revenue Requirement
BEST	Brihan-Mumbai Electric Supply and Transport Undertaking
BMC	Brihan Mumbai Municipal Corporation
BPTA	Bulk Power Transmission Agreement
CC	Capacity Charges
COD	Commercial Operation Date
CTs	Current Transformers
CTU	Central Transmission Utility
DC	Declared Capacity
EC	Energy Charges
EHV	Extra High Voltage
FCA	Fuel Cost Adjustment
FTR	Frequency Trend Relay
FY	Financial Year
GCV	Gross Calorific Value
GoM	Government of Maharashtra
HV	High Voltage
IC	Installed Capacity
IEGC	Indian Electricity Grid Code
InSTS	Intra-State Transmission System
IRLC	Irrevocable Letter of Credit
kV	Kilo Volt
L/C	Letter of Credit
MERC	Maharashtra Electricity Regulatory Commission

MSEB	Maharashtra State Electricity Board
MVA	Mega Volt Ampere
MW	Mega Watt
PLF	Plant Load Factor
PPA	Power Purchase Agreement
PTs	Potential Transformers
SGC	State Grid Code
SHR	Station Heat Rate
SLDC	State Load Despatch Centre
STU	State Transmission Utility
TPC (G)	The Tata Power Company Limited- Generation Business
TPC-(T)	The Tata Power Company Limited- Transmission Business
TPC-(D)	The Tata Power Company Limited- Distribution Business
UFR	Under Frequency Relay
UI	Unscheduled Interchange
VC	Variable Charge
WRLDC	Western Regional Load Despatch Centre

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA

General Stamp Office, Mumbai.
L.S.V. No. 8844
25 AUG 2009
Proper Officer

क्रमांक: 116 CC 773680

THE TATA POWER COMPANY LTD.
Regulations Department,
Corporate Center 'B'
34, Sant Tukaram Road,
Carnac Bunder, Mumbai - 400 009.

SMT. T. S. SAWANT

PARTIES TO AGREEMENT AND RECITAL

This Power Purchase (Additional) Agreement (here in after referred as the "PPA" or "Agreement") is made this day 05th Feb ... of 2010, between

1. **Brihan Mumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihan Mumbai Municipal Corporation (BMC) a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai – 400 001 (hereinafter referred to as the BEST, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

2. **The Tata Power Company Limited (TPC)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai – 400001(hereinafter referred to as "TPC" which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

BEST and TPC are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihan Mumbai Electric Supply and Transport Undertaking (hereinafter referred as BEST) is deemed distribution licensee under the proviso of Section 14 of EA, 2003 and engaged in distribution and supply of electricity to consumers within its license area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements

b) The Tata Power Company Limited (TPC) by the order dated 18th October, 2000 passed by the Hon'ble Bombay High court in company petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations through the generation business of The Tata Power Company Limited (hereinafter referred as TPC(G)) to Distribution Licensee/Companies including BEST;

c) BEST and the TPC had entered into an Agreement dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in that Agreement. And the said agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission on 6th November, 2007 and is in force thereafter;

d) TPC have vide their letter dated 9th November 2009 expressed their willingness to offer BEST, additional 100 MW of power w.e.f. 1/04/2010, which has been duly accepted by BEST vide its letter dated 16th November 2009.

NOW THEREFORE, in view of the foregoing premises and in consideration of the mutual covenants and agreements herein after set forth, the Tata Power Company Limited (Generation Business) and the BEST hereby agree as follows:

1: ARTICLE: DEFINITIONS & INTERPRETATIONS

1.1 Definitions

The words/expressions mentioned below unless repugnant to the context shall have the meanings respectively as assigned hereunder:

(a) **"Act"** means the Electricity Act, 2003 (Central Act No.36 of 2003) and amended from time to time;

(b) **"Agreement"** means this Power Purchase Agreement (PPA) including its schedules, as amended, supplemented or modified from time to time in accordance with the terms and conditions herein and approved by the Commission thereof;

(c) **"Auxiliary (Energy) Consumption"** in relation to a period, means the quantum of energy consumed by auxiliary equipment of the generating station and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the unit(s) of the generating station. The auxiliary consumption for a thermal generating station shall include transformation losses within the generating station;

(d) **"Availability"** for any period means the average of the daily average Declared Capacities (DCs) for all the days during that period expressed as a percentage of the installed capacity of the generating station minus auxiliary consumption in MW, and shall be computed in accordance with the following formula:

$$Availability = 10000 \times \sum_{i=1}^{N} DCi / \{N \times IC \times (100 - AUX)\}\%$$

Where

IC = Installed Capacity of the generating station in MW

DCi = Average declared capacity for the ith time block in such period in MWs,

N = Number of time blocks in the given period,

AUX = Normative Auxiliary Energy Consumption in MW for each Unit / Plant of TPC expressed as a percentage of gross Generation as specified by the Commission from time to time;

(e) **"Availability Based Tariff"** means the tariff structure based on the availability of generating units and having three components which are Capacity Charges (CC), Energy Charge (EC) or Variable Charges (VC) and charges for Unscheduled Interchange (UI);

(f) **"Billing Date"** means the date on which the bill is presented by TPC (G) ;

(g) **"Billing Month"** means the calendar month for which bill is raised by TPC (G);

(h) **"Check Meter"** means the meter defined as "Check Meter" in the Metering Code for intra-state transmission system approved by the Commission;

(i) **"Commission"** means the Maharashtra Electricity Regulatory Commission;

(j) **"Connection Agreement"** means an agreement setting out the terms and conditions relating to connection to and / or use of the intra-State transmission system, as per MERC (State Grid Code) Regulations, 2006;

(k) **"Contracted Capacity"** means the capacity at the generator terminals contracted to be delivered by TPC (G) to BEST and more particularly defined in Article 4.1 of this Agreement;

(l) **"Daily Capacity Index"** means the declared capacity expressed as a percentage of the maximum available capacity for the day and shall be calculated in accordance with the following formula:

Daily Capacity Index = Declared Capacity (MW) x 100 / Maximum Available Capacity (MW)

and the term **"Capacity Index"** for any period shall be the average of the daily capacity indices calculated as above, for such period;

(m) **"Declared Capacity (DC)"** means as defined in the MERC (Terms and Conditions of Tariff) Regulations, 2005 including any amendment from time to time ;

(n) **"Delivery points"** means the physical point or points at which the transfer of electrical power occurs between the TPC-(G) and intra-State transmission system for utilisation by BEST ;

(o) **"Designated Officer(s)"** means the Officer(s) in TPC (G) and BEST designated by the respective parties for matters relating to Billing and Payment;

(p) **"Dispatch Instruction"** shall have the meaning given to it in the MERC (State Grid Code) Regulations, 2006;

(q) **"Energy Charges"** is the monthly amount payable by BEST to TPC (G) in respect of delivered energy and other matters related to the supply of fuel to the power station and shall be computed as specified by the Commission in accordance with regulation 35 of the MERC (Terms & Conditions of Tariff) Regulations 2005;

(r) **"Effective Date"** means the date on which this Agreement is approved by the Commission or 1st April 2010, whichever is later;

(s) **"Expiry Date"** means the date on which this Agreement expires and shall be 31st March 2018 ;

(t) **"Fixed Charges"** means the fixed charges to be paid by BEST on a monthly basis to TPC (G) as specified by the Commission;

(u) **"Financial Year"** means the period from 1st of April of the year to 31st of March of the next year;

(v) **"Force Majeure"** means as defined in Article 12;

(w) **"Generating Station"** means any station of TPC(G) for generating electricity, including any building and plant with step-up transformer, switch yard, switch-gear, cables or other auxiliary equipments, if any used for that purpose and the site thereof, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated, but does not include any sub-station;

(x) **"Generating Unit"** means an electrical Generating Unit coupled to a turbine within a Power Station together with all Plant and Apparatus at that Power Station (up to the Connection Point) which relates exclusively to the operation of that turbo-generator;

(y) **"Interface Meter"** means a meter used for accounting and billing of electricity, connected at the point of interconnection between electrical systems of Generating Company and the Intra-State Transmission System as specified in Metering Code ;

(z) **"Installed Capacity"** means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating stations (reckoned at the generator terminals) as approved by the Commission from time to time;

(aa) **"License Area of BEST"** shall mean license area for distribution of electricity granted to BEST under the relevant laws and statutes by the relevant authorities;

(bb) **"Main Meter"** means the meter defined as "main meter" in the Metering Code for intra-state transmission system approved by the Commission;

(cc) **"Metering System"** means meters and wherever applicable associated metering apparatus/equipment such as CTs, PTs, communications/SCADA equipment etc, necessary for such recording and communication of metered data and shall also include main meter, check meter and/or standby meters which are provided to enable proper accounting, billing, recording and auditing of energy consumption / energy transfer;

(dd) **"Metering Code"** means the code and/or the metering section of the State Grid Code in force or any amendments approved thereof by the Commission and covering aspects relating to metering equipment, its installations, operation and use;

(ee) **"Monthly Bill"** means the bill issued by the TPC(G) at the end of month under Article 10 showing (i) Fixed Charges and (ii) Energy Charges payable by BEST for the billing month;

(ff) **"Normative Auxiliary Consumption"** means the level of auxiliary consumption specified by the Commission from time to time as the norms of operations under MERC (Terms& Conditions of Tariff) Regulations, 2005;

(gg) **"Plant Load Factor"** for a given period, means the total energy sent out corresponding to scheduled generation during the period, expressed as a percentage of sent out energy corresponding to installed capacity in that period and shall be computed in accordance with the following formula:

$$\text{PLF (\%)} = 10000 \times \sum_{i=1}^{N} SGi / \{N \times IC \times (100 - AUX)\}\%$$

Where;

IC	=	Installed Capacity of the generating stations in MW
SGi	=	Scheduled Generation in MW for i^{th} time period in ex bus as given by State Load Despatch Centre.
N	=	Number of time Blocks during the given period
AUX	=	Normative Auxiliary consumption in MW expressed as a percentage of gross generation

(hh) **"Power Station"** means the Generating Station as defined above;

(ii) **"Primary Fuel"** means coal/ oil/ gas which is used as the main fuel for firing in the boiler for generation of power;

(jj) **"Project"** means all activities related to construction, erection, testing and commissioning of a Generating Station undertaken prior to Commercial Operation Date (COD);

(kk) **"Prudent Utility Practices"** means the practices, methods, techniques, and standards that are generally accepted nationally and internationally from time to time and commonly used in the national and international electric utility industry for the operation and maintenance of equipment of a Generating Station in a safe, prudent and reliable manner consistent with the parameters for such operation and maintenance. Such practices, methods, techniques and standards shall be adjusted as necessary to take account of the requirements of Law, physical conditions at the site on which a Generating Station is located and operation and maintenance guidelines of the manufacturers of plant and equipment installed in the Power Station which

TPC (G) is required to follow in order to maintain in effect any warranties, guarantees or insurance policies relating thereto;

(ll) **"Reactive Power"** means the product of root mean square (rms) voltage, root mean square (rms) current and the sine of the electrical phase angle between the voltage vector and current vector, measured in 'Volt – Ampere reactive' (VAr) and in standard multiples thereof;

(mm)**"Referee"** means person appointed under Article 13;

(nn) **"Special Energy Meter (SEM)"** means such meters, of not less than 0.2 class accuracy, as are capable of:-

(i) recording time-differentiated measurements of active energy and voltage differentiated measurement of reactive energy, at intervals of fifteen (15) minutes;

(ii) storing such measurements for not less than thirty-five (35) days; and

(iii) communication of such measurements at such intervals as maybe required by the State Load Despatch Centre for balancing and settlement of energy transactions;

(oo) **"Scheduled Generation"** at any time or for any given period or time block means the schedule of generation in MW ex-bus given by TPC (G);

(pp) **"Secondary Fuel"** means the liquid fuel for supplementary firing used during the start up and low load condition of the Generating station and also during stabilisation period;

(qq) **"Start Up"** means the preparation and activities carried out for synchronisation and connection of the Generating Station to the Grid System;

(rr) **"State Grid Code (SGC)"** means the MERC (State Grid Code) Regulations, 2006 issued by Maharashtra Electricity Regulatory Commission and as amended from time to time;

(ss) **"Supplementary Bill"** means the bill raised by TPC (G) for any amount due to TPC (G), other than the monthly bill, as stipulated in Article 10 of this agreement;

The terms not defined herein shall have meaning as per the Electricity Act, 2003.

2: ARTICLE: REGULATORY APPROVAL

2.1 This Power Purchase (Additional) Agreement is subject to approval of the Commission under section 62 and 86 of the Electricity Act, 2003 read with Regulation 24 of the MERC(Terms & Conditions of Tariff) Regulations, 2005.An application for approval of the Commission under section 86(1) (b) of the Electricity Act,2003 read with clause 24 of the MERC (Terms &Conditions of Tariff) Regulations, 2005 in so far its implication on the consumers and revenue requirement of BEST in the ARR concerned, shall be filed by BEST to the Commission within a period of 30(Thirty) days of signing of the PPA. TPC(G) shall participate in the proceedings that may be initiated by the Commission for the approval of PPA between the parties. The terms of this Agreement shall stand modified as per the orders passed by the Commission to the power purchase agreement, provided that such modified terms are acceptable to TPC(G), TPC(G) shall inform BEST of the acceptance or non acceptance to the modifications within 30 days of the order of the Commission.

2.2 The Parties also agree that any subsequent amendment / modification to this Power Purchase Agreement shall be subject to the approval from the Commission.

3: ARTICLE: TERM OF AGREEMENT

3.1 Effective Date and Term of Agreement

3.1.1 The Agreement shall come into force from the Effective Date for all-purpose and intent and shall remain operative till 31st March 2018 i.e. co-terminus with the existing PPA between TPC(G) & BEST unless extended as per Article 3.3 or terminated earlier as per Article 3.2.

3.1.2 The Agreement will remain in force even after expiry of this Agreement with mutual consent without further renewal or formal extension thereof and all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced except the tariff which shall be determined by the Commission from time to time.

3.2 Early Termination

This Agreement shall terminate before the Expiry Date:

3.2.1 if either BEST or TPC (G) exercises a right to terminate, pursuant to Article 13; or

3.2.2 in such other circumstances as the TPC (G) and BEST may subsequently agree, in writing.

3.3 Extension of Term

3.3.1 Prior to at least one hundred and eighty days (180) before the Expiry Date, BEST shall give a written notice to the TPC (G) that it wishes to extend this Agreement for an additional period.

3.3.2 Upon the receipt of the notice from BEST under Article 3.3.1 above, the parties shall in good faith negotiate the terms and conditions for extension of the agreement including the revision in tariffs and period of extension and if the parties mutually agree on the above the parties may decide to extend the Agreement with suitable modifications and approval of the Commission.

3.4 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement to the extent they refer to the obligations prior to the termination of the Agreement.

4: ARTICLE: OBLIGATION TO SUPPLY AND TAKE ENERGY

4.1 Contracted Capacity

4.1.1 TPC (G) shall contract **100 MW** additional generating capacity (at TPC's generator terminal) from its power stations for supply to BEST. An additional generating capacity of **100 MW** shall be allocated and earmarked for use of BEST from the following installed generating capacity owned, operated and maintained by TPC (G):

Table 1: Additional Generation Capacity Allocation to BEST

Sr. No.	Name of Generating Station	Type of Plant	Installed Capacity (MW)	Additional Generating Capacity contracted to BEST (MW)
1.	Khopoli	Hydro	447	27
2.	Bhivpuri	Hydro		
3.	Bhira	Hydro		
4.	**Trombay**			
4.1	Unit 4	Thermal	150	**0**
4.2	Unit 5	Thermal	500	**31**
4.3	Unit 6	Thermal	500	**31**
4.4	Unit 7	Thermal	180	**11**
4.5	Unit 8 -LA	Thermal	150	**0**
	Total		**1927**	**100**

4.1.2 The despatch from a generating station for BEST shall be sum of gross energy generated at the generator terminals of all the unit(s) of the generating station

less auxiliary energy consumption at normative level approved by the Commission from time to time.

4.1.3 The contracted capacity allocation to BEST shall be from overall aggregate capacity of TPC (G) without any reference specific generating units i.e. the allocation of additional **100 MW** will be constituted through share from each generating units as shown in the table above. Subject to availability, Scheduling and Despatch Code as may be specified by SLDC under State Grid Code, TPC (G) shall operate its power plants and despatch generation from them such that BEST load of additional **100 MW** (at TPC's generator terminal) is met.

4.2 Priority to BEST

In the event of break-down of the power system resulting in any partial dislocation of supply to BEST, TPC (G) shall supply the power to BEST as per the priority list of load in BEST distribution as provided by BEST or as much of it as possible in priority to every other person, firm or company, except that TPC (G) shall be bound by the directions of the State Government, MERC and SLDC/ WRLDC if any in this regard.

4.3 Obligation to Supply and Take Energy

TPC (G) shall be obligated to supply to BEST its additional requirement to the extent of contracted capacity of additional 100 MW at the Generator terminals subject to Article 4.1.3. This will amount to additional **100 MW** less the normative auxiliary consumption of the generating station at delivery points. . BEST shall be obligated to take from TPC (G) its additional requirements to the extent of 100 MW as provided in this Agreement.

4.4 Surcharge for non-supply of contracted capacity

4.4.1 Till the time MERC specify billing and settlement code for intra-State transmission, or ABT on intra-State Transmission System, the following provisions shall govern the payment of surcharge by TPC(G) for not generating and supplying contracted capacity.

4.4.2 Availability for recovery of full fixed cost in case of TPC's thermal and hydro generating stations shall be as per MERC (Terms & Conditions of Tariff) Regulations, 2005.

4.4.3 In case the availability of generating stations of TPC(G) falls below 85% on annual basis, the TPC(G) shall compensate BEST at the rate of 10 paisa per kWh for computed as under:

Annual Surcharge in Rs. = (85% - Actual Availability) * 8760* 100 * 1000* 0.1

The surcharge for non-supply of contracted capacity to BEST shall be independent of any recovery of annual fixed charges based on target availability.

4.5 **Right to Electrical Output**

4.5.1 TPC (G) agrees that it shall supply to BEST from its existing installed capacity of 1927 MW, the additional contracted capacity subject to maximum of 100 MW. In the event of availability less than 1927 MW, TPC (G) shall meet BEST's additional requirement in proportion to the available capacity. (For e.g. if available capacity is 1200 MW at a point of time, the additional capacity available during that point of time to BEST shall be (100 x 1200)/1927).

4.5.2 TPC (G) shall not sell the power generated out of capacity contracted to BEST directly to third parties before meeting demand of BEST and subject to the limitation provided in article 4.1.3 above. Where the total schedules on day ahead basis of BEST becomes less than the contracted capacity of BEST with TPC (G) and TPC (G) is required to back-down generation, under such circumstance TPC (G) may supply such un-availed capacity on short-term basis to third parties other than BEST. In the event, TPC is able to sell such surplus capacity at a price higher than its variable cost, such excess recovery over the variable energy charges shall be reduced from the fixed charges payable by BEST.

4.5.3 TPC shall furnish yearly audited statement for such power sale from the contracted capacity of BEST to third parties.

5: ARTICLE: EVACUATION & TRANSMISSION OF POWER

5.1 Evacuation and Transmission

TPC-(G) shall supply power from TPC (G) generating stations to BEST at the delivery points. BEST shall make arrangement to transmit this power to their own receiving stations for further distribution. BEST for this purpose has executed a separate Bulk Power Transmission Agreement (BPTA) and Connection Agreement (CA) with TPC- (T) on 21st December 2006.

5.2 Islanding System for Mumbai City

The BEST shall cooperate with TPC (G) to operate power system of Mumbai City for achieving effective islanding to save Mumbai City from system disturbances transverse from rest of Maharashtra and/or Western Region. The TPC (G) shall design Generator Islanding to salvage the loss of generation in the event of any system disturbance. TPC (G) shall provide frequency dependent relays (FTR and UFR) on inter-connection points with external system for achieving islanding.

6: ARTICLE: OPERATION AND MAINTENANCE

6.1 Operation and Maintenance of the Power Station

6.1.1 TPC (G) at its own expense shall be responsible for ensuring that the generating stations are 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 and not to have an adverse effect on the Grid System.

6.1.2 TPC (G) shall be responsible at its own expense for obtaining and keeping in force all consents required for the operation of the Generating Stations and new Projects(s) in accordance with this Agreement throughout its Operating Period.

6.2 Scheduling & Despatch

6.2.1 TPC (G) and BEST agree to abide by the State Grid Code and any other Balancing Mechanism/ ABT mechanism established by the Commission.

6.2.2 The scheduling and despatch procedure shall be applicable as prescribed by the Commission from time to time. The existing scheduling and despatch procedure shall continue till such time the same is amended by the Commission.

6.2.3 BEST shall provide to TPC-G, the month-wise estimate of peak demand in MW and energy requirement in MU for next financial year by 1st November of each year and in accordance with SLDC demand estimation procedure.

6.2.4 TPC (G) based on such demand estimate of BEST on 15th November each year shall furnish month-wise generation schedule up to the contracted capacity to BEST for power procurement planning by BEST.

6.2.5 TPC (G) agrees that for the purpose of Scheduling, it shall declare its true plant capability to the SLDC. If requisitioned by BEST through the SLDC, TPC (G) may require demonstrating the declared capacity of any of its generating unit. Any declaration shall be subjected to provisions of Regulation 40 (Demonstration of Declared Capacity) of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005.

6.3 Scheduled & Maintenance Outages

TPC (G) on year-ahead basis shall furnish to SLDC its generation outage programme as per the SLDC Outage Planning Procedure for next financial year under Grid Code.

TPC (G) shall also give the copy of such outage programme to BEST so that it can plan its power procurement in advance. BEST may request TPC (G) to defer/ reschedule its Annual Outage Programme based on its power requirement. TPC (G) based on the technical considerations may accede or reject such request from BEST for re-scheduling outage plan.

6.4 **Coordinating Committee**

All operational issues shall be discussed and resolved by a Committee constituted with two members each from TPC-(G) and BEST ("Joint Coordination Committee") before resorting to any other mechanism for dispute settlement.

6.5 **Maintenance of Records**

6.5.1 TPC (G) shall keep complete and accurate records of the following :

(a) meter records and other records needed to reflect real and reactive power production for each time block for billing month;

(b) records of Available Capacity and Declared Capacity;

(c) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages (and any other restrictions or limitations affecting Declared Capacity);

(d) any unusual conditions found during inspections;

6.5.2 Any other data required by each of them for the purpose of proper administration of this agreement shall be provided with a prior notice of 30 days or such time period as may be necessary to capture the required data.

6.5.3 All records maintained pursuant to this Article shall be maintained for minimum of sixty months after the creation of such records or data.

6.5.4 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.

7: ARTICLE: METERING AND ENERGY ACCOUNTING

7.1 Installation, Inspection and Testing of Meters

7.1.1 The metering arrangement between TPC (G) generating stations and TPC (T) transmission system shall be compatible with requirement of Metering Code approved by the Commission.

7.1.2 The interface tariff meters conforming to the specification mentioned in the relevant clauses of the Metering Code shall be suitable to measure and store all pertinent parameters, needed for billing as per the applicable tariffs and settlement system as specified by the Commission.

7.1.3 The parties agree for inspection and testing of meters in accordance with the relevant clause of the Metering Code approved by the Commission. The parties also agree that inaccuracies, failures and discrepancies in the interface meters shall be dealt in accordance with the relevant provisions of the Metering Code approved by the Commission.

7.1.4 Other provisions regarding metering system, which are not covered specifically in this agreement, shall be governed by the relevant codes and standards approved by the Commission.

7.2 Meter Reading

7.2.1 Interface Tariff Meters shall be provided at the inter-connection points between TPC (G) and transmission system of TPC (T) to record ex-bus despatch of generating stations of TPC (G) as per Metering Code approved by the Commission.

7.2.2 Meters for interface tariff shall be programmed so as to register and store the readings from 00.00 hrs of 1st day of current month to 00.00 hrs of first day of next month. Joint Monthly meter readings of the meters for interface tariff for recording ex-bus despatch shall be taken / downloaded at by 11.00 hrs on the 1st day of the next month and confirmation signed by the authorised representatives of TPC (G) and BEST. No notice is required to be issued for monthly joint meter readings. In case any party is not able to attend meter readings at specified time, the meter readings taken by the other party (s) shall be considered conclusive and binding on other parties.

7.3 Energy Accounting

7.3.1 State Energy Account: Monthly State Energy Account for intra-State transmission system shall be prepared by the State Load Despatch Centre indicating energy injected into / drawn from intra-State transmission system in pursuance with clause (C) sub-section (2) Section 32 of the Act. The monthly

State energy account issued by the SLDC shall be basis for accounting, billing and settlement amongst the beneficiaries of intra-State transmission system.

7.3.2 SLDC Charges: The scheduling and SLDC charges as specified by the Commission from time to time shall be applicable and payable to SLDC separately by BEST & TPC (G) as the case may be.

8: ARTICLE: PRINCIPLE OF DETERMINATION OF TARIFF & CHARGES

The tariffs for supply of electricity contracted by BEST from the generating stations of TPC (G) under this Agreement shall be in line with Part E of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time and various other orders of the Commission as may be necessary to give effect to obligation to supply and take energy under Article 4 of the Agreement. Under the current regulations of the Commission, the charges as determined on two part basis consist of (i) Fixed Charge, (ii) Energy Charge and (iii) Incentives.

8.1 Recovery of Fixed Charges

The "Monthly Fixed charges" payable by BEST for contracted capacity shall be as given below:

$$\text{Monthly Fixed Charge} = \frac{\text{Annual Fixed Charge X Contracted Capacity}}{\text{Installed Capacity X 12}}$$

Where, AFC is determined by MERC under Regulation 28 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

In case of thermal generating stations, target availability for full recovery of annual fixed charges shall be 80 per cent and if the availability during any year is less than target availability of 80%, the recovery of fixed cost shall be on pro-rata basis in accordance with MERC (Terms& Conditions of Tariff) Regulations, 2005.

In case of hydro-generating stations, the normative capacity index for recovery of annual fixed charges shall be as per Regulation 33.2.1 of MERC (Terms & Conditions of Tariff) Regulations, 2005.

8.2 Energy Charges

The energy charges shall be determined unit-wise and payable by BEST as given below:

(a) Thermal generating stations

Energy Charges (Rs) = Rate of Energy Charges in Rs/kWh X Ex-bus energy sent out corresponding to scheduled generation for the month
Where,

Rate of Energy Charges (REC) shall be as computed as per Regulation 35.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

(b) Hydro power generating stations

In case of Hydro power generating stations the Energy Rate shall be determined as per Regulation 35.2.1 of MERC (Terms &Conditions of Tariff) Regulations, 2005.

8.3 **Incentives:**

(a) Thermal Generating Station:

Incentive for each unit shall be payable as per MERC (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time.

(b) Hydro Generating Station:

Incentive for each unit shall be payable as per MERC (Terms and Conditions of Tariff) Regulations, 2005 as amended from time to time.

9: ARTICLE: TARIFF & CHARGES

9.1 The tariff and charges as per Article 8 for supply of electricity by TPC (G) to BEST under this Agreement shall be approved by the Commission from time to time. TPC (G) shall raise bills on BEST at monthly interval for tariff and Charges.

9.2 BEST shall continue to pay to TPC (G) as per rates last determined by the Commission on provisional basis till the rates are decided by the commission. After finalisation of rates by the Commission for such period, where provisional rates have been applied, TPC (G) shall issue supplementary bill under Article 10.1 (C) towards the difference amount between provisional rate and tariff finally approved by the Commission.

9.3 Fuel adjustment charges shall be levied by TPC (G) and payable by BEST based on the MERC (Terms and Conditions of Tariff) Regulations, 2005.

9.4 Payment of reactive energy charges shall be governed by the MERC (Terms and Conditions of Tariff) Regulations, 2005 and payable by BEST as specified by the Commission from time to time.

10: ARTICLE: BILLING AND PAYMENT

10.1 All payments under this Agreement shall be billed and paid in accordance with the following provisions:

(a) Monthly Bill: TPC (G) shall raise at monthly interval one or more bills ("Monthly Bills") for 1) Fixed Charges 2) Energy Charges for supply of electricity to BEST from its generating stations based on the amounts derived from Article 8 of this Agreement. The bills shall be raised in the name of designated officer of the BEST.

(b) BEST shall arrange the payment of monthly bill in the following manner through cheque payable at Mumbai and drawn in the name of TPC (G). The date of realisation of cheque by TPC (G) shall be considered as the date of payment for computation of rebate or late payment surcharge payable as the case may be.

Table 10.1(b): Monthly Bill Payments

Sr.No.	Due Date	Amount	Remarks
1.	On 4th	Lump-sum payment of 33% of the previous month bill amount .	If 4th happens to be Saturday, Sunday or Holiday, then this amount to be paid on earlier working day to enable TPC to deposit in the high value clearance on the same day.
2.	On 9th	67% of the current bill amount minus amount paid as per 1. above	If 9th happens to be Saturday, Sunday or Holiday, then this amount to be paid on earlier working day to enable TPC to deposit in the high value clearance of the same day.
3.	On 14th	Balance of the current bill amount after deducting the prompt payment discount amount	If 14th happens to be Saturday, Sunday or Holiday, then this 33% of the bill amount to be paid on next working day to enable TPC to deposit in the high value clearance on the same day.

(i) BEST will avail 1.25% of Bill amount as rebate at the time of the payment of last instalment subject to the payment of 1st and 2nd instalments as prescribed in the above table.

In case the 3rd Instalment payment is made by BEST after 14th day of the month, but within 30 days of billing date, subject to realization of payment of 1st and 2nd instalment (as per Sr. No. 1 & 2 above) in time, the rebate shall be reduced at the rate of 0.078% per day for delay beyond 14 days.

(c) Supplementary Bills: Any amount due to TPC (G) from BEST under this Agreement other than amounts set out in a Monthly Bills shall be payable within thirty (30) days of presentation of the Supplementary Bill by TPC (G) to BEST.

Provided the Incentives for thermal unit shall be calculated twice in a year for generation above target PLF of 80% during the period

1) from 1st April to 30th September and billed in monthly Bill for September

2) 1st October to 31st March and billed in monthly Bill for March.

Provided the Incentives for hydro unit shall be calculated once in a year for performance during the period from 1st April to 31st March and billed in monthly Bill for March.

10.2 Notwithstanding any dispute as to all or any portion of a Bill submitted by TPC (G) to BEST, BEST shall pay the full amount of the Bill.

10.3 Surcharge on delayed payments:

Any payment delayed beyond period of 30 days of billing date shall not entitle BEST to any rebate, but a surcharge for late payment computed as under:

Surcharge for late payment = Payment delayed or not paid within 30 days X (number of days taken for payment from billing date - 30) x 1.25% x 1/30

11: ARTICLE: PAYMENT SECURITY MECHANISM:

11.1 Third Party Sales by TPC(G) on BEST default:

In the event of failure of the BEST to make due and admissible payment of TPC (G) for consecutively two months for any reason whatsoever, the TPC (G) shall have the right to stop power supply to BEST and divert such power for sale to any other customer at the risk and cost of BEST. TPC (G) shall however give 7 (seven) days advance notice to the BEST before stopping supply to BEST.

11.2 Sales to any third party other than the BEST shall cease and regular supply of electricity to the BEST shall commence and shall be restored in accordance with all the provisions of this Agreement, on the day on which BEST makes the due payment to the TPC (G).

11.3 Quarterly and Annual Reconciliation

Both Parties acknowledge that all payments made against Monthly and Supplementary Bills shall be subject to reconciliation at the end of each quarter and annual reconciliation at the end of each financial year for energy supplied to BEST from TPC (G) generating stations and other sources, Rebate on prompt payment, Surcharge on delayed 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 or a full financial year as the case may be has been finally verified and adjusted, the Parties shall jointly sign such reconciliation statement. Within fifteen days of signing of a reconciliation statement, TPC (G) shall raise a Supplementary Bill showing credit/ debit of payments.

12: ARTICLE: FORCE MAJEURE

"Force Majeure " means, with respect to any party, any event or circumstance which is not within the reasonable control of, or due to an act or omission of, that party ("Affected Party") and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:(i) acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood, drought and natural disaster;

(ii) strikes, lockouts, go-slow, bandh or other industrial disturbances;

(iii) acts of public enemy, wars (declared or undeclared), blockades, insurrections, riots, revolution, sabotage, vandalism and civil disturbance;

(iv) unavoidable accident, including but not limited to fire, explosion, radioactive contamination and toxic dangerous chemical contamination;

(v) any shutdown or interruption of the grid, which is required or directed by the State or Central Government or by the Commission or the State Load Despatch Centre; and

(vi) any shut down or interruption, which is required to avoid serious and immediate risks of a significant plant or equipment failure.

12.1 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.

12.2 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.

12.3 In case the force majeure conditions prevail for more than 100 days, both the Parties may mutually agree to rescind/ defer the Agreement or portion thereof which have been affected due to such force majeure conditions on such terms and conditions between the Parties.

12.4 To the extent not prevented by a force majeure event pursuant to Article 12.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall put their best efforts to mitigate the effect of any event of force majeure as soon as practicable.

12.5 Available Relief for a force majeure event shall be limited to the extent that 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.

13: ARTICLE: TERMINATION ON EVENT OF DEFAULT

13.1 This agreement may be terminated by BEST as provided hereunder in the event of following defaults by TPC(G):

13.1.1 TPC is adjudicated bankrupt or dissolved or a receiver is appointed for its assets or proceedings for TPC's liquidation (except for the purpose of amalgamation or restructuring on terms not detrimental to BEST) are continuing more than six (6) months after they were commenced,

13.1.2 Failure for a continuous period of 90 days relating to obligations to supply under Article 4.2,

13.1.3 Failure relating to obligations for contracted capacity under Article 4.1 without taking remedial action within a period of 30 days.

13.2 This agreement may be terminated by TPC (G) as provided hereunder in the event of following defaults by BEST:

13.2.1 BEST is adjudicated bankrupt or dissolved or a receiver is appointed of the whole or any part of its assets or proceedings for its liquidation (other than for the purpose of amalgamation or restructuring on terms not detrimental to TPC (G)), which are continuing more than six (6) months after they were commenced,

13.2.2 Failure of the BEST to make due and admissible payment of TPC-(G) for consecutive two months under Article 10.

13.3 Termination Procedure

13.3.1 Upon the occurrence and continuation of Event of Default by any Party ("Notice Initiating Party") as specified above; then Other Party ("Default Party") shall have the right to deliver to the defaulting Party a "Preliminary Termination Notice", which shall specify in reasonable detail the circumstances giving rise to the issue of such notice;

13.3.2 Following the issue of Preliminary Termination Notice the Parties shall wait for consultation as to what steps shall be taken to remedy the situation having regard to all the circumstances for a period of ninety (90) days ("Consultation Period") or such longer period as the Parties may agree;

13.3.3 Any time after 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 Party may terminate this Agreement by delivering a "Final Termination Notice", whereupon this Agreement shall terminate on the date of such notice.

13.3.4 Till service of final notice of termination, the Parties shall, save as otherwise provided in this Agreement; continue to perform their respective obligations under this Agreement.

13.4 Consequences of Termination

13.4.1 In the event of Termination of this Agreement consequent to default by any Party, the other Party may refer the matter to a Referee as provided hereunder for deciding the compensation payable on account of Termination of Agreement due to event of default.

13.4.2 The Referee shall be an independent reputed person having sound knowledge of power sector. Both the parties within a period of thirty days of issue of final notice of termination agree to a common name for the Referee and if no consensus is reached on the name of the Referee within such period, the name suggested by the affected party shall be binding and acceptable to defaulting party. The Referee after hearing both parties and on examination of such witnesses, evidences and documents as may be put by the parties, shall give his award for determination of compensation payable by defaulting Party to Other Party consequent to termination. The award of the Referee shall indicate the manner and period in which compensation shall be paid by the defaulting party to affected party. The parties agree that the award of the Referee shall be acceptable and binding on them.

13.4.3 The Parties shall equally share the cost associated with the proceeding before the Referee as mentioned above, for determination of compensation.

14 ARTICLE: PERFORMANCE STANDARDS

14.1 Both BEST and TPC (G) shall maintain respective standards of performance at the point of inter-connection as laid down by the Commission and the Central Electricity Authority (CEA) under the Electricity Act 2003.

15 ARTICLE: GOVERNING LAW

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

16 ARTICLE: CHANGE IN LAW

"Change in Law" means the occurrence of any of the following after the date of effectiveness of this agreement:

(a) 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

(b) 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;

16.1 In the event of change of law as defined above, which affects TPC (G) or BEST, then the Affected Party shall send a notice in writing to Other Party regarding such event of change of law. Both parties shall meet and endeavour to agree to an amendment to this Agreement to pass on the impact of such an event which shall be settled through a supplementary bill.

16.2 If within 90 (ninety) days after such notification, the parties are unable to reach agreement on such amendment, or in the event that an agreement to amend has been reached but no amendment has been executed within 30 (thirty) days after reaching of such agreement to amend, either party shall have the right to commence the dispute resolution procedures set forth in Article 17 to determine or implement the appropriate amendment to this Agreement.

17 ARTICLE: DISPUTE RESOLUTION & ARBITRATION

17.1 All disputes between the Parties herein arising out of or in connection with this Agreement shall be referred to the Commission for adjudication by the Commission and / or for settlement by reference to Arbitration as provided in section 86 (1) (f) read with section 158 of the Electricity Act, 2003.

17.2 Notwithstanding the existence of any question, dispute, and differences referred to arbitration, the Parties hereto shall continue to perform their respective obligations under this Agreement.

18 ARTICLE: 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

a) 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.

b) 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 between the parties stand as abrogated and withdrawn.

18.6 Succession and Assignment

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and assigns including any entity which may succeed to the rights and obligations of either party under any scheme that may be adopted by the Parties after appropriate approval and consents as may be require under Law.

18.7 Confidential Information

The Parties herein shall at all time during the continuance of this Agreement use their reasonable endeavours to keep all information relating to technical and commercial aspects affecting their business as confidential and accordingly no Party shall disclose the same to any other person unless the information which at the time of disclosure was in the public domain.

18.8 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.

18.9 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the TPC (G) and BEST.

18.10 Survival

Notwithstanding anything to the contrary herein, the provisions under Article 12 (Force Majeure), Article 15 (Governing Law), Article 17 (Dispute Resolution & Arbitration), Article 13 (Termination on Event of Default), and Article 18 (Miscellaneous) shall continue and survive any expiry or termination of this Agreement.

18.11 Counterparts

This Agreement may be executed between the parties, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of The Tata Power Company Limited Authorised Signatory (P. R. MENON), MD, TATA POWER Name & Designation Common Seal	For and on behalf of Brihan Mumbai Electric Supply And Transport Undertaking (BEST) Authorised Signatory (Uttam Khobragade) Name & Designation GM, BEST Common Seal
In the presence of	In the presence of
1 Vidyadhar Wagle	1
2 Ashok Sethi	2

ANNEXURE - 4

Supplementary POWER PURCHASE AGREEMENT

BETWEEN

Brihan-Mumbai Electric Supply and Transport Undertaking (BEST)

AND

The Tata Power Company Limited – Generation Business (Tata Power-G)

(To be read along with the Existing Power Purchase Agreements dated 21st December, 2006 & 5th February, 2010)

THE TATA POWER CO. LTD.

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◑ 2018 ◑ TE 550034

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२०
21 MAR 2018
सक्षम अधिकारी

श्रीमती. एस. व्हि. मसुरकर

PARTIES TO AGREEMENT AND RECITAL

This Supplementary Power Purchase Agreement (here in after referred as the "Supplementary Agreement") is made this day 26th March of 2018, between

1. **BrihanMumbai Electric Supply and Transport Undertaking (BEST)** for and on behalf of the Brihan Mumbai Municipal Corporation (BMC) a corporation formed under the Bombay Municipal Corporation Act 1888 having its registered office at BEST Bhavan, BEST Marg, Mumbai – 400 001 (hereinafter referred to as the BEST, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the One Part.

And

2. **The Tata Power Company Limited (Tata Power-G)** a company registered under the Indian Companies Act, VII of 1913 having its registered office at Bombay House 24, Homi Mody Street, Mumbai – 400001(hereinafter referred to as "TPC" which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns of the Other Part;

THE TATA POWER CO. LTD.

BEST and Tata Power-G are individually referred to as the "Party" and are collectively referred to as the "Parties"

WHEREAS;

a) Brihan Mumbai Electric Supply and Transport Undertaking (hereinafter referred as "BEST") is deemed distribution licensee under the proviso of Section 14 of EA, 2003 and engaged in distribution and supply of electricity to consumers within its license area in the City of Mumbai and for this purpose BEST is required to make suitable arrangement to procure its power requirements

b) The Tata Power Company Limited by the order dated 18th October, 2000 passed by the Hon'ble Bombay High Court in Company Petition No. 826, 827 and 828 of 2000 for sanction of the scheme of amalgamation of The Andhra Valley Power Supply Company Limited, The Tata Hydro-Electric Power Supply Company Limited with TPC (hereinafter referred as "Original Licensees") effective 1st April 2000, functioning as a Generating Company (hereinafter referred as "Tata Power-G) within the meaning of Section 10 of the Electricity Act, 2003 and inter alia owns, operates and maintains three Hydro power stations at Bhira, Bhivpuri and Khopoli, thermal power station at Trombay and supplying power generated from these stations to various Distribution Licensee/Companies including BEST;

c) BEST and the Tata Power-G had entered into a Power Purchase Agreement (PPA) dated 21st December, 2006 for bulk supply of 800 MW of electricity as per the terms and conditions contained in the said Agreement. In the same PPA it was agreed that BEST will procure additional 100 MW of power from Unit 8 when the unit gets commissioned & subsequently capacity of 67.53 MW of Unit 4 will get reduced once the Unit is decommissioned. Further the agreement dated 21st December, 2006 was approved by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as 'MERC') on 6th November, 2007 and has been in force thereafter. The term of the PPA is going to expire on 31st March 2018.

d) Tata Power-G had, vide its letter dated 9th November 2009 expressed its willingness to offer BEST, additional 100 MW of power w.e.f. 1st April 2010, which had been duly accepted by BEST vide its letter dated 16th November 2009. Tata Power-G had accordingly entered into an additional PPA with BEST on 5th February, 2010 for supplying 100 MW of power from its existing generation units. The term of this PPA is also going to expire on 31st March 2018. Consequently, post commissioning of Unit 8 on 27th March, 2009 & decommissioning of Unit 4 on 1st October, 2016 the contracted capacity of BEST from the generating units of Tata Power-G is 932 MW (800 MW (PPA dated 21st December, 2006) + 100 MW (unit 8 commissioning) + 100 MW (PPA dated 5th February, 2009) Less 68 MW Unit 4 decommissioning)

e) During the subsistence of the above mentioned PPAs, BEST filed a Petition before the Hon'ble MERC being Petition No 176/2017 inter alia seeking extension of the existing PPA between BEST and Tata Power-G in terms of clause 3.3 of the existing PPA.

f) The Hon'ble MERC vide its order in case 176 of 2017 dated 27th February 2018, has approved extension of the validity of the PPA between BEST and Tata Power-G upto 31st March 2019 along with certain directions as detailed below to be incorporated in the

TATA POWER CO. LT

g) That in terms of the directions of the Hon'ble MERC passed in case 176/2017 the validity of PPA between BEST and Tata Power-G as approved by the Hon'ble MERC vide its Order dated 6 November, 2007 in Case No. 87 of 2006, Case No.88 of 2006 & Case No. 30 of 2007 and Order dated 1st September, 2010 in Case No. 1 of 2010 stands extended for the period of one year from 1st April, 2018 upto 31st of March, 2019 for the revised quantum of 676.69 MW as agreed between BEST and Tata Power-G.

h) That further, the sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be regulated under the applicable Regulations of the Hon'ble MERC, as amended from time to time.

i) The tariff for sale of power by Tata Power-G and purchase of power by BEST pursuant to such PPA shall be approved by the Hon'ble MERC in accordance with the applicable Tariff Regulations of the Hon'ble MERC, as amended from time to time.

j) In case of any inconsistency in terms and conditions of existing PPA with the provisions in applicable Regulations of the Hon'ble MERC, the terms and conditions of the PPA shall stand modified in accordance with the applicable Tariff Regulations. Further, the existing PPA is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency.

k) The parties in view of the mutually agreed terms and conditions of the existing PPAs and in terms of the directions contained in the order dated 27thFebruary 2018 in Case No 176/2017 has therefore decided to enter into the present Supplementary Power Purchase Agreement.

This Supplementary agreement therefore witnesseth as under:

1. That the term of the existing PPA stands extended for a further period of one year in accordance with the direction of the Hon'ble MERC in Case 176 of 2017 on the terms and conditions as stated therein for supply of 676.69 MW. Further, in case any terms and conditions of existing PPA are inconsistent with the relevant provisions of prevailing **TARIFF REGULATIONS** currently being Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015 and its amendment form time to time, the same shall stand modified accordingly.

2. The Supplementary Power Purchase Agreement is subject to the relevant provisions of the Tariff and other Regulations and Orders of the Hon'ble MERC and of the Rules as applicable from time to time, which shall prevail in case of any material inconsistency. The existing PPAs are attached as **Annexure 1** and **Annexure 2** of this Supplementary Power Purchase Agreement.

3. The Supplementary Agreement shall come into force from the date of **1st April 2018** for all-purpose and intent and shall remain operative till **31st March 2019** or till any further date of extension on mutually agreed term as per Article 3.3 of the existing agreement.

4. The Unit wise allocation of revised contracted capacity of 676.69 MW (excluding 256 MW of Unit 6) from Tata Power-G as agreed between the parties is as given below:

TATA POWER CO. LTD.

Table: Generation Capacity Allocation to BEST for FY 2018-19

Sr. No	Name of Generating Station	Type of Plant	Installed Capacity (MW)	% Allocation	Generating Capacity contracted to BEST (MW)
1	Khopoli				
2	Bhivpuri	Hydro	447	51.17%	228.73
3	Bhira				
4	Trombay				
4.1	Unit 5		500	51.17%	255.85
4.2	Unit 7	Thermal	180	51.17%	92.11
4.3	Unit 8		250	40.00%	100.00
	Total		1377		676.69

5. This Supplementary Agreement may be executed between the parties in duplicate, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument.

IN WITNESS WHEREOF the parties have executed these presents through their authorized representatives at Mumbai.

For and on behalf of The Tata Power Company Limited Authorised Signatory 1 Ashok Sethi A. S. SETHI, COO & EXECUTIVE DIRECTOR Name & Designation Authorised Signatory 2 H M Mistry H. M. MISTRY, COMPANY SECRETARY Name & Designation Common Seal THE TATA POWER COMPANY LIMITED	For and on behalf of Brihan Mumbai Electric Supply And Transport Undertaking (BEST) Authorised Signatory Surendrakumar Bagde Ph.D., I.A.S. Name & Designation General Manager THE BRIHAN-MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING Common Seal
In the presence of	In the presence of
1	1 Dy. General Manager (Electric Supply)
2 V B Mistry	2 Dy. Chief Engineer

AGREEMENT

FOR

PROCUREMENT OF POWER

(FOO)

125 MW on RTC Basis

The Brihanmumbai Electric Supply & Transport Undertaking (of Brihanmumbai Mahanagarpalika)
BEST Bhavan, Colaba, Mumbai,
Maharashtra 400001

And

Sai Wardha Power Generation Private Limited
8-2-293/82/A/90 Road No: 9, Jubilee Hills,
Hyderabad 500 033

October 2024

E-Tender No. BEST/Medium/Lumpsum Tariff/23-24/ET/75
E-Reverse Auction No. BEST/Medium/Lumpsum Tariff/23-24/RA/73

Sai Wardha Power Generation Private Limited

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Sai Wardha Power Generation Private Limited

Part I

Preliminary

भारतीय गैर न्यायिक

भारत INDIA

रु. 500 FIVE HUNDRED RUPEES

पाँच सौ रुपये Rs. 500

सत्यमेव जयते

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA ◑ 2024 ◑ CT 044691

प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.वि.क्र. ८०००२२
- 8 OCT 2024
सक्षम अधिकारी
श्रीमती सुषमा चव्हाण

AGREEMENT FOR PROCUREMENT OF POWER

THIS AGREEMENT is entered into on this the .....15th..... day of Oct., 2024

BETWEEN

1 The Brihanmumbai Electric Supply & Transport Undertaking (of Brihanmumbai Mahanagarpalika) represented by its General Manager and having its principal office at BEST Bhavan, Colaba, Mumbai, Maharashtra-400001 (hereinafter referred to as the **"Utility"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 Sai Wardha Power Generation Private Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 represented by its [Managing Director/Authorised Person] and having its registered office at 8-2-293/82/A/90, Road No: 9, Jubilee Hills, Hyderabad 500 033, (hereinafter referred to as the **"Supplier"**

Sai Wardha Power Generation Private Limited

which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Utility has resolved to procure electricity from a power generating station that would deliver a Contracted Capacity of 125 MW power on RTC basis at the Delivery Point corresponding to 138 MW of gross generation[1] on finance, own and operate (the "FOO") basis, in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

(B) The Utility had accordingly invited proposals by its Request for Qualification dated 11.07.2023 (the "Request for Qualification" or "RFQ") for short listing of Bidders who offer to supply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia,* the selected bidder.

(C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No. *23/17/2013-R&R-Vo1-VI (Part 2) dated 29 January, 2019 (the "**Request for Proposals**" or "**RFP**") from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.

(D) After evaluation of the Bids received, the Utility had accepted the Bid of the selected bidder and issued its Letter of Award No. CER/44/2024 dated ..... 07.08.2024 (hereinafter called
the "**LOA**") to the selected bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Power within 30 (thirty) days of the date of issue thereof.

(E) ~~[The Utility has obtained the Letter of Assurance, dated [**] issued by [**][4] ("**Coal Supplier**") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("**Letter of Assurance**" appended herein as **Annexure 1**) for the purposes of the Contracted Capacity;]~~ (Deleted)

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

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

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

Sai Wardha Power Generation Private Limited

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

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

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

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

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

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

Sai Wardha Power Generation Private Limited

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

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

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

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

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

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

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

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

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

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

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

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

(t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**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, reorganisation, dissolution, arrangement, protection or relief of debtors;

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

Sai Wardha Power Generation Private Limited

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

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

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

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

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

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

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

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

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

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

1.3 Measurements and arithmetic conventions

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

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1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

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

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

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

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

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

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

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

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

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

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Part II

The Procurement Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

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

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

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

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ARTICLE 3

GRANT OF PROCUREMENT CONTRACT

3.1 The Procurement Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein [for producing electricity at the Power Station" if Supplier is NOT a Trading Licensee]for supply thereof to the Utility (the "**Procurement Contract**") for a period of 7 years (In case of RTC Power Procurement] and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

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

(a) finance, own, operate and maintain the Power Station in accordance with this Agreement";

(b) Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;

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

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

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

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

3.2 Substitution of the Utility

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

3.2.2 In the event of additional Licensees operating in the same area of supply post the signing

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of this Agreement, the existing PPA may be reallocated in full or part by the competent authority to the other licensees in proportion to the number of consumers/ demand of power with the different licensees and the present Agreement shall apply to all such subsequent Licensees.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

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

(a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;

(b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;

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

(d) deleted

(e) provided Performance Security to the Supplier;

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

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

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of [90 (ninety) days] from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

(a) provided Performance Security to the Utility;

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

(c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;

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

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

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

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

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

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

4.2 Damages for delay by the Utility

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

4.3 Damages for delay by the Supplier

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

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the

provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, [120 (one hundred twenty) days] from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier and the Utility under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the parties, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as Damages thereof. Provided further that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Utility, the Performance Security given by the Utility shall be encashed and appropriated by the Supplier as Damages thereof.

4.5 Extension of Term of Agreement

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

4.6 Date of Commencement of Supply

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

ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, at its own cost and expense, procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Supplier shall operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty-five per cent) thereof during each year of the Contract Period for Power procurement on RTC basis (the "**Normative Availability**")

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to 1000 kWh per megawatt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and dispatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.2 Obligations relating to Change in Ownership

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

[*In case the Supplier is a Trading Licensee* "The provisions of Clause 5.2 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 5.2 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to ..... (name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid). The Supplier shall ensure the compliance of the provisions mentioned in this Clause 5.2. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Clause 19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.2."]

5.3 Obligations relating to transmission charges

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

A. Inter State Transmission Charges

The Utility shall be liable for inter-state transmission charges under Applicable Laws.

B. Intra State Transmission Charges

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

5.4 Obligations relating to transmission losses

A. Inter-State Transmission losses:

The Utility shall be liable for inter-state transmission losses under Applicable Laws.

B. Intra-State Transmission Losses

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

5.5 Obligations relating to SLDC and RLDC charges

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Utility.

5.6 Obligations relating to taxes

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

5.7 Obligations relating to reporting requirements

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

ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

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

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement;

(n) ;

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

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

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

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

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7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

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

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

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

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

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

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

7.3 Disclosure

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

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ARTICLE 8

DISCLAIMER

8.1 Disclaimer

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

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

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

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

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Part III

Operations

ARTICLE 9

PERFORMANCE SECURITY BY THE SUPPLIER AND THE UTILITY

9.1 Performance Security

9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 12.50 crore (Rupees Twelve crore and Fifty Lakh Only)[2] in the form set forth in Schedule-B (the "**Performance Security**") valid for a period ending 6 (six) months after date of commencement of supply. The amount towards the Performance Security can be paid through NEFT/RTGS/ also.

9.1.2 The Utility shall, for the performance of its obligations hereunder, provide to the Supplier no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 12.50 crore (Rupees Twelve crore and Fifty Lakh Only) in the form set forth in Schedule-B (the "**Performance Security-Utility**") valid for a period ending 6 (six) months after date of commencement of supply.

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

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

9.2 Appropriation of Performance Security

9.2.1 Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional

[2] To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity. ~~This may be increased to Rs. 15,00,000 (Rs. Fifteen lakh) per MW of Contracted Capacity if Contracted Capacity is less than 500 MW and Rs. 8,00,000 (Rs. eight lakh) per MW of Contracted Capacity if Contracted Capacity is more than 1000 MW.~~

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Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

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

9.3 References to Performance Security

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

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

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ARTICLE 10
ALLOCATION OF CAPACITY

10.1 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a capacity of 125 MW to the Utility as the capacity contracted hereunder on RTC basis (the "**Contracted Capacity**") and the Contracted Capacity shall at all times be operated and utilized in accordance with the provisions of this Agreement.

10.2 Dispatch of unutilized Contracted Capacity

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

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

10.3 Substitute Supply

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

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

10.4 Supply during Designated Hours

The Supplier shall ensure the Availability of the Power Station during designated hours of the day comprising 00.00 to 24.00 Hrs for RTC Power (Project 1 as per RfQ)However, the Utility may with a notice of 30 (thirty) days, require the Supplier a change in the Designated Hours subject to mutual agreement between the parties.

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10.5 Supply on Round the Clock Basis

The Supplier shall ensure the Availability of the Power Station on round the clock basis. The Utility may opt for a lower capacity requirement during pre-specified hours comprising 6 (Six) hours between 00.00 hours and 06.00 hours.

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Part IV

Financial Covenants

ARTICLE 11

TARIFF

11.1 Tariff

11.1.1 The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Utility to the Supplier for Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the "**Tariff**") (As approved by the Hon'ble MERC in Case No. 135 of 2024).

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

11.2 Base Fixed Charge

The Parties agree that the fixed charge payable for Availability during Designated Hours shall, in accordance with the offer of the Supplier for the Base Year, be Rs. 2.78./kwh (Rupees Two point Seven Eight Only)[3] per kWh (the "**Base Fixed Charge**"), which shall be fixed for the first five years of the contract from the Appointed Date and thereafter shall be revised, in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.

11.3 Fixed Charge

For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be fixed for first five years from the Appointed Date and thereafter shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and for better clarification, if the supply commences in FY 2024 – 25, say by 15th October 2024, the Fixed Charge of Rs. 2.78/kwh will be fixed for first 5 years, i.e. till 14th October 2029, thereafter, from 15th October 2029 onwards, Fixed Charge gets escalated considering the base WPI as on 31st Jan 2028. Illustration: (a) Base Fixed Charge from 15th Oct 2024 to 14th Oct 2029 is Rs. 2.78/kwh, (b) WPI as on 31st Jan 2028, 31st Jan 2029, 31st Jan 2030 are 100, 110, 115 respectively, the Fixed Charge for the period from 15th October 2029 to 31st March 2030 shall be Rs. 2.836/kwh (2.78x(1+(20%x10%))), for 1st Apr 2030 to 1st March 2031 shall be Rs. 2.861/kwh and so on.

11.4 Computation of Fixed Charge

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

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

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

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

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

11.4.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the non-Availability hereunder.

11.5 Declaration of Availability

11.5.1 Unless otherwise notified by the Supplier, the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.

11.5.2 In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in intra state transmission system in accordance with clause 5.3, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as non-Availability on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the entitlement of the Utility in the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the non-Availability hereunder shall be notified by the Supplier to the Utility forthwith.

11.5.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the non-Availability hereunder shall be notified by the Supplier to the Utility forthwith.

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

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

11.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, *if Supplier* maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty-eight) hours prior to its occurrence.

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

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

11.6 Damages

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

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

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

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11.7 Variable Charge

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

11.8 Taxes and duties

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

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

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

11.9 Billing and Payment

11.9.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the "**Monthly Invoice**") signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Variable Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.

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

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.3; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.4; and (l) the net amount payable

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under the Monthly Invoice.

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

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

11.10 Disputed Amounts

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

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

11.11 Discount for early payment

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

(i) Upto 5 days from the date of submission of the invoice – 1.5%

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

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

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

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

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

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

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

ARTICLE 12

VARIABLECHARGE

12.1 Variable Charge

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

12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. 2.78 (Rupees Two point seven eight) per kWh, as the cost of Fuel/generating cost (the "**Base Variable Charge**") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period.

12.3 Computation of Variable Charge

[*Option j: Lumpsum Tariff*[4]

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

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be fixed for first five years of the contract from the Appointed Date and thereafter shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and for better clarification, if the supply commences in FY 2024 – 25, say by 15th October 2024, the Variable Charge of Rs. 2.78/kwh will be fixed for first 5 years, i.e. till 14th October 2029, thereafter, from 15th October 2029 onwards, Variable Charge shall gets escalated considering the base WPI as on 31st Jan 2028. Illustration: (a) Base Variable Charge from 15th Oct 2024 to 14th October 2029 is Rs. 2.78/kwh, (b) WPI as on 31st Jan 2028, 31st Jan 2029, 31st Jan 2030 are 100, 110, 115 respectively, the Variable Charge for the period from 15th October 2029 to 31st March 2030 shall be Rs. 2.919/kwh (2.78x(1+(50%x10%))), for 1st Apr 2030 to 1st March 2031 shall be Rs. 2.985/kwh and so on.

12.4 Shortage of Fuel

In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from Contracted Capacity on account of a shortfall in Fuel for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of

[4] May be used for procurement any sources of energy including renewable source of energy where deemed feasible. Bidders whose source of Fuel is from Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws or from Coal Linkage allocated by CIL as stated under Options (b), shall not be eligible to Bid under this Option (j) (Lumpsum Tariff).

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Fuel, notify the Utility of the nature, extent and period of shortage of Fuel and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Availability occurring on account of shortage of Fuel, save and except as provided in Clause 11.4.4.

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ARTICLE 13

PAYMENT SECURITY

13.1 Default Escrow Account

13.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favor of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where Utility's revenue of at least twice the Monthly Payment are normally deposited (the "**Default Escrow Bank**").The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than twice the Monthly Payment shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 1.1 times the sum of 1/12th of the applicable annual Capacity Charge for the relevant year and 1/12th of the total amount paid on account of variable charge for the last year (the "**Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.

Provided that in the first year of operation, total amount of variable charge shall be assessed by multiplying energy generation at normative availability and applicable variable charge.

13.1.2 The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "**Deed of Hypothecation**"), whereby the Utility shall hypothecate to the Supplier an amount equal to Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

13.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to the Monthly Payment shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.

13.1.4 The Utility shall ensure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Monthly Payment for and in respect of any month.

13.2 Letter of Credit

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

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the Appointed Date, and shall be modified once every year to reflect the revision in Monthly Payment in accordance with the provisions of this Agreement.

13.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least twice the value of the Monthly Payment is normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.3 Recovery

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

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

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

13.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

13.5 Operationalization of Payment security mechanism

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

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ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1 Despatch of Contracted Capacity

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

14.1.2 Pursuant to the provisions of Clause 14.1.1, the Supplier shall plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.

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

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

14.2 Settlement of DSM charges

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

14.3 Overriding powers of the Utility

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

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

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

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

14.4 Ramp up of Despatch

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

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ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

The Supplier shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier during the Contract Period.

15.2 Insurance Cover

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

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

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

(c) the Supplier's general liability arising out of the Procurement Contract;

(d) liability to third parties for goods or property damage;

(e) workmen's compensation insurance; and

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

15.3 Evidence of Insurance Cover

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

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15.4 Remedy for failure to insure

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

15.5 Waiver of subrogation

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

15.6 Supplier's waiver

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

15.7 Application of insurance proceeds

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

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ARTICLE 16

ACCOUNTS AND AUDIT

16.1 Audited accounts

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

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

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

16.2 Appointment of auditors

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

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

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

16.3 Certification of claims by Statutory Auditors

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

16.4 Set-off

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

16.5 Dispute resolution

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

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Part V

Force Majeure and Termination

ARTICLE 17

FORCE MAJEURE

17.1 Force Majeure

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

17.2 Force Majeure Events

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

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

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

(c) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Utility;

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

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

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

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

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

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

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

17.3 Other Events

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

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

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, or of the Contractors;

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

(d) any failure or delay of a Contractor but only to the extent caused by another Event mentioned in 17.3 and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor; or

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

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17.4 Duty to report Force Majeure Event

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

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

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

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

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

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

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

17.5 Effect of Force Majeure Event on the Procurement Contract

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

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

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17.6 Allocation of costs arising out of Force Majeure

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

17.7 Termination Notice for Force Majeure Event

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

17.8 Excuse from performance of obligations

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

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

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

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

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ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier

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

18.2 Compensation for default by the Utility

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

18.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Availability, as the case may be, the Utility shall, in addition to payment of compensation under Clause 18.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Availability was reduced on account thereof, as the case may be; and in the event of reduction in Availability below 80% (eighty per cent) of the Normative Availability, the Utility shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Availability. For the avoidance of doubt, loss of 25% (twenty-five per cent) of Availability for 4 (four) days shall entitle the Supplier to extension of 1 (one)day in the Contract Period.

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ARTICLE 19

TERMINATION

19.1 Termination for Supplier Default

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

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

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

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

(d) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;

(e) the Supplier creates any Encumbrance in breach of this Agreement;

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

(g) Deleted

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

(i) a Change in Ownership has occurred in breach of the provisions of Clause 5.2;

(j) the Supplier fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4

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

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

(k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, without prior intimation to the Utility, and such transfer causes a Material Adverse Effect;

(l) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;

(m) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;

(n) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;

(o) a resolution for winding up of the Supplier is passed;

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

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reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:

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

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;

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

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

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

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

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

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

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

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

19.2 Termination for Utility Default

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

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

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

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

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

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

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

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

19.3 Termination Payment

19.3.1 Apart from the other payments to be made by the Supplier-on-Supplier Default, upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 8 (eight) months 12 (twelve) days][5] as if the Contracted Capacity was Available for such 8 (eight) months 12 days from the date of Termination.

19.3.2 Apart from the other payments to be made by the Utility-on-Utility Default, upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 4 (four) months 6 days][6] as if the Contracted Capacity was Available for such 4 (four) months 6 days from the date of Termination.

[5] This period may equal to about 10% (ten per cent) of the Contract Period.

[6] This period may equal to about 5% (five per cent) of the Contract Period.

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

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

19.4 Instructions to RLDC and SLDC

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

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

19.5 Survival of rights

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

~~[19.6 The expiry of this Agreement on account of efflux of time or earlier Termination thereof shall lead to the automatic termination of Fuel Supply Agreement in accordance with the terms thereof]~~ (Deleted)-

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Part VI

Other Provisions

ARTICLE 20

ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

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

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

20.2 Permitted assignment and charges

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

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

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

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

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

20.3 Assignment by the Utility

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

20.4 Approvals for assignment

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

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ARTICLE 21

CHANGE IN LAW

21.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds 0.1% (zero point one percent) of the Capacity Charge in any Accounting Year or if as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds 0.1% (zero point one percent) of the Capacity Charge in any Accounting Year, the impact of Change in Law to be adjusted and recovered shall be computed in accordance with the procedure provided in the applicable rules issued by the Ministry of Power'.

21.3 No claim in the event of recovery from Buyers

Notwithstanding anything to the contrary contained in this Agreement, the Utility shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.

21.4 Exclusions to the Change in Law

The term 'Change in Law' shall not include any change in any withholding tax on income or dividends distributed to the shareholders of the Seller.

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ARTICLE 22

LIABILITY AND INDEMNITY

22.1 General indemnity

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

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

22.2 Indemnity by the Supplier

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

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

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

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

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

of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier promptly make every reasonable effort to secure for the Utility a license, at no cost to the Utility, authorising continued use of the infringing work. If the Supplier is unable to secure such license within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non- infringing work or part or process, or modify the same so that it becomes non- infringing.

22.3 Notice and contest of claims

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

22.4 Defence of claims

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

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

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

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

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

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

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

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

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

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

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

22.5 No consequential claims

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

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ARTICLE 23

DISPUTE RESOLUTION

23.1 Dispute resolution

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

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

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

23.2 Adjudication by the Commission

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

23.3 Adjudication by a tribunal

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

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ARTICLE 24

DISCLOSURE

24.1 Disclosure of Specified Documents

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

24.2 Disclosure of Documents relating to safety

The Supplier shall make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier's Registered Office and the Power Station. The Supplier shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

24.3 Withholding disclosure of Protected Documents

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

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 24.1 and 24.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

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ARTICLE 25

MISCELLANEOUS

25.1 Governing law and jurisdiction

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

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

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

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

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

25.3 Interest

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

25.4 Delayed payments

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

25.5 Waiver

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

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(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

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

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

25.6 Exclusion of implied warranties etc.

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

25.7 Survival

25.7.1 Termination shall:

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

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

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

25.8 Entire Agreement

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

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25.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10 No partnership

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

25.11 Third parties

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

25.12 Successors and assigns

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

25.13 Notices

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

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

{Attention:
Designation:
Address:

Fax No:
Email:}

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

{Name:
Designation:
Address:
Fax No:
Email:}; and

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

25.14 Language

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

25.15 Counterparts

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

ARTICLE 26

DEFINITIONS

26.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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5th financial year of the Appointed Date;

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

"**Bid Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;
"**Bid Security**" means the security provided by the Supplier to the Utility along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

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

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

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

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

["**Captive Mine**" means a mine, acquired through any form of auction or bidding which specifically allows the owner or allottee, as the case may be, to use the coal for production of electricity and sale thereof to any purchaser; and includes a mine which is owned by a third party that has entered into a long-term agreement with the Supplier for dedicated supply of Fuel for use at the Power Station for a period not less than the Contract Period;]

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

(a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any Applicable Law;
(b) the commencement of any Applicable Law which has not entered into effect until the Bid Date;
(c) a change in the interpretation or application of any Applicable Law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
(d) any change in the rates of any of the Taxes that have a direct effect on the Project
(e) change in any Applicable Permits, available or obtained for the Project, otherwise than for default of the Supplier;

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

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

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

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

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

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

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

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

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

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

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

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

"**Deed of Hypothecation**" shall have the meaning as set forth in Clause 13.1.2;
"**Default Escrow Account**" shall have the meaning as set forth in Clause 13.1.1;
"**Default Escrow Agreement**" shall have the meaning as set forth in Clause 13.1.1;
"**Default Escrow Bank**" shall have the meaning as set forth in Clause 13.1.1;
"**Delivery Point**" means any point in the Inter-State Transmission System where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located

Provided that in case this agreement has been signed pursuant to the bidding carried out by utilities located in the same state, Delivery Point, for the Supplier located in this state, shall mean any point in the Intra-State grid where the electricity is delivered by the Supplier;

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

["**Designated Hours**" shall have the meaning as set forth in Clause 10.4;]

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

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

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

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

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

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

"**DSM Regulations**" means the CERC Deviation Settlement Mechanism and Related Matters Regulations, 2022;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~["Linkage Coal" shall mean the coal linkage provided by Coal India Limited or Singareni Collieries Company Limited at notified price for regulated sector of thermal power;]~~[37]

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

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

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

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

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

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

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

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

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

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

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

"**Performance Security-Utility**" shall mean the performance security to be provided by the Utility in terms of Clause 9.1.2;

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

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

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

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

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

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

(a) rights over the Station Premises in the form of license or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief Centre's, administrative offices and Sub-stations;

[(c) rights over Captive Mines;]

(d) all rights of the Supplier under the Project Agreements;

(e) financial assets, such as receivables, security deposits etc.;

(f) insurance proceeds; and

(g) Applicable Permits and authorisations relating to or in respect of the Power Station;

"**RLDC**" means the regional load Despatch Centre as specified in the Act;

"**Re.**", "**Rs.**" or "**Rupees**" or "**Indian Rupees**" means the lawful currency of the Republic of India;

"**Request for Proposals**" or "**RFP**" shall have the meaning as set forth in Recital (C);

"**Request for Qualification**" or "**RFQ**" shall have the meaning as set forth in Recital (B);

"**Revenues**" means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Utility in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Utility for and in relation to any capital expenditure for creation of assets;

"**SLDC**" means the State Load Despatch Centre as specified in the Act;

"**Scope of the Agreement**" shall have the meaning as set forth in Clause 2.1;

"**Secured Obligations**" means:

(a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;

(b) obligations of the Utility for payment of Tariff under and in accordance with this Agreement; and

(c) obligation of the Utility to make Termination Payment under and in accordance with

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this Agreement upon termination thereof;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in the rules and regulations made under the Act;

"**State**" means the State or the Union Territory, as the case may be, in which the headquarters of the Utility is situate and "**State Government**" means the government of that State or Union Territory;

"**Station Premises**" shall mean and include the site, real estate, assets, equipment's, facilities and amenities comprising the Power Station;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;

"**Supplier**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Supplier Default**" shall have the meaning as set forth in Clause 19.1.1; "**Tariff**" shall have the meaning as set forth in Clause 11.1.1;

"**Taxes**" means any Indian taxes including goods and service tax, customs duties, value added tax, royalties' local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement and the Procurement Contract hereunder;

"**Termination Notice**" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

[Insert this definition in case Supplier is a Trading Licensee:

"**Trading Licensee**" shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Applicant/Bidder.];

"**Unit**" means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity independently of other units at the Power Station;

"**Utility**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Utility Default**" shall have the meaning as set forth in Clause 19.2.1;

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"**Utility Representative**" means such person or persons as may be authorised in writing by the Utility to act on its behalf under this Agreement and shall include any person or person having authority to exercise any rights or perform and fulfil any obligations of the Utility under this Agreement;

"Variable Charge" shall have the meaning as set forth in clause 12.1; and

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 11.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of **'The Brihanmumbai Electric Supply & Transport Undertaking'** by:	THE COMMON SEAL OF **M/s Sai Wardha Power Generation Private Limited** has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the 7th Day of August 2023 hereunto affixed in the presence of Shri Vikas Gupta (Whole time Director and CEO), who has signed these presents in token thereof and Shri. Chakradhar, Company Secretary /Authorized Officer who has countersigned the same in token thereof
Signature :	Signature :
Name : Shri A.U. Diggikar, IAS Designation : General Manager Address : The Brihan-Mumbai Electric Supply & Transport Undertaking, BEST Bhavan, BEST Marg, Colaba Mumbai 400001	Name : Shri Kamalakannan Rangaraju Designation : Vice-President Address : Sai Wardha Power Generation Private Limited 8-2-293/82/A/90 Road No: 9, Jubilee Hills, Hyderabad 500 033
Email : gm@bestundertaking.com	Email : kamalakannan.r@saiwardha.com
In the presence of: 1. Bilal. A.W. Shaikh AGMES 2. R. D. Patante CER	In the presence of: 1. VIKAS GUPTA. 2. D. Chakradhar

Schedules

SCHEDULE – A

(See Clause 2.1)

SITE OF THE POWER STATION[7]

1 **The Site**

Site of the Power Station shall include the land, buildings, structures as briefly described in Annex-I of this Schedule A.

2 **Power Station**

The principal features of the Power Station are described in Annex-I of this Schedule-A.

[7] In case of a Trading Licensee being the Supplier, the details of the Power Station of the Developer need to be filled in this Schedule.

Annex –I
(Schedule-A)

Annex-I: Description of Coal-based Power Station[8]

1 **The site**

The Site of the Power station shall include the land, building and structures as briefly described below:

Sai Wardha Power Generation Private Limited, B-2, Warora Growth Centre, MIDC, Warora, Chandrapur (District), Maharashtra 442 907

2 **Capacity of the Power Station**

2.1 The Power Station shall have a generating capacity of not less than 540MW.

2.2 The configuration of Units is given below:

(a) The number of Units is 4 Nos.

(b) The nameplate capacity of each Unit is135 MW.

3 **Dedicated communication**

The Power Station shall have a dedicated communication linkage with the Utility.

3 **Specifications and Standards**

The Power Station shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-C.

4 **Station Heat Rate**

The Station Heat Rate of the Power station is2451.75 kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.

5 **Ramp Rates**

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) as per the applicable technical standards/regulation notified by CEA.

6 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of 4 (four) hours from the time of each start.

7 **Description of the Power Station**

[8] Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.

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The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Power Station is briefly described below:

A.	**Boiler**		
	(i)	Type	Single Reheat PF Boile (Dongfang make)
	(ii)	Number of steam generators with auxiliaries	4 Nos.
	(iii)	Steaming capacity (BMCR)	440 T/hr
	(iv)	Pressure at SH outlet	145.31 kg/cm^2(abs)
	(v)	Temperature at SH outlet	540 °C
	(vi)	Temperature at RH outlet	540 °C
B.	**Steam Turbine**		
	(i)	Type	Super-high pressure, single reheat, double cylinder and double exhaust, single shaft, condensing steam turbine
	(ii)	Number	N135-13.7/537/537
	(iii)	TMCR output	135 MW
	(iv)	VWO output	144.226 MW
	(v)	Turbine inlet pressure at TMCR	139.91 kg/cm^2
	(vi)	MS temperature at turbine inlet	537 °C
	(vii)	RH temperature at turbine inlet	537 °C
	(viii)	HP/LP by pass	60/60 %
	(ix)	Boiler feed pump	
		(a) TDBFPCapacity(m^3/hr)	Not Applicable
		(b) MDBFPCapacity(m^3/hr)	552.5 m3/hr
C.	**Condenser**		
	(i)	Type	Water cooler
	(ii)	Design cooling water temperature	32.5°C
	(iii)	Tube material	TP-304
	(iv)	Type of cooling water	Raw water
	(v)	Condensate polishing plant	Not Applicable
D.	**Generator**		Harbin make
	(i)	Number	
	(ii)	Capacity	158 MVA
	(iii)	Power factor	0.85
	(iv)	Cooling	

(a)	Rotor	Air cooled
(b)	Stator	Air cooled

SCHEDULE –B

(See Clause 9.1)

PERFORMANCE SECURITY BY THE SUPPLIER AND THE UTILITY

The.....,
Distribution Company
State of....

WHEREAS:

(A) .... (the "**Supplier**") and [the.... Distribution Company] represented by....and having its principal offices at ("**Utility**") have entered into an Agreement for Procurement of Power dated (the "**Agreement**") whereby the Utility has agreed to the [Supplier *if supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] undertaking the financing and operation of the Power Station with a generating capacity of ....MW in the State of o n finance, own and operate (the "**FOO**") basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Parties to furnish a Performance Security in a sum of [Rs... cr. (Rupees.... crore)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).

(C) We.... through our Branch at ...the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

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3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.

5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Partiesshall have provided another Performance Security in substitution of this Performance Security.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith,

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and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

Signed and sealed this.... day of ....20.... at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

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SCHEDULE – C

(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of ....20....

AMONGST

1. .... Limited, a company incorporated under the provisions of the Companies Act, 2013and having its registered office at ...(hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);

2. .... (Name and particulars of the Default Escrow Bank), through its .... branch, and having its registered office at.... (herein after referred to as the "**Default Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and

3. The....Distribution Company represented by ....and having its principal offices at ...(hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into an agreement dated ...with the Supplier (the "Agreement for Procurement of **Power**") for supply of.... MW of electricity from the Power Station at....in the State of, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under the Agreement for Procurement of Power, the Utility is required to establish a default escrow account on the terms and conditions stated therein (the "**Default Escrow Account**").

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Utility, and shall commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

"**Default Escrow Account**" shall have the meaning set forth in Recital B of this Agreement;

"**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the Parties to this Agreement individually;

"**Agreement for Procurement of Power**" shall have the meaning set forth in Recital A of this Agreement;

"**Security**" shall have the meaning set forth in Clause 3.1;

"**Utility Account**" shall have the meaning set forth in Clause 2.4;

"**Utility Escrow Default**" shall have the meaning set forth in Clause 8.1;

"**Utility's Lenders**" means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Utility and who have, for the repayment and/or discharge of obligations of the Utility been provided security by way of a charge on the Revenues of the Utility, as specified in Annex-I hereto.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Agreement for Procurement of Power shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexures of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Utility hereby appoints the Default Escrow Bank to act as trustee for the Supplier and the Utility in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

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2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third-party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Utility pursuant to the provisions of this Agreement and the Agreement for Procurement of Power. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Utility with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Supplier and the Utility, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the ..... (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

The Default Escrow Bank and the Utility acknowledge that at least 30% (thirty per cent) of the Utility's total monthly Revenues are being deposited in the Utility's existing account at the Default Escrow Bank (the "**Utility Account**"), and the Utility undertakes to maintain the Utility Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Utility. For the avoidance of doubt, the Default Escrow Bank shall be entitled to

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deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Agreement for Procurement of Power, the rights of the Supplier and the Utility in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Utility expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Utility Account from the Utility Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Utility and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Utility Escrow Default and until delivery of notice that the Utility Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to the Utility and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Utility of the Secured Obligations in the manner contemplated under this Agreement and the Agreement for Procurement of Power.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

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3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Utility upon a certificate signed by or on behalf of the Utility;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Utility in connection herewith; and

(d) shall within 5 (five) business days after receipt, deliver a copy to the Utility of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE UTILITY

4.1 General

4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Agreement for Procurement of Power and this Agreement.

4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues

therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

4.2.1 The Utility hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favor of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Utility further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Utility's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favor of Utility's Lenders or any other entity would be secondary and subordinate to the first charge created in favor of the Supplier pursuant to the Deed of Hypothecation. The Utility expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.

4.2.2 The Utility agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favor of the Supplier in accordance with Clause 4.2.1.

4.2.3 The Utility may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favor of the Supplier over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favor of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Utility in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Utility Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Utility from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

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5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Utility or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Utility

The Utility and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Utility Account, without any further authorisation or instructions from the Utility, funds aggregating an amount equal to the Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Utility irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Utility Account to the Default Escrow Account on a monthly basis, an amount equal to the Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Contract Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 Drawal against Letter of Credit

5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

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5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Monthly Payment.

5.6 Withdrawals upon Termination

5.6.1 Upon Termination of the Agreement for Procurement of Power, if the Utility fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.

5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Agreement for Procurement of Power .

5.6.3 The Utility expressly acknowledges and agrees that upon Termination of the Agreement for Procurement of Power, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Utility Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Utility agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Supplier or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;

(c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi-judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;

(d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

(ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;

(f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favor in accordance with Clauses 4.2.1 and 4.2.3;

(g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;

(h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;

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(i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and

(j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Utility and the Supplier as of the date of this Agreement and at all times that:

(a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at ..... and its branch among others, at ..... and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;

(c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;

(d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

(ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and

(e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favor of any other person other than the Supplier, save and except those created in favor of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Default Escrow Bank and the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Agreement;

(c) the execution, delivery and performance of this Agreement by the Supplier has been duly authorized by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and

(d) there are no actions, suits or proceedings pending or threatened, against or affecting the Supplier before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Supplier to perform its duties and obligations under this Agreement.

7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

(a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;

(b) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;

(c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of

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Hypothecation, in favor of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;

(d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Agreement;

(ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and

(iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;

(e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Agreement and the Deed of Hypothecation;

(f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and

(g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

Following events shall constitute an event of default by the Utility (a "**Utility Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

(a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Utility Account as provided herein and fails to cure such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;

(b) the Utility does not deposit or cause to be deposited an amount equal to the Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.

(c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;

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(d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;

(e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;

(f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;

(g) the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;

(h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Agreement for Procurement of Power; and

(i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Utility in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days' notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow

Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

(i) cease therewith accepting any payments or deposits into the Default Escrow Account;

(ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;

(iii) when all such amounts have been transferred, close the Default Escrow Account; and

(iv) within 30 (thirty) days of such closing, provide to the Utility and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Utility and the Supplier, made on or after the payment by the Utility of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Utility. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Utility shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

11.1.1 The Utility will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Agreement or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

11.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Utility's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

11.1.3 The Default Escrow Bank will indemnify, defend and hold the Utility and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Utility or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where the headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

13.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

13.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

13.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

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If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the day of 20.... hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof] [9]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED

AND

DELIVERED

For and on behalf of

THE UTILITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of
THE DEFAULT
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[9] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors

In the presence of:

1. 2.

Annex- I
(Schedule-C)

Annex-I: Utility's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

Sai Wardha Power Generation Private Limited

SCHEDULE – D

(See Clause 13.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the ....day of..... 20....

BETWEEN

1.....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at..... (hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. The .... Distribution Company represented by ....and having its principal offices at.... (herein after referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into an agreement dated....with the Supplier (the "**Agreement for Procurement of Power**") for supply of .... MW of electricity from the Power Station at ....in the State of..... and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under and in accordance with the Agreement for Procurement of Power, the Utility is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated ...entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.

(C) To further secure the Secured Obligations, the Utility has agreed to grant a charge and security interest in favor of the Supplier on the Utility's right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Deed**" means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

"**Default Escrow Agreement**" shall have the meaning set forth in Recital B of this Deed;

"**Hypothecated Interest**" shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

"Agreement for Procurement of Power" shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Agreement for Procurement of Power or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Deed.

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Agreement for Procurement of Power and agreeing to make available to the Utility the Contracted Capacity, subject to the terms and conditions set out in the Agreement for Procurement of Power, the Utility hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Agreement for Procurement of Power.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Agreement for Procurement of Power, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favor of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Monthly Payment for and in respect of any month (collectively, the "**Hypothecated Interest**").

2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favor of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Utility Escrow Default.

2.2.3 At any time after a Utility Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Agreement for Procurement of Power.

2.2.4 Following the occurrence of a Utility Escrow Default, the Supplier shall not, save and except as may be required under the Agreement for Procurement of Power, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:

(a) take action or obtain judgement or any arbitration award against the Utility in any court or before any arbitrator;

(b) make or file any claim or proof in a winding up or dissolution of the Utility; and

(c) exercise any legal remedies, which may be available to it under or in respect of the Agreement for Procurement of Power.

2.3 Release of Charge

2.3.1 Upon termination of the Agreement for Procurement of Power in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.

2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:

(a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;

(b) re-assign, retransfer or re-convey to the Utility, or as it may direct, the Hypothecated Interest; and

(c) execute all such documents and do all such other acts as may be required by the Utility in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Utility shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Utility, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

3.2 The Utility shall be entitled to create a subordinate/second charge in favor of the Utility's Lenders or any other entity over the Hypothecated Interest, provided,

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however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;

(c) the charge and security interest created hereunder constitute a first priority security interest in favor of the Supplier;

(d) based on available records, the Revenues are believed by the Utility to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Utility and the Utility has full right and interest in the Revenues;

(e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi-judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;

(f) the execution, delivery and performance of this Deed by the Utility have been duly authorised by all requisite actions and will not constitute a violation of:

    (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

    (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Utility routed through the Default Escrow Account after the date hereof, except as permitted under this Deed;

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(h) as of the date hereof and until the expiry of this Deed, the Utility Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favor in accordance with the provisions of Clauses 3.1 and 3.2; and

(i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;

(b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and

(c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. UTILITY'S COVENANTS

5.1 The Utility covenants that during the term of this Deed:

(a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;

(b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain

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and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;

(c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;

(d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favor of the Supplier, save and except in compliance with the provisions of this Deed;

(e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Deed;

(ii) the validity, binding effect and enforceability of this Deed; and

(iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;

(f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;

(g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed;

(h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;

(i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and

(j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

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6. FURTHER ACTIONS

The Utility shall, from time to time, upon the request of the Supplier, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Deed or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

7.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Utility's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

(a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and

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(b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

(a) any time or other indulgence given or agreed to be given by the Supplier to the Utility or to any other party providing Security for the Secured Obligations;

(b) any amendment to the Agreement for Procurement of Power or the Default Escrow Agreement not agreed to by the Supplier;

(c) any release or exchange of Security or obligations granted or undertaken pursuant to the Agreement for Procurement of Power or the Default Escrow Agreement or any documents connected therewith;

(d) any other act, event or omission which but for this provision would impair or discharge the Utility's liability hereunder; and

(e) any change in the structure or organisation of the Utility as a result of a Change in Law, insolvency of the Utility or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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(a) agrees that the execution, delivery and performance by it of this Deed constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Deed or any transaction contemplated by this Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in this Deed shall prevail over the Agreement for Procurement of Power.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Deed in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Deed or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third-party beneficiaries

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This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the

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signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

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THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20 hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and...., company Secretary / Authorised Officer who has countersigned the same in token thereof][10]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[10] To be affixed in accordance with the articles of association of the Supplierand the resolution passed by its Board of Directors

SCHEDULE –E

(See Clause 13.2.1)

LETTER OF CREDIT

DATE:

TO: Limited (the "**Supplier**")

FROM: (Specify the name and address of the bank issuing the Letter of Credit)[11] (the "**Bank**")

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the "**Letter of Credit**") No.... in favor of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favor of the Supplier in the maximum aggregate amount of Rs. .... Rupees) [12](the "**Monthly Payment**"), payable not more than once in a month upon notice received from the Supplier to this effect.

2. The Letter of Credit shall come into force with effect from....., shall be valid and effective upto the 31st (thirty first) day of March, 20 (indicate the year) falling after the year in which the Letter of Credit is issued (the "**Expiry Date**"), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.

3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under an Agreement for Procurement of Power dated.... entered into between the Utility and the Supplier (the "**Agreement for Procurement of Power**") for supply of .....MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

4. Any reference to the Agreement for Procurement of Power or other agreement is for information only and does not in any way incorporate the terms and conditions of such Agreement for Procurement of Power or agreement into the terms and conditions of this Letter of Credit.

5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

[11] As provided in Article 13 of the Agreement for Procurement of Power, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement

[12] As provided in the Agreement for Procurement of Power, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the Supplier for Normative Availability of the power station during a period of one month. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Monthly Payment in accordance with the provisions of the Agreement

(i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of Power) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and

(ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of Power) is in accordance with the Agreement for Procurement of Power and that the amount due has remained unpaid and has not been disputed by the Utility.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated , entered into between the Bank, the Utility and the Supplier.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

14. This Letter of Credit is governed by the Laws of India.

15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: ... (Name of Utility representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: ... (Name of the Bank representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: ... (Name of the Supplier representative)
..... (Designation)
..... (Address, telephone and fax numbers)

Signed and sealed this.... day of ....20....at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

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SCHEDULE –G

F. METHODOLOGY FOR CALCULATION OF RAMP RATE PENALTY

Penalty calculation methodology for Ramp rates < 1%/minute

Td - The number of blocks in which both declared ramp up rate and declared ramp down rate are 1%/minute or greater (i.e., 15% of ex-bus generation corresponding to MCR per time block) shall be counted as "Td"

Tm - The total number of time blocks in the period of computation shall be counted as "Tm". The blocks in which no units are on-bar (i.e., zero DC on-bar) and the blocks in which the schedule is less than technical minimum (i.e., start-up or shutdown) shall not form part of "Td" and "Tm".

D - Number of time blocks during the computation period when the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule.

F - Number of blocks in which the station has achieved ramp rate greater than or equal to 1%/min, out of the blocks in which the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule. F is a subset of D.

R= minimum of (Td/Tm, F/D)

For R>= 0.9, P=0

For 0.75<R<0.9, P = 6.003- 6.67R

& for R<= 0.75, P=1

Where P is the fraction to be multiplied to annual fixed charges to get penalty for ramp rate as specified in 11.6.1

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Appendices

APPENDIX-I

I LIST OF BID-SPECIFIC CLAUSES£

A. Provisions with currency-based footnotes

~~1. *Fo*Agreement for Procurement of Power: Signature Page~~
~~Schedule C: Default E*sotnotes with "£" sign*~~
~~2. crow Agreement: Signature page.~~
~~3. Schedule D: Deed of Hypothecation: signature Page.~~
~~4. Appendix I: List of Bid Specific Clauses.~~

~~Note: The above footnotes marked "£" shall be removed prior to execution of the Agreement for Procurement of Power.~~

~~*Footnotes with "$" or "$$" signs*~~

~~1. Clause 5.4: Obligation relating to Transmission.~~
~~2. Clause 11.2: Base Fixed Charge~~
~~3. Clause 12.2: Base Variable Charge.~~
~~4. Schedule A (Annex I): Site of the Power Station.~~
~~5. Schedule E: Letter of Credit: Form; and Paragraph 1.~~

~~Note: Non numerical footnotes marked "$" or "$$" shall not be deleted. They shall remain in the Agreement for Procurement of Power to be executed between the Parties.~~

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 25.13 (a) and (b): Notices
3. Schedule-A (Annex-I): Site of the Power Station: Paragraph 1.

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.3: Obligations relating to transmission charges.
3. Clause 11.2: Base Fixed Charge.
4. Clause 12.3: Base Variable Charge.
5. Clause 12.3: Variable Charge.
6. Agreement for Procurement of Power: Signature page.

D. Schedules with blank spaces

All blank spaces in Schedules shall be retained in the Agreement for Procurement of Powerto be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

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