

Power Purchase Agreement

for

Procurement of Power from -----[insert name of Renewable Energy Source] on Long/Medium Term Basis from Power Stations to be setup at -----[Specify Location]

between

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

and

***[Insert Name of Distribution Licensee 2]
("Procurer 2")***

and

***[Insert Name of Distribution Licensee 3]
("Procurer n")***

And

***[Insert Name of the Seller]
("Seller")***

(As per Guidelines for Tariff Based Competitive Bidding Process for Grid Connected Power Projects Based on Renewable Energy Sources)

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

Between

- (1) ----[Insert Name of Distribution licensee], (the “Procurement 1”)
- (2) ----[Insert Name of Distribution licensee], (the “Procurement 2”)
- (3) ----[Insert Name of Distribution licensee], (the “Procurement n”)

(The “Procurement 1”, “Procurement 2” and “Procurement n” are (hereinafter collectively referred to as the “Procurement” and individually as a “Procurement”)

and

----[Insert Name of the Seller], (the “Seller”)

(each of the “Procurement 1”, “Procurement 2” “Procurement n” and or “Procurement” and “Seller” are individually referred as “Party” and collectively to as the “Parties”)

Whereas:

- A. In accordance with the Bidding Guidelines, the Procurement(s)/Authorised Representative had initiated a competitive bidding process through issue of RFP for selecting a Successful Bidder to build, own, operate and maintain the Project namely, -----[insert name of the Renewable Energy Source and location of the Project], details of which are as set out in the Schedule 1A.
- B. Pursuant to the said bidding process, -----[insert name of Successful Bidder] has been identified by the Procurement(s)/Authorised Representative as the Selected Bidder for the construction, operation & maintenance and supply of power from the Project to the Procurement(s) in accordance with the terms of this Agreement.
- C. The [Insert the name of Successful Bidder] has provided to the Procurement(s), Contract Performance Guarantee(s) as per format specified in Annexure 4.9 of RFP.
- D. The Parties hereby agree to execute this Power Purchase Agreement (PPA) setting out the terms and conditions for the sale of power up to the agreed Contracted Energy of ----- [To be filled based on Selected Bid] MU based on the Contracted Capacity of ---MW by the Seller to the Procurement(s).
- E. All the other RfP Project Documents will be executed by the Procurement(s) and the Seller simultaneously with the signing of this Agreement.

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:

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”	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 Schedules, amended or modified from time to time in accordance with the terms hereof;
“Allocated Contracted Capacity”	means portion of the Contracted Capacity allocated to each of the Procurers as provided in Schedule 1 hereof, subject to adjustment as per the terms of this Agreement;
"Appropriate Commission"	shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
“Availability Based Tariff” or “ABT”	Shall mean all the regulations contained in the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
Bid Document	Means the RfP along with all its attachments and any amendments thereto or clarifications thereof;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill issued by the other Party;
“Business Day”	shall mean with respect to the Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the state in which the concerned Procurers’ registered office is located.
“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, 2012 as amended from time to time and shall be ----% [to be filled in by the Procurer(s) in line with above referred CERC Regulation] on Contract Year basis;
“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 Section-38 of the Electricity Act 2003;
“Change in Law”	shall have the meaning ascribed thereto in Article 8 of this Agreement;
“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 Seller Preliminary Default Notice or Procurer 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 the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
"Contracted Capacity"	shall mean ---- MW of power from ----[insert name of Renewable Energy source] contracted with Procurer for sale of such power by the Seller;
“Contracted Energy”	shall mean ---- MU of power from ----[insert name of Renewable Energy source] based on the Contracted Capacity, contracted with Procurer for sale of such power by the Seller;
“Day”	Shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
“Declared Price of Land”	means the amount as mentioned in the RFP by the Procurers, at which the identified land for the Site will be transferred to the Seller;
“Delivery Date”	shall mean the date on which the Seller commences supply of the Contracted Energy to the Procurers;
"Delivery Point" or “Interconnection Point”	means the switchyard bus bar of the Project;
"Dispatch Instruction"	means any instruction issued by the Procurers through the respective SLDC and RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
“Dispute”	shall mean any dispute or difference of any kind between the Seller and the Procurer 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 13 of this Agreement;

"Due Date"	shall mean the last day of the month provided the bill is received and acknowledged by the Procurer up to 4th day of the month. For the bills received and acknowledged by the Procurer after 4th, it shall be 30th day from such date;
"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;
" 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;
Energy Charges	Shall have the meaning ascribed to this term under Schedule 4;
"Event of Default"	shall mean the events as defined in Article 9 of this Agreement;
"Expiry Date"	Shall mean the date occurring ----- years [Procurer to insert no. of years depending on long/medium term procurement] from the date of commercial operation of the Project;
"Financial Closure or Financial Close"	shall mean the execution of all the Financing Agreements required for the Project and fulfilment of conditions precedents and waiver, if any, of the conditions precedent for the initial draw down of funds for the Project.
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 7 of this Agreement;
"Functional Specifications"	means the technical requirements and parameters described in Schedule 2 of this Agreement and as provided in Grid Code relating to the operation, maintenance and dispatch of any unit and the Project;
"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;
"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;
"Independent Engineer"	means an independent consulting engineering firm or group appointed jointly by all the Procurers jointly) and the Seller to carry

out the functions in accordance with Article 4 herein.

“Indian Governmental Instrumentality”	shall mean the Government of India, Government of ----[insert name of State(s) where the Procurer(s) and Project 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" or "Interconnection and Transmission Facilities"	Means the facilities on the Procurers' side of the Interconnection Point for receiving and metering electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 5, the Metering System required for the Project.
“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;
"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 this Agreement;
“Plant Load Factor” or “PLF”	Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 as amended from time to time and shall be ----% [to be filled in by the Procurer(s) in line with above referred CERC Regulation for Renewable Energy Source where primary fuel

	<i>is being used such as bio-mass etc.] on Contract Year basis;</i>
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 9 of this Agreement;
“Project”	means the ----[insert name of Renewable Energy Source] of --- [insert gross capacity] MW undertaken for design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance by the Seller in accordance with the terms and conditions of this Agreement
“Quoted Charges”	shall have meaning ascribed thereto in Schedule 4;
“Quoted Escalable Charge”	shall have meaning ascribed thereto in Schedule 3;
“Quoted Non-Escalable Charge”	shall have meaning ascribed thereto in Schedule 3;
“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;
"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." or “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commercial Operation Date” or " Scheduled COD"	shall be a date, ---[<i>Procurer(s) to insert number of months</i>] months from the Effective Date, when the Project is required to be commissioned as per the terms and conditions of the 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 Sub-section (1) of Section 83 of the Electricity Act 2003;
"Settlement Period"	shall mean the time block for issue of daily generation and drawal schedules as provided in ABT;
“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 any of the relevant SLDCs on the Procurers;
“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 mean the tariff as computed in accordance with Schedule 4 of this Agreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 6;
"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;
"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 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 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 "₹"(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 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;

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 the Parties and such date shall be referred to as the Effective Date.

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.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either Seller or all the Procurers (jointly) terminates this Agreement, pursuant to Article 3.4.2, Article 3.4.3, Article 3.4.4 or Article 9 of this Agreement or any other provision of this Agreement; or
- ii. in such other circumstances as the Seller or all the Procurers (jointly) may agree, in writing;

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 13 (Governing Law and Dispute Resolution), Article 14 (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.

3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER / PROCURERS

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within Six (6) months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurers jointly:

- a) The Seller shall have taken possession of the total land required for the Project and have paid the remaining Declared price of the land, if any, to the concerned authority.
- b) The Seller shall have received all Consents, Clearances and Permits required for supply of power to the Procurer(s) as per the terms of this Agreement.
- c) in case the Seller develops the Project on a non recourse basis, Seller shall have achieved Financial Closure OR in case the Project is proposed to be developed on the books of the Bidder, he shall have completed the execution and delivery of the Financing Agreements for at least fifty percent (50%) of the debt required for the Project as certified by the Lender.
- d) The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) for the Project and shall have given to such contractor an irrevocable notice to proceed.
- e) The Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection and Transmission Facilities, if required.

3.2 Satisfaction of conditions subsequent by the Procurer(s)

3.2.1 The Procurer(s) agree and undertake to duly perform and complete the following activities at the Procurer's own cost and risk within Six (6) Months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their obligations under Article 3.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- a) The Procurer(s) shall have obtained necessary transmission linkage for ---- *[Medium/long term, as applicable]* open access for the transmission system from the power station switchyard and shall have executed the Transmission Service Agreement with the STU/CTU, as the case may be, and provided a copy of the same to the Seller. Further, the Procurer(s) shall indicate in writing to the Seller, the voltage level at which supply of power is to be made to the Procurer(s).
- b) The Procurer(s) shall have obtained the order of the Appropriate Commission for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.

- c) The Procurer shall ensure transfer of the total land required for the Project to the Seller.

3.3 Progress Report

The Seller and the Procurer(s) shall notify each other in writing at least once a Month on the progress made in satisfying the conditions in Articles 3.1 and 3.2.

3.4 Consequences of non-fulfillment of conditions subsequent

- 3.4.1 If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, within the time specified therein, otherwise than for the reasons directly attributable to the Procurer(s) or Force Majeure event in terms of Article 3.4.3 then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurer(s) additional Contract Performance Guarantee of Rs. (.....) [Insert Amount not less than that derived on the basis of Rs. **2.0 lakh** per MW of the gross capacity, which shall be provided separately to each of the Procurers for the amount calculated pro-rata (and rounded off to the nearest one lakh with the principle that amounts below Rs. 50,000/- shall be rounded down and amounts of Rs. 50,000/- and above shall be rounded up), in the ratio of their Allocated Contracted Capacities within two (2) Business Days of expiry of every such Week. Such additional Contract Performance Guarantee shall initially be valid till the Scheduled COD, and the Procurer(s) shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this Agreement. However, upon satisfaction of the conditions subsequent by the Seller, the additional Contract Performance Guarantee shall be returned by the Procurer(s).

- 3.4.2 Subject to Article 3.4.3 and Article 3.4.4 if:

- (i) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of two (2) Months after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurer(s) in accordance with Article 3.4.1 hereof; or
- (ii) the Seller furnishes additional Contract Performance Guarantee to the Procurer(s) in accordance with Article 3.4.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of two (2) Months beyond the period specified in Article 3.1 above;

all the Procurers (jointly) or the Seller shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period ("Termination Date").

If the Procurers elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer(s) on the Termination Date an amount of Rupees (.....) [Insert amount not less than that derived on the basis of **Rs. 60.00 lakhs** per MW of the gross capacity only as liquidated damages.

The Procurer(s) shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurer(s) is/are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer(s) within ten (10) days from the Termination Date.

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

- 3.4.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 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 the Procurer(s) (jointly), or the Seller by giving a Termination Notice of at least seven (7) 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.
- 3.4.4 Similarly, in case of inability of the Procurer(s) to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, 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(s) (jointly), or the Seller by giving a Termination Notice of at least seven (7) 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.
- 3.4.5 In case of inability of the Procurer(s) to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurer(s) as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurer(s) to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of two (2) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer(s). If the Seller elects to terminate this Agreement, the Procurer(s) shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurer(s) shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.
- 3.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled COD.

3.5 Return of Contract Performance Guarantee

- 3.5.1 The Contract Performance Guarantee as submitted by Seller shall be released by the Procurers within three (3) Months from the actual Commercial Operation Date of the Project. In the event of delay in achieving Scheduled COD of the Project by the Seller (otherwise than due to the Procurers' inability to complete the activities mentioned in Article 3.2, or Force Majeure event), the Procurer(s) shall release the Contract Performance Guarantee if any, remaining unadjusted under Article 4, after the satisfactory completion by the Seller of all the requirements regarding achieving the Scheduled Commercial Operation Date of the Project. It is clarified that the Procurers shall also return/release the Contract Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees ----- [Insert amount not less than that derived on the basis of 60.00 lacs per MW of the gross capacity], or (ii) termination of this Agreement by any Party under Article 3.4.3 or Article 3.4.4 of this Agreement.

4 DEVELOPMENT AND COMMISSIONING OF PROJECT

4.1 The Seller's obligation to build, own and operate the Project

4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at its own cost and risk, for:

- a) obtaining and maintaining in full force and effect all Consents required by it pursuant to this Agreement and Indian Law;
- b) executing the Project in a timely manner so as to enable the Project to be Commissioned no later than its Scheduled Commercial Operations Date and such that the Contracted Capacity is made available reliably to the Procurer(s) throughout the term of this Agreement;
- c) owning the Project throughout the term of this Agreement free and clear of encumbrances;
- d) procure the requirements of electricity at the Project (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;
- e) provide on a timely basis relevant information on Project specifications which may be required for interconnecting the Project with the transmission system;
- f) designing, constructing, erecting, commissioning, completing and testing the Project in accordance with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:
 - (i) applicable Law;
 - (ii) the Grid Code;
 - (iii) the terms and conditions of this Agreement;
 - (iv) the Functional Specifications; and
 - (v) Prudent Utility Practices.
- g) fulfilling all other obligations undertaken by him under this Agreement.

4.2 Procurers' obligation

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

- a) shall be responsible for procuring the Interconnection and Transmission Facilities¹ to enable the Project to be connected to the Grid System not later than 120 days prior to Scheduled COD of the Project;
- b) fulfilling obligations undertaken by them under this Agreement.

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 the Procurer(s), and the Procurer(s) undertake to pay the Tariff up to the Contracted Energy of the Project, according to their then existing Allocated Contracted Capacity, throughout the term of this Agreement.

4.3.2 Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell up to the Contracted Energy based on the Contracted Capacity of the Project to each Procurer in proportion of each Procurer's then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.

4.4 Right to Energy in Excess of the Contracted Energy

4.4.1 Subject to other provisions of this Agreement, the entire capacity of the Project shall at all times be for the exclusive benefit of the Procurer(s) and the Procurer(s) shall have the exclusive right to purchase the entire energy based on the Contracted Capacity from the Seller. The Seller shall have right to sell energy in excess of the Contracted Energy to any third party subject to first right of refusal to the Procurer(s).

4.4.2 Notwithstanding Article 4.4.1, the Seller shall be permitted to sell power, being a part of the Contracted Energy to third parties if:

- (a) there is a part of Contracted Energy which has not been dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer'); and
- (b) *[Insert in case of multiple Procurers]* such part has first been offered, at the same Tariff, to the other Procurers (by the RLDC and/or the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the energy within two (2) hours of being so offered the opportunity to receive such part.

4.4.3 If a Procurer does not avail of power upto the Contracted Energy provided by the Seller corresponding to such Procurer's Allocated Contracted Capacity, and the provisions of Article 4.4.2 have been complied with, the Seller shall be entitled to sell such Contracted Energy not procured, to any person without losing the right to receive the Quoted Tariff from the Concerned Procurer for such un-availed Contracted Energy. In such a case, the sale realization in excess of Quoted Tariff, shall be equally shared by the Seller with the Concerned Procurer. Upon the Procurers or any Procurer who has not availed of the Contracted Energy, as envisaged under this

¹ This obligation may also be of the Seller if the same is being specified in the RFP. Consequential changes may accordingly be carried out in the Project Documents.

Article, intimating to the Seller of its intention and willingness to avail of the part of the Contracted Energy not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Concerned Procurer/s from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurer/s or the time for commencement of supply specified in such notice.

[The above para to be replaces as under, in cases where primary fuel is required such as Bio-mass etc.]

If a Procurer does not avail of power upto the Contracted Energy provided by the Seller corresponding to such Procurer's Allocated Contracted Capacity, and the provisions of Article 4.4.2 have been complied with, the Seller shall be entitled to sell such Contracted Energy not procured, to any person without losing the right to receive the Quoted Charges from the Concerned Procurer for such un-availed Contracted Energy. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Concerned Procurer. Upon the Procurers or any Procurer who has not availed of the Contracted Energy, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part of the Contracted Energy not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Concerned Procurer/s from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurer/s or the time for commencement of supply specified in such notice

4.5 Extensions of time

4.5.1 In the event that:

- (a) the Seller is prevented from performing its obligations under Article 4.1.1(b) by the stipulated date, due to any Procurer Event of Default; or
- (b) Project cannot be commissioned by its Scheduled Commercial Operations Date because of Force Majeure Events.

the Scheduled Commercial Operations Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period but not less than 'day for day' basis, to permit the Seller through the use of due diligence to overcome the effects of the Force Majeure Events affecting the Seller or in the case of the Procurer's or Procurers' Event of Default, till such time such default is rectified by the Procurer(s).

- ##### **4.5.2**
- If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance on how long the Scheduled Commercial Operations Date and the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 13.

- 4.5.3 In case of extension occurring due to reasons specified in Article 4.5.1(a), the original Scheduled Commercial Operations Date of the Project would not be extended by more than **six (6)** Months or the date on which the Seller elects to terminate this Agreement, whichever is earlier.

As a result of such extension, the date newly determined shall be deemed to be the Scheduled Commercial Operation Date for the purposes of this Agreement.

4.6 Liquidated damages for delay in providing Contracted Energy

- 4.6.1 If the Project is not commissioned by its Scheduled Commercial Operation Date other than for the reasons specified in Article 4.5.1, the Seller shall pay to each Procurer liquidated damages, proportionate to their then existing Allocated Contracted Capacity, for the delay in such commissioning. The sum total of the liquidated damages payable by the Seller to the Procurers for such delay shall be calculated as follows:

$$\text{SLD} = [\text{CC} \times d \times \text{DR1}] , \text{ if } d \leq 60$$

$$\text{SLD} = [\text{CC} \times 60 \times \text{DR1}] + [\text{CC} \times (d - 60) \times \text{DR2}] , \text{ if } d > 60$$

Where:

- a) "SLD" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Commercial Operation Date of the Project up to and including the day on which the Project is actually Commissioned;
 - b) "CC" is the Contracted Capacity of the Project;
 - c) "d" is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date of the Project up to and including the day on which the Project is actually Commissioned;
 - d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is less than 60 days and
 - e) "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is equal to or more than 60 days
- 4.6.2 The Seller's maximum liability under this Article 4.6 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.6.1 for and upto six (6) Months of delay for the Project. Provided that in case of failure of the Seller to Commission the Project even after expiry of six (6) Months from its Scheduled Commercial Date, the provisions of Article 9 shall apply.
- 4.6.3 The Seller shall pay the amount calculated pursuant to Article 4.6.1 to the Procurers within ten (10) days of the earlier of:
- (a) the date on which the Project is actually commissioned; or
 - (b) expiry of the six (6) month period mentioned in Article 4.6.2.

If the Seller fails to pay the amount of damages within the said period of ten (10) days, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurers under this Article 4.6, then the Seller shall be liable to forthwith pay the balance amount.

- 4.6.4 The Parties agree that the formula specified in Article 4.6.1 for calculation of liquidated damages payable by the Seller under this Article 4.6, read with Article 9 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer(s) in the event of Seller's delay in achieving commissioning of the Project by its Scheduled COD.

4.7 Liquidated damages for delay due to Procurer Event of Default

4.7.1 If

- a) the Project cannot be commissioned by its Scheduled Commercial Operations Date, due to a Procurer Event of Default; or
- b) the Project is available for conducting commissioning tests and is anticipated to be capable of duly completing the commissioning tests as certified by the Independent Engineer, but the said commissioning tests are not undertaken or completed due to such Procurer Event of Default:

the Project shall, until the effects of the Procurer Event of Default no longer prevent the Seller from undertaking a commissioning tests, be deemed to have a tested capacity equal to the Contracted Capacity and to this extent, be deemed to have been commissioned with effect from the Scheduled COD, the Procurers shall make payment to the Seller of the Quoted Charges calculated on CUF/PLF, as the case may be, of Contracted Capacity of the Project for and during the period of such delay.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.7.1 shall be paid by the Procurers in proportion to their then Allocated Contracted Capacity.

- 4.7.2 In case referred to in Article 4.7.1 hereinabove, the Seller shall undertake a commissioning tests as soon as reasonably practicable and in no event later than two (2) weeks or such longer period as mutually agreed between the Seller and the Procurers (jointly) after the point at which it is no longer prevented from doing so by the Procurer Event of Default (as appropriate) and if such commissioning tests is not duly completed and / or demonstrates a tested capacity of the Project which is less than ninety five (95) percent of its Contracted Capacity, then:

- a) The Project shall be deemed to have not been commissioned from the deemed COD referred to in Article 4.7.1;
- b) The Seller shall repay to the Procurers, all sums received by way of Capacity Charge along with interest at the same rate as Late Payment Surcharge; and
- c) If the Seller fails to achieve commissioning by the Scheduled Commercial Operation Date, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.6.

4.8 Availability

The Seller shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

4.9 Dispatch

The Seller shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to Dispatch and the matters incidental thereto.

5 ARTICLE 5: METERING AND ENERGY ACCOUNTING

5.1 Meters

5.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer(s) shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time. In addition, the Seller shall also allow and facilitate STU/CTU/Distribution Licencee(s) in installation of one set of required main and standby special energy meters for accurate recording of energy supplied by Seller. For these meters, the Seller shall provide the required connection from current transformers/ bushing CTs/ voltage transformers/ CVTs on HV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better. The Seller may install any further meters for its own comfort at its own cost

5.2 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

5.3 RLDC / SLDC Charges

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

6 ARTICLE 6: BILLING AND PAYMENT

6.1 General

6.1.1 From the commencement of supply of power by the Seller, the Procurers shall pay to the Seller the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in this Article 6 and Schedule 4. All Tariff Payments by the Procurers shall be in Indian Rupees.

6.2 Delivery and Content of Monthly Bills

6.2.1 The Seller shall issue to Procurer(s) a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

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

6.2.2 The Monthly Bill prepared as detailed in Schedule-4 of the PPA, shall include the following;

- i) Provisional Bill for power supplied in the immediately preceding Month and shall take into consideration the following;
 - (a) Adjustments against the Provisional Bill(s) based on Energy Accounts for the power supplied in the Month(s) proceeding to the previous month(s);
 - (b) Any other adjustments to cover changes in open access related charges and any other prior-period adjustments;
- ii) Late Payment Surcharge, if any; and
- iii) Taxes, Duties, Levies etc as applicable.

6.3 Payment of Monthly Bills

6.3.1 The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified to the Procurers in accordance with Article 6.3.2 below.

6.3.2 The Seller shall open a bank account at ---- [insert identified place or account] ("Seller's Designated Account") for all Tariff Payments to be made by the Procurer(s) to the Seller, and notify the Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurer(s) shall also designate a bank account at ---- [insert identified place or account] (the "Procurers' Designated Account") for payments to be made by the Seller to the Procurer(s), if any, and notify the Seller of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. The Seller and the Procurer(s) shall instruct their respective bankers to make all payments under this Agreement to the Procurers' Designated Account or the Seller's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

6.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by the Procurers thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable by the Procurers 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 next Monthly Bill.

6.3.4 Rebate

For payment of any Bill within Due Date, the following Rebate shall be paid by the Seller to the Procurers in the following manner.

- a) A Rebate of 2% shall be payable to the Procurers for the payments made in full within one Business Day of receipt of the Bill by the Procurer.
- b) For payment of Bill subsequently but up to the Due Date, a rebate of 1% shall be allowed for the payments made in full.
- c) No Rebate shall be payable on the Bills raised on account of taxes, duties and cess etc.

6.4 Payment Security Mechanism

Letter of Credit (LC):

6.4.1 The Procurer(s) shall provide to the Seller, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer(s), which may be drawn upon by the Seller in accordance with this Article. The Procurer(s) shall provide to the Seller draft of the Letter of Credit proposed to be provided to the Seller two (2) months before the Scheduled Commercial Operation Date.

6.4.2 Not later than one (1) Month before the start of supply, the Procurer(s) shall through a

scheduled bank at ---- [insert identified place] open a Letter of Credit in favour of the Seller, 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 year, in the month of January and revised w.e.f. April for an amount equal to:

- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

6.4.3 Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal 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, the Procurer(s) shall restore such shortfall within seven (7) days.

6.4.5 The Procurer(s) shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

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

6.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer(s).

6.4.8 If the Procurers fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 6.6.1 and 6.6.2, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer(s), 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 the Procurers;
- 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;

6.4.9 **Collateral Arrangement**

As a further support for the Procurer's obligations, on or prior to the Effective Date, the Procurer(s) and the Seller shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the Procurers shall be routed and used as per the terms of the Default Escrow Agreement. The Procurer(s) and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Procurers shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 6.4.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of

Hypothecation are collectively referred to as the “Collateral Arrangement”.

Provided that the Procurer(s) shall ensure that the Seller shall have first ranking charge on the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation.

6.4.10 The Default Escrow would come into operation if,

- iii) The Letter of Credit is not recouped by the Procurer(s) to its required value by the 7th day of its operation;
- iv) The Seller is unable to draw on the Letter of Credit on the Due Date, if the Procurer(s) fails to pay by the Due Date.
- v) Non-restoration of Escrow Arrangement by the 7th day of the Due Date.

6.5 Disputed Bill

6.5.1 If a Party does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive.

6.5.2 If a Party disputes the amount payable under a Monthly Bill, it shall pay 90% 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.

6.5.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.5.2, it 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 to the invoicing Party and up to and including the date on which such payment has been received as refund.

6.5.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.5.2, 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.

6.5.5 Upon receipt of the Bill Disagreement Notice under Article 6.5.4, authorized representative(s) or a director of the board of directors/ member of board of each Party shall meet and make best endeavours to amicably resolve such dispute within

fifteen (15) days of receipt of the Bill Disagreement Notice.

6.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 6.5.4, the matter shall be referred to Dispute resolution in accordance with Article 13.

6.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the concerned Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 90% of the Disputed Amount in the Monthly Bill.

6.6 Quarterly and Annual Reconciliation

6.6.1 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.

6.6.2 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, the Procurer(s) and the Seller shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the Seller 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 13.

7 ARTICLE 7: FORCE MAJEURE

7.1 Definitions

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

7.2 Affected Party

7.2.1 An affected Party means the Seller or the Procurer(s) whose performance has been adversely affected by an event of Force Majeure.

7.3 Force Majeure

7.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances as 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 in performing its obligations:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- c) 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 making the performance of obligations as specified herein as impossible; or
- d) radio active 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.
- e) 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 the Procurers;

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 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.

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:

- (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 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;

8 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 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 Procurers;
- any change in tax or introduction of any tax made applicable for sale of power by the Seller to the Procurers as per the terms of this Agreement.
- any change in the price of land for the Project to that provided in RFP.

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 excluding calculation of CUF/PLF, as the case may be.

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.

9 ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION

9.1 Seller 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 or a breach by Procurer(s) of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

- (i) the failure to commence supply of power to the Procurer(s) up to the Contracted Energy, relevant to the Scheduled COD, as revised/extended under the provisions of this Agreement, or
- (ii) after the Delivery Date, the Seller fails to achieve CUF/PLF, as the case may be, for a period of twelve (12) consecutive or non-consecutive Months within any continuous period of thirty six (36) Months; or
- (iii) any of the representations and warranties made by the Seller in Schedule 6 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Selected Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its parent company/ affiliates related to the minimum equity obligation; Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days; or
- (iv) if
 - a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or
 - b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - (i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - (ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (v) 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 an Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to meet the financial and technical requirements as per RFP till COD of the Project, and 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

- (vi) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Procurer(s) in this regard; or
- (vii) 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 or of any of the RFP Documents where the Procurer(s) and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by the Procurers.
- (viii) any direct or indirect change in the shareholding of the Seller in contravention of the terms of the Bid Documents; or
- (ix) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or
- (x) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller

9.2 Procurers 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 Procurers Event of Default:

- (i) Any amount subject to Article 6.5 remains outstanding beyond a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding from the Procurers through the Letter of Credit and Default Escrow Account; or
- (ii) the Procurers repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iii) except where due to any the Seller's failure to comply with its material obligations, the Procurers is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Procurers within thirty (30) days of receipt of first notice in this regard given by the Seller; or
- (iv) if (a) any 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 (b) any winding up or bankruptcy or insolvency order is passed against the Procurer, or (c) the

Procurer 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, except where such dissolution or liquidation of such 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 such Procurer and expressly assumes all obligations of such Procurer under this Agreement and is in a position to perform them; or

- (v) any representation and warranties made by any of the Procurer in Schedule 6 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the concerned Procurer in writing of at least thirty (30) days; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Procurers.

9.3 Procedure for cases of Seller's Event of Default

- 9.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 9.1.1, the Procurer(s) shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission, of their 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.
- 9.3.2 Following the issue of the Procurer 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 Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission.

9.4 Procedure for cases of Procurers Event of Default

- 9.4.1 Upon the occurrence and continuation of any Procurers Event of Default under Article 9.2, the Seller shall have the right to deliver to the Procurers a notice, stating its intention to terminate this Agreement (Seller Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

- 9.4.2 Following the issue of the 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 have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 9.4.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.4.4 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 Procurers Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Procurers with a copy to the Appropriate Commission.

9.5 Termination due to Force Majeure

- 9.5.1 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.

10 ARTICLE 10: LIABILITY AND INDEMNIFICATION

10.1 Indemnity

10.1.1 The Procurers 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 the Procurers of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Seller from third party claims arising by reason of:
 - (i) breach by the Procurers of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Procurers, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of The Seller, its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Procurers, if any made under this Agreement, being found to be inaccurate or untrue.

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), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(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 12.3.2; 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.

- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 10.1.1(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.

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), 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.

11 ARTICLE 11: INSURANCES

11.1 Insurance

The Seller shall effect and maintain or cause to be effected and maintained during the Construction Period and Operating Period , Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

11.2 Application of Insurance Proceeds

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

If a Natural Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the Procurer(s) shall have no claim on such proceeds of such Insurance

11.3 Effect on liability of the Procurers

Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the Seller can claim compensation, under any Insurance shall not be charged to or payable by the Procurers.

12 ARTICLE 12: ASSIGNMENTS AND CHARGES

12.1 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 the Seller 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.

12.2 Permitted Charges

12.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

13 ARTICLE 13: GOVERNING LAW AND DISPUTE RESOLUTION

13.1 Governing Law

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

13.2 Amicable Settlement

13.2.1 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.

13.2.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 13.2.1, furnish:

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

13.2.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 13.2.1 or Article 13.2.2, 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, the Dispute shall be referred for dispute resolution in accordance with Article 13.3.

13.3 Dispute Resolution

13.3.1 Dispute Resolution by the Appropriate Commission

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 be referred 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.

The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

13.3.2 Dispute Resolution through Arbitration

If the Dispute arises out of or in connection with any claims not covered in Article 13.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:

- 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 ----[insert place]. 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.

13.4 Parties to Perform Obligations

13.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 13.3 and save as the Appropriate 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.

14 ARTICLE 14: MISCELLANEOUS PROVISIONS

14.1 Amendment

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

14.2 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.

14.3 Waiver

14.3.1 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:

14.3.2 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.

14.4 Confidentiality

14.4.1 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.

14.5 Severability

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.

14.6 Notices

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

14.6.2 If to the Procurers, 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:

[Insert details of Procurer1]

Address :
Attention :
Email :
Fax. No. :
Telephone No.:

[Insert details of Procurer2]

Address :
Attention :
Email :
Fax. No. :
Telephone No.:

[Insert details of Procurer n]

Address :
Attention :
Email :
Fax. No. :
Telephone No.:

14.6.3 If to the Seller, 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 :
Attention :
Email :
Fax. No. :
Telephone No.:

14.6.4 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.

- 14.6.5 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.

14.7 Language

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.

14.8 Restriction of Shareholders / Owners' Liability

- 14.8.1 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.

14.9 Taxes and Duties

- 14.9.1 The Procurers shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Procurers, contractors or their employees that are required to be paid by the Procurers as per the Law in relation to the execution of the Agreement.
- 14.9.2 The Seller shall be indemnified and held harmless by the Procurers against any claims that may be made against the Seller in relation to the matters set out in Article 14.9.1.
- 14.9.3 The Seller shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Procurers by The Seller on behalf of Procurers or its personnel.

14.10 No Consequential or Indirect Losses

The liability of the Procurers and The Seller shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Seller or the Procurers claim from one another any indirect or consequential losses or damages.

14.11 Independent Entity

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

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

14.12 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 thereunder, 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
[The Seller]

For and on behalf of
[Insert name of Procurer1]

Signature with seal

Signature with seal

Witness:
1.

Witness:
1.

For and on behalf of
[Insert name of Procurer2]

Signature with seal

Witness:

1.

For and on behalf of

[Insert name of Procurer n]

Signature with seal

Witness:

1.

SCHEDULE 1:

NAMES AND DETAILS OF THE PROCURER(S)

Sl. No.	Name of the Procurer(s)	Address of the Registered Office of Procurer(s)	Law under which incorporated	Allocated Contracted Capacity (MW)	Allocated Energy (MU) based on CUF/PLF, as the case may be.

SCHEDULE 1A:

**DETAILS OF THE RENEWABLE ENERGY SOURCE AND
LOCATION OF THE PROJECT**

[Procurer/Authorised Representative to provide details]

**SCHEDULE 2:
FUNCTIONAL SPECIFICATIONS**

[Procurer/Authorised Representative to provide details]

SCHEDULE 3

QUOTED TARIFF

(Quoted Tariff from Format 4.10 of RFP of the Selected Bid to be inserted here)

SCHEDULE 4: TARIFF–

1.1 *General*

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Tariff shall be paid in single part comprising of Quoted Charge.

[Insert in case of Renewable Energy Source requiring primary fuel such as Bio-mass etc.] The Tariff shall be paid in two parts comprising of Quoted Charge and Energy Charge.

- iii) For the purpose of payments, the Tariff will be Quoted Tariff, as specified in Schedule 3, duly escalated as provided in Schedule 5 and, provided in this Schedule 4 for the applicable Contract Year.

1.2 **Monthly Tariff Payment**

1.2.1 **Components of Monthly Tariff Payment**

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Quoted Charge payment in accordance with Clause 1.2.2 of Schedule 4; and
- ii) Monthly Energy Charge for Scheduled Energy in accordance with Clause 1.2.3 of Schedule 4; *[Applicable only in case where bids are invited for Renewable Energy Sources requiring primary fuel, such as Bio-mass etc.]*

1.2.2 **Monthly Quoted Charge Payment**

- 1.2.2.1 The monthly Quoted Charge payment for any Month m in a Contract Year n shall be calculated as below:

Energy supplied in a Month (kwh) * AFCyn

where:

AFCyn is the Quoted Charge and is sum of a) Payable Quoted Escalable Charges AEFCyn and b) Payable Quoted Non Escalable Charges ANEFCyn for the month in which the relevant settlement period occurs in the Contract Year n (in Rs per kWh) and computed as mentioned hereunder;

AEFCyn is the Payable Quoted Escalable Charges for month in which the relevant settlement period occurs in the Contract Year “n”, expressed in Rupees/kWh and is equal to the Quoted Escalable Charges as provided in Schedule 3 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$$AEFCyn = QAEFCyn * p/q$$

Where,

QAEFCyn is the Quoted Escalable Charges (in Rs./kWh) in the first Contract Year as per Schedule 3.

p is the Escalation Index as per Schedule 5 at the beginning of the Month in which the relevant settlement period occurs.(expressed as a number)

q is the Escalation Index as per Schedule 5 applicable as at the beginning of the first Contract Year mentioned in Schedule 3 (expressed as a number)

Provided, no monthly Quoted Charges shall be paid for the settlement period during which the RLDC has not allowed the operation of the power station due to Seller's failure to operate it as per the provisions of Grid Code and such settlement period shall not be considered during calculation of Monthly Quoted Charge payment.

1.2.3 Monthly Energy Charges [Applicable only in case where bids are invited for Renewable Energy Sources requiring primary fuel, such as Bio-mass etc.]

1.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined considering the supply from the type of plant, as detailed hereunder:

1.2.3.2 The Monthly Energy Charges (in Rupees) for Month "m" shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

where:

a) MEP_m is the Monthly Energy Charges for Month m (in Rs.);

b) AEO_m is the Scheduled Energy for the Month m (in kWh); and

c) MEP_n is the Energy Charge, in Rs/ kWh, and is the sum of (i) Payable Escalable Energy Charges ($MEEP_n$) and (ii) Payable Non Escalable Energy Charges ($MNEEP_n$) for the Contract Year "n" in which Month "m" occurs and computed as mentioned hereunder:

where:

$$MEEP_n = QMEEP_n * p(EE)/q(EE)$$

where:

a) $QMEEP_n$ for the first Contract Year in which month "m" occurs is the Quoted Escalable Energy Charges as per Schedule 3 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);

- b) $p(EE)$ is the Escalation Index as per Schedule 5 at the beginning of Month “m” (expressed as a number);
- c) $q(EE)$ is the Escalation Index as per Schedule 5 (expressed as a number);
- d) $MNEEP_n$ is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 3; and

1.3 Penalty for availability below CUF/PLF, as the case may be, during the Contract Year

In case the availability for a Contract Year is less than the specified CUF/PLF, as the case may be, the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kwh) corresponding to the difference between actual CUF/PLF, as the case may be, and the specified CUF/PLF, as the case may be, during such Contract Year.

1.4 Deviation from the Schedule

- 1.4.1 Variation between Scheduled Energy and actual energy at the Interconnection Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

1.5 Transmission/Wheeling Charges and RLDC/ SLDC Charges

- 1.5.1 [Incase the Seller is responsible for Open Access] The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer(s).

[Incase the Procurer(s) is/are responsible for Open Access] The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point onwards shall be paid by the Procurer(s).

- 1.5.2 The payment of the RLDC/ SLDC charges shall be the responsibility of the Procurer(s).

1.6 Settlement of Bills

- 1.6.1 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel, if any.

SCHEDULE 5

ESCALATION INDEX

- 1.1** The index (“Escalation Index”) to be applied for escalation of Quoted Escalable Energy Charges shall be computed by assuming that as on the date of the Bid Deadline for Quoted Escalable Energy Charges, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline for Quoted Escalable Energy Charges, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable Energy Charge, as per the provisions of this Agreement.

For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e. $100 * (1 + 0.047/12)$]. The value of the Escalation Index at the end of the Nth Month after the Bid Deadline shall be calculated as: $100 * (1 + N*0.047/12)$ for Quoted Escalable Energy Charges. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the fourth decimal point.

- 1.2** The different per annum escalation rates will be specified by CERC, which shall be revised only at the end of every six months for Quoted Escalable Energy Charges separately
- 1.3** In case due to any reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurer(s) and the Seller shall replace the above inflation rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.

SCHEDULE 6

REPRESENTATION AND WARRANTIES

1. Representations and Warranties by the Procurers

Each Procurer hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

- 1.1 The said Procurer has all requisite powers authorising and has been duly authorised to execute and consummate this Agreement;
- 1.2 This Agreement is enforceable against the said Procurer in accordance with its terms;
- 1.3 The consummation of the transactions contemplated by this Agreement on the part of the said Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived;
- 1.4 The said Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;
- 1.5 There are no actions, suits, claims, proceedings or investigations pending or, to the best of the said Procurer's knowledge, threatened in writing against the said Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- 1.6 The quantum of Allocated Contracted Capacity of said Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines

Each of the Procurers makes all the representations and warranties above to be valid as on the date of this Agreement.

2. Representation and Warranties of the Seller

The Seller hereby represents and warrants to and agrees with the Procurers as follows and acknowledges and confirms that the Procurers are relying on such representations and warranties in connection with the transactions described in this Agreement:

- 2.1 The Seller has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- 2.2 This Agreement is enforceable against the Seller in accordance with its terms;
- 2.3 The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- 2.4 The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- 2.5 There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.
- 2.6 The Selected Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the RFP Bid are true and accurate and there is no breach of the same.

The Seller makes all the representations and warranties above to be valid as on the date of this Agreement, except as stated in sub-article 2.6 above.