DRAFT

HYDRO POWER PURCHASE AGREEMENT

Procurement of …… MW Dispatchable Hydro Power For 30 years

Issued by:

The Tata Power Company Limited

(Tata Power-D)

Power System Control Centre, Station-A,

1st Floor, Tata Power Co. Ltd.

Trombay Thermal Power Station,

Chembur-Mahul Mumbai-400074

Date of HPPA

PART I - PRELIMINARY

HYDRO POWER PURCHASE AGREEMENT

THIS AGREEMENT is entered into on this the …………………….. day of…......., 20….

BETWEEN

Tata Power Company Limited ("**Tata Power-D**") (a company incorporated under the provisions of Companies Act 1956) having its registered office at ……………………………………………………………………….. (herein after referred to as "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, includes its Executors Administrators, Successors and Permitted Assigns) of One Part.

AND

________LIMITED, a company incorporated under the provisions of the Companies Act, 1956 or 2013 represented by its [Managing Director/Authorized Person] and having its registered office at ___________, (hereinafter referred to as the **"Supplier"** which expression shall, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) Tata Power-D / Utility intends to procure dispatchable hydro power through process of competitive bidding from Hydro Power Generating Station that would dedicate a capacity for dispatchable supply of electricity thereof for a specified period in time and has therefore decided to carry out the bidding process for selection of the Bidder to whom the contract may be awarded for production of dispatchable electricity and/or Supply thereof as per the terms and conditions specified in the bidding document.

(B) The Utility had resolved to procure electricity from a hydro power generating station that would dedicate a contracted capacity of 200 MW of dispatchable electricity and supply thereof to the Utility on PPP, BOLT, BOO, BOOT, BOT, DBFOO or on similar basis, in accordance with the terms and conditions to be set forth in an agreement for procurement of dispatchable supply to be entered into under and in accordance with the provisions of the Electricity Act, 2003, i.e. this Agreement,

(C) The Utility had invited Bids from the Bidders in accordance with the bidding document issued on […………..] ("**Bidding Document**") under and in accordance with the Guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003 vide notification no. 23/17/2013-R&R(Vol-VI, Part II) dated 29.01.2019 which were modified by the Utility to accommodate long term procurement of dispatchable supply from Hydro Power Station(s) and approved by the Hon'ble Maharashtra Electricity Regulatory Commission vide order in Case No. 221 of 2024 and IA No. 9 of 2026 dated 16th June 2026.

(D) After completion of the bidding process, the Utility had accepted the Bid of the selected bidder and issued its letter of award [*] to the selected bidder requiring, inter-alia the execution of this Agreement for procurement of Hydro Power within 10 days of the date of issue thereof.

(E) The selected Supplier shall communicate the daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. For each month from May to October, the Supplier shall ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours (any four hours out of 24 hours) on daily basis as communicated by Tata Power-D by 09:00 hours of previous day. The Supplier has to supply dispatchable hydro power electricity in accordance with scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis.

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

NOW, THEREFORE, in consideration of the foregoing and mutual agreements, the respective covenants and conditions set forth in this Agreement for Procurement of dispatchable Hydro Power for 30 years,the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARICLE 1 - DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.1.1. "**Accounting Year**" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

1.1.2. "**Act**" means the Electricity Act, 2003 and include any modifications, amendments and substitutions from time to time;

1.1.3. "**Affected Party**" shall have the meaning as set forth in Clause 17.1;

1.1.4. "**Affiliate** or **Associate** " means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

1.1.5. "**Agreement**" or "**Agreement for Procurement of Hydro Power**" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

1.1.6. "**Applicable Laws**" means all laws, brought into force and effect by Government of India or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

1.1.7. "**Applicable Permits**" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

1.1.8. "**Appointed Date**" means the date of commencement of the dispatchable supply i.e., May 2032 or such other date as extended as per the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

1.1.9. "**Appropriate Commission**" shall mean Maharashtra Electricity Regulatory Commission or Central Electricity Regulatory Commission as the case may be;

1.1.10. "**Arbitration"** means the resolution of a dispute between the parties in accordance with Clause 23.3

1.1.11. "**Bank Rate**" means the 'base rate of Late Payment Surcharge' as provided in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022;

1.1.12. "**Base Fixed Charge**" shall have the meaning as set forth in Clause 11.2;

1.1.13. "**Base Year**" means the Accounting Year in which the Bid was received;

1.1.14. "**Bid**" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposal in accordance with the provisions thereof and "**Bids**" shall mean the bids submitted by any and all pre-qualified bidders;

1.1.15. "**Bid Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

1.1.16. "**Bid Security**" means the security provided by the Supplier to the Utility along with the Bid in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

1.1.17. **"Buyer(s)"** shall mean the third parties buying electricity from the Power Station, in accordance with the provisions of this Agreement and Applicable Laws;

1.1.18. "**Capacity Certificate**" means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, and other principal parameters of the Power Station;

1.1.19. "**Capacity Charge**" shall have the meaning as set forth in Clause 11.4.2;

1.1.20. "**Change in Law in India**" shall have the meaning as set forth in Article 21;

1.1.21. **"Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline, at any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

1.1.22. "**Commission**" means the Maharashtra Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

1.1.23. "**Competent Authority**" in case of a Power Station located outside India shall mean, the government of the relevant foreign state or its instrumentalities responsible for formulating/ prescribing standards for hydro power stations;

1.1.24. "**Conditions Precedent**" shall have the meaning as set forth in Article 4;

1.1.25. "**Contract Period**" means the period starting on and from the Appointed Date and ending on the earlier of the [30th (thirtieth)] anniversary of the Appointed Date and/ or the date of termination of the Agreement, whichever is later, subject to the period of supply being the period of 12 months from May to April every accounting year;

1.1.26. "**Contracted Capacity**" shall have the meaning as set forth in Clause 10.1;

1.1.27. "**Contractor**" means the person or persons, as the case may be, with whom the Supplier has entered into any of the material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

1.1.28. "**Control Centre**" shall be the RLDC/SLDC, as the case may be;

1.1.29. "**Cross Border Transmission Link**" or "**CBTL**" shall have the same meaning as under Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019 as amended, replaced or substituted from time to time;

1.1.30. "**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

provided that if the cure of any breach by the Supplier requires any reasonable action by the Supplier that must be approved by the Utility hereunder, the applicable Cure Period shall be extended by the period taken by the Utility to accord its approval;

1.1.31. "**Damages**" shall have the meaning as set forth in clause 11.6;

1.1.32. "**Delivery Point**" shall mean:

(a) for power station located in India outside Maharashtra : point where supply of power from the power station is injected into the nearest ISTS-substation or

(b) for power stations located in Maharashtra, point where supply of power from the power station is injected into the nearest InSTS-substation or

(c) for power station located outside India: point where cross border transmission link / line is connected to Indian Grid and is used for the purpose of energy accounting by RLDC. For the purpose of power station located outside India, the Indian Grid shall mean the Inter-State Transmission System (ISTS) or Intra-State Transmission System (In-STS) or both as the case may be.

1.1.33. "**Despatch**" shall have the meaning as set forth in Clause 14.1.1;

1.1.34. "**Designated Authority**" shall have the same meaning as provided under the Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019 as amended from time to time;

1.1.35. "**Developer**" shall mean the owner of the Power Station from which the Supplier shall supply the Power to the Utility(s);

1.1.36. **"Dispatchable Contracted Capacity"** means the quantum of capacity, expressed in MW, of the Power Station contractually allocated for supply to the Tata Power-D under this Agreement.

1.1.37. **"Dispatchable Contracted Supply"** means the quantum of electrical energy, expressed in MU, for a given month, corresponding to the monthly Design Energy approved by the Central Electricity Authority.

1.1.38. "**Dispute**" shall have the meaning as set forth in Clause 23.1.1;

1.1.39. "**Disputed Amounts**" shall have the meaning as set forth in Clause 11.9.3;

1.1.40. "**Dispute Resolution**" shall have the meaning as set forth in Article 23 ;

1.1.41. "**Distribution Licensee**" means a person who has been granted a license under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

1.1.42. "**Document**" or "**Documentation**" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

1.1.43. "**Fixed Charge**" shall have the meaning as set forth in Clause 11.1.2;

1.1.44. "**Force Majeure"** or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 17.1;

1.1.45. "**Fuel**" means the water which is fit for use in generation of electricity at the Power Station;

1.1.46. "**GOI**" means the Government of India;

1.1.47. "**Government**" means the Government of India or the Government of the State, as the case may be;

1.1.48. "**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

1.1.49. "**Grid**" means the high voltage backbone system of inter-connected transmission lines and sub-stations;

1.1.50. "**Grid Code**" means the CERC (Indian Electricity Grid Code) Regulations 2023 or any substitute thereof;

1.1.51. "**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to clause 22.3.1;

1.1.52. "**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to clause 22.3.1;

1.1.53. "**Indirect Political Event**" shall have the meaning as set forth in Clause 17.3;

1.1.54. "**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 15, and includes all insurances required to be taken out by the Supplier under Clause 15.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

1.1.55. **"Law"** means, in relation to this Agreement, all laws and Electricity Laws in force and includes any statute, decree, ordinance, regulation, notice, circular, code, rule or direction, or any interpretation of any of them by Governmental Instrumentality in India and/or in relevant states and also includes all applicable rules, regulations, orders, directions, notifications by a Government Instrumentality pursuant to or under any of them;

1.1.56. "**LOA**" or "**Letter of Award**" means the letter of award referred to in Recital (E);

1.1.57. **"Letter of Credit**" shall have the meaning as set forth in Clause 13.2.1;

1.1.58. "**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its crucial obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

1.1.59. "**Maximum Monthly Payment**" shall mean the, maximum monthly quoted Design Energy from month of May to October (during the Contract Period) multiplied by the quoted tariff;

1.1.60. **“Minimum Supply**” shall have meaning as set forth in Clause 5.1.4;

1.1.61. **“Monthly Dispatchable Energy”** means the actual quantum of electrical energy declared for generation by the Supplier, expressed in MU, to the Tata Power-D during a particular month and should be calculated based only for the hours communicated by TPC-D as specified in Clause 2.1(b).

1.1.62. “**Monthly Invoice**” shall have the meaning as set forth in Clause 11.9.1;

1.1.63. “**Non-Political Event**” shall have the meaning as set forth in Clause 17.2;

1.1.64. “**Parent**” shall mean a Company, which holds more than 50% voting rights and paid up share capital, either directly or indirectly in the Project Company or a Member in a Consortium developing the Project

1.1.65. “**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

1.1.66. “**Payment Due Date**” shall have the meaning as set forth in Clause 11.9.3;

1.1.67. “**Performance Security**” shall have the meaning as set forth in Clause 9.1;

1.1.68. “**Point of Grid Connection**” means the point of interconnection at which the electricity generated by the Power Station is transferred to the Grid;

1.1.69. “**Political Event**” shall have the meaning as set forth in Clause 17.4;

1.1.70. “**Power Purchase Agreement**” shall mean the back-to-back arrangement for dispatchable supply of hydro electricity between the Supplier and the Developer from the Power Station;

1.1.71. “**Power Station**” means the generating station as described in Schedule A or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities;

1.1.72. “**Procurement Contract**” shall have the meaning as set forth in Clause 3.1;

1.1.73. “**Project**” means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement;

1.1.74. **“Project Agreements”** means this Agreement and any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

1.1.75. “**Project Assets**” means all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Station Premises in the form of license or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers, administrative offices and Sub-stations;
- (c) all rights of the Supplier /Developer under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorizations relating to or in respect of the Power Station;

1.1.76. "**Prudent Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent Utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

1.1.77. "**RLDC**" means the Regional Load Despatch Centre as specified in the Act;

1.1.78. "**Re**.", "**Rs**." or "**Rupees**" or "**Indian Rupees**" means the lawful currency of the Republic of India;

1.1.79. "**Revenues**" means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Utility in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Utility for and in relation to any capital expenditure for creation of assets;

1.1.80. **"Scheduled Energy"** means the quantum of electrical energy, expressed in MWh or MU, scheduled by the Tata Power-D and approved by the concerned RLDC/SLDC in accordance with the Grid Code for a specified time block, which is relevant for operational dispatch and grid compliance.

1.1.81. "**SLDC**" means State Load Despatch Center as specified under the Act;

1.1.82. **"Scope of the Agreement**" shall have the meaning as set forth in Clause 2.1;

1.1.83. "**Secured Obligations**" means:

- (a) obligations of the Utility for payment of Tariff under and in accordance with this Agreement; and

(b) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

1.1.84. "**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in the rules and regulations made under the Act;

1.1.85. "**State**" means the State or the Union Territory, as the case may be, in which the headquarters of the Utility is situated and "**State Government**" means the government of that State or Union Territory;

1.1.86. "**Station Premises**" shall mean and include the site, real estate, assets, equipment facilities and amenities comprising the Power Station;

1.1.87. "**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;

1.1.88. "**Supplier**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

1.1.89. "**Supplier Default**" shall have the meaning as set forth in Clause 19.1.1;

1.1.90. "**Tariff**" shall have the meaning as set forth in Clause 11.1.1;

1.1.91. **"Taxes"** means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

1.1.92. "**Termination**" means the expiry or termination of this Agreement and the Procurement Contract hereunder;

1.1.93. **"Termination Notice"** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

1.1.94. **"Termination Payment"** means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

1.1.95. **"Trading Licensee"** shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Applicant/Bidder.

1.1.96. "**Unit"** means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity independently of other units at the Power Station;

1.1.97. **"Utility"** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

1.1.98. **"Utility Default"** shall have the meaning as set forth in Clause 19.2.1;

1.1.99. **"Utility Representative**" means such person or persons as may be authorized in writing by the Utility to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Utility under this Agreement;

1.1.100. **"Variable Charge"** shall have the meaning as set forth in Clause 12.1; and

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires/provides:-

1.2.1.1. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered or under this Agreement into hereunder;

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

1.2.1.3. references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall be construed as including a reference to its successors, permitted assigns and permitted transferees in accordance with their respective interests;

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

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

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

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

1.2.1.8. any reference to any period of time shall mean a reference to that according to Indian Standard Time;

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

1.2.1.10. any reference to a day shall mean a reference to a calendar day;

1.2.1.11. reference to a "business day" shall be construed as reference to a day (other than a Sunday or a gazetted (holiday or strikes) on which banks in the State where the Power Station is situated are generally open for business;

1.2.1.12. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

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

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

1.2.1.15. the words importing singular shall include plural and vice versa;

1.2.1.16. references to any gender shall include the other and the neutral gender;

1.2.1.17. "kWh" shall mean kilowatt hour and "kCal" shall mean kilo calories;

1.2.1.18. "lakh" shall mean a hundred thousand (100,000) and "crore" shall mean ten million

(10,000,000);

1.2.1.19. “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;

1.2.1.20. references to the “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.1.21. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (21) shall not operate so as to increase liabilities or obligations of the Utility hereunder or pursuant hereto in any manner whatsoever;

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

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

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

1.2.1.25. the liquidated damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are pre-estimated loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”);

1.2.1.26. “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.

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

1.2.1.28. capitalized terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.1.29. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Supplier to the Utility shall be provided free of cost and in three copies, and if the Utility is required to return any such documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 3 (three) decimal places, with the third digit of 5 (five) or above beingrounded up and below 5 (five) being rounded down.

1.4. Priority of agreements, clauses and schedules

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

i. this Agreement; and
ii. all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
iii. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
    (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
    (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
    (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
    (d) between the written description on the drawings and the Specifications and

Standards, the latter shall prevail;

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

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

PART II – THE PROCUREMENT CONTRACT

ARTICLE 2 - SCOPE OF THE PROJECT

2. Scope of the Project

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

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

(b) The Supplier has to communicate the daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. For each month from May to October, the Supplier has to ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours (any 4 hours out of 24 hours) on daily basis as communicated by Tata Power-D by 09:00 hours of previous day . The Supplier has to supply dispatchable hydro power electricity in accordance with scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis

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

ARTICLE 3 - GRANT OF PROCUREMENT CONTRACT

3.1. The Procurement Contract

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein (for generating and supplying dispatchable electricity from the Power Station(s), and if Supplier is a Trading Licensee (than supplying dispatchable electricity) to the Utility for a period of 30 years commencing from the Appointed Date, and the Supplier hereby accepts the procurement contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period of up to five years with same terms and conditions set forth herein.

Provided that the Supplier is allowed to supply alternate power subject to the written consent of the Procurer. The Supplier may before the Appointed Date supply early power up to the dispatchable Contracted Supply from the Power Station or other hydro source or any other Renewable Energy sources (matching the generation profile of the HEP quoted by the bidder) as per their discretion, which shall be procured by the Procurer at tariff which shall comprising of fixed charge and variable charge as quoted under clause 11.2 & clause 12.2 of the HPPA, respectively. The tariff applicable for early power supply shall be fixed till the Appointed Date i.e. no indexation (as mentioned in clause 11.3 and clause 12.3 of the HPPA) and no degradation (as mentioned in clause 11.2 of the HPPA) will applicable on the early power tariff.

The Supplier has to communicate daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. For each month from May to October, the Supplier has to ensure that, while communicating the daily availability, contracted capacity is available for period of minimum four hours on daily basis as communicated by Tata Power-D by 09:00 hours of previous day. The Supplier shall supply dispatchable hydro power electricity in accordance with scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis.

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

a) finance, own, operate and maintain the Power Station(s) in accordance with this Agreement if Supplier is NOT a Trading Licensee or ensure that the Developer finances, owns, operates and maintains the Power Station(s) in accordance with this Agreement if Supplier is a Trading Licensee.

b) [procure if Supplier is NOT a Trading Licensee, or ensure that the Developer procures if Supplier is a Trading Licensee] availability of the dispatchable Contracted Capacity or production of dispatchable electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;

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

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

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

f) Omitted.

g) Omitted.

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

i) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the procurement contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement if Supplier is NOT a Trading Licensee, or neither assign, transfer or sub-let or create any lien or encumbrance on this Agreement, or the procurement contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement if Supplier is a Trading Licensee.

j) Ensure supply of dispatchable hydro power electricity in accordance with the scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis. For each month from May to October, the Supplier has to ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours on daily basis as communicated by Tata Power-D by 09:00 hours of previous day .

k) To communicate the daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements.

3.2. Substitution of the Utility

The Parties expressly agree that the Utility may, in pursuance of any re-organization or restructuring undertaken in pursuance of Applicable Laws, or if it is unable to discharge its liabilities and obligations under this Agreement, substitute itself by another Distribution Licensee(s)/Administrator and upon such substitution, all the functions, rights and obligations of the Utility under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws. Provided, however, that prior to any substitution hereunder, the Parties shall, on a best endeavor basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 13. Provided further that prior intimation of the substitution shall be given to the Supplier.

ARTICLE 4 - CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

4.1. Conditions Precedent

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

4.1.2. The Supplier shall provide the Performance Security to the Utility within 45 days from signing of this Agreement and subject to the submission of the performance security the Utility will release the bid security earlier submitted by the bidder, which shall be kept valid and subsisting until the said time. Additionally, the Utility shall have the following Conditions Subsequent to be discharged by it:

(a) Utility having provided to the Supplier, an unconditional and irrevocable Letter of Credit 30 days before the commencement of supply in accordance with the provisions of Clause 13.2;

(b) Procure in principle approval of adoption of Tariff from the Appropriate Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement;

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

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

a) provided Performance Security to the Utility to be provided within 45 days after signing of this Agreement;

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

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

d) submit the application to Governmental Instrumentality for access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.

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

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

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

4.2. Damages for delay by the Supplier

4.2.1. In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred due to failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement.

4.3. Deemed Termination upon delay

4.3.1. Without prejudice to the provisions of Clause 4.2, the Parties expressly agree that in the event the Condition Precedent are not satisfied / waived by Utility for any reason whatsoever, upto 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of dispatchable supply shall be deemed to have been terminated by mutual agreement of the Parties.

Provided, however, that in the event the delay in achievement of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as damages thereof. Provided however, Supplier shall have the option to supply dispatchable electricity from any other alternate source. The same has to be subject to prior concurrence of Utility. In case the alternate dispatchable supply of electricity is not from a RE source bidder shall have to compensate through procurement of RECs commensurate to the power quantum supplied by it from such alternate source.

4.4. Conditions Subsequent

4.4.1. The Supplier shall be required to submit the Capacity Certificate and evidence of the capacity of the Power Station within a period of 90 (ninety) days before the Appointed Date.

ARTICLE 5- OBLIGATIONS OF THE SUPPLIER

5.1. Obligations of the Supplier

5.1.1. Subject to the terms and conditions of this Agreement, the Supplier shall, ("at its own cost and expense" if Supplier is NOT a Trading Licensee, or insert "through the Developer" if Supplier is a Trading Licensee), procure, finance for and undertake the operation and maintenance of the Hydro Power Station(s) and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder including but not limited to supply dispatchable supply to the utility in accordance herewith. Further, in case Supplier is a Trading Licensee; the Supplier shall further ensure that the Developer maintains all consents, clearances and permits as required under Applicable Law for the operation and maintenance of Power Station and production of dispatchable supply, in full force and effects during the Term of this Agreement.

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

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

5.1.4. The Supplier shall, (ensure that the Developer shall, if Supplier is a Trading Licensee) operate and maintain the Power Station in accordance with the specifications, standards and the maintenance requirements such that the assured supply of dispatchable Contracted Capacity from the Power Station in a Year in terms of million units is at least equal to 90% of the quoted Design Energy during the Contract Period (the "**Minimum Supply**") for recovery of entire fixed charges. The bidder shall have to provide CEA or Competent Authority approved or certified monthly design energy for the Power Station for the period of May to October during the Contract Period along with already tied up firm commitments. [For example, if the total capacity of the project is 1000 MW, and the bidder is offering 200 MW to the Utility, then the Supplier should mention monthly Design Energy corresponding to 1000 MW and Design Energy corresponding to the bid capacity (200 MW) separately. For clarity, please refer Annex-I (Schedule A) of HPPA]

Provided that the Design Energy for the contract period corresponding to Dispatchable Contracted Capacity shall result in a Capacity Utilization Factor of at least 35%.

Illustration-1

Sr.	Particulars		Generator A	Generator B
1	Dispatchable Contracted Capacity (MW)	A	200	250
2	No. of hours in a year	B	8760	8760
3	Dispatchable Contracted Supply for a year (MUs)	C	876	700
4	CUF (%)	D=C*1000/A*B	50%	32%
5	CUF Acceptability		**No Damages**	**Damages payable as per Clause 11.7**

For the purposes of this Agreement "**Design Energy**" shall mean design energy as approved by the Central Electricity Authority (CEA) for domestic hydro projects, or design energy as approved by the Competent Authority (in case of cross border projects) from time to time.

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

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

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

(c) Perform and fulfil its obligations in respect of debt service for the Project if Supplier is NOT a Trading Licensee, "ensure performance and fulfillment of Developer's obligation in respect of debt service for the project" if Supplier is a Trading Licensee;

(d) [make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement if Supplier is NOT a Trading Licensee];

(e) ensure and procure that its ("**Contractors**") if Supplier is NOT a Trading Licensee, or insert ("**Developer**") if Supplier is a Trading Licensee) comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;

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

(g) [procure that all equipment and facilities comprising the Power Station are operated and maintained in accordance with Prudent Utility Practice if Supplier is NOT a Trading Licensee];

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

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

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

(k) Ensure supply of dispatchable hydro power electricity in accordance with the scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis. For each month from May to October, the Supplier has to ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours on daily basis as communicated by Tata Power-D by 09:00 hours of previous day .

(l) To communicate the daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements.

5.2. Obligations relating to Project Agreements

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

5.3. Obligations relating to Change in Ownership

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

[In case the Supplier is a Trading Licensee "The provisions of Clause 5.3 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 5.3 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to ………… (name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid). The Supplier shall ensure the compliance of the provisions mentioned in this Clause 5.3. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Clause 19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.3."]

5.4. Obligations relating to operation of the Power Station

5.4.1. The Supplier shall (ensure that the Developer shall if Supplier is a Trading Licensee) at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the RLDC/SLDC may give from time to time in accordance with the provisionsof the Act.

5.4.2. The Supplier shall (enter if Supplier is NOT a Trading Licensee or cause the Developers to enter if Supplier is a Trading Licensee) into and comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5. Obligations relating to transmission charges

5.5.1. The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for transmission of electricity from the point of grid connection to the Delivery Point and further beyond the Delivery Point all charges, due and payable under Applicable Laws, for transmission of electricity from time to time shall be borne by the Utility. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of transmission system upto the Delivery Point shall be borne by the Supplier. The Utility shall be liable for Inter-State Transmission charges under Applicable Laws.

For avoidance of doubt, it is clarified that transmission charges up to the Delivery Point, as applicable from time to time, shall be borne by the Supplier throughout the Contract Period.

5.5.2. In case, Utility pays the transmission charges upto the Delivery Point on behalf of Supplier, the Supplier shall be responsible for reimbursing same to Utility or Utility is authorized to adjust the same from monthly energy bills.

5.5.3. Further, any amount payable by Utility towards ISTS charges as per the provisions of "Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020" as amended from time to time, beyond delivery point, shall be borne by the Utility.

5.5.4. Furthermore, ISTS charges on transmission of power, including waiver for hydro power, shall be applicable as per extant of the relevant regulations. Ministry of Power , Government of India has waived ISTS charges on transmission of electricity generated from new hydro-power projects, for which construction work is awarded and PPA is signed on or before 30.06.2025. In case the PPA signing date or award for construction work date is on or before the above deadline for ISTS waiver and it gets delayed beyond the applicable date of ISTS waiver due to reasons solely attributable to the Supplier, the liability of ISTS transmission charges would be to the account of the Supplier.

5.5.5. In the event, any waiver of transmission charges, is available or becomes available for cross border projects as per the prevailing regulations issued by the Government of India, it will be the responsibility of the Bidder to check and ensure that such benefits availed/ pursued is passed on to Utility.

5.6. Obligations relating to SLDC and RLDC charges

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

5.7. Obligations relating to taxes

The Supplier shall pay at all times during the subsistence of this Agreement, all taxes, levies, duties, cess and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of dispatchable electricity to the Utility under this Agreement shall be reimbursed by the Utility upon receipt of particulars thereof, Subject to Utility being given input tax credit as per Applicable Law.

5.8. Obligations relating to reporting requirements

All information provided by the Supplier to the SLDC and RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Utility simultaneously. The Trading Licensee shall ensure that wherever applicable, the obligations of the Supplier shall be fulfilled through the Developer.

5.9. Obligations related to Power Station located outside India

Notwithstanding anything to the contrary contained in this Agreement, in the event the Power Station is located outside India, the following shall also be applicable:

a) The supply of dispatchable electricity from the Power Station shall be done through a Trading Licensee, as per the CERC (Cross Border Trade of Electricity) Regulations, 2019 and amendments/replacement thereof ("**CBTE Regulations**"). It is clarified that supply of dispatchable electricity shall only be through a Trading Licensee.

b) Trading Licensee shall seek approval from the 'Designated Authority' to import electricity from the Power Station outside India, to Utility, as per CBTE Regulations read with Procedure for approval and facilitating Import/Export (Cross Border of Electricity) by the Designated Authority issued by Central Electricity Authority on 25.02.2021 and amendments/replacement thereof ("**CBTE Procedure**").

c) Trading Licensee shall seek the long-term open access, upto the Delivery Point i.e., point where CBTL is connected to Indian Grid, as per CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 and amendments/replacement thereof ("**GNA Regulations**") read with CBTE Regulations.

d) Trading Licensee shall seek all necessary approvals, permissions etc. as may be required from the Designated Authority or otherwise to import electricity from the Power Station, located outside India, as per CBTE Regulations read with CBTE Procedure, at its own cost and expense.

e) The power supplied under this Agreement from the project and /or in case the power from an hydro source is proposed to be supplied the same should be Renewable Purchase Obligation ("**RPO**")/or Renewable Consumption Obligation (**"RCO"**) compliant in accordance with the respective RPO regulations including but not limited to Ministry of Power Gazette Notification dated 27th September, 2025 or any amendment thereon .

f) Trading Licensee shall seek long term open access as per CBTE Regulations read with GNA Regulations.

g) In case Trading Licensee seeks to supply dispatchable electricity through a dedicated transmission system to Indian Grid, the Trading Licensee shall ensure that the generating company located in the neighboring country seeks connectivity as per the CBTE Regulations read with GNA Regulations.

h) Trading Licensee shall be liable to pay charges (if any) and provide security as per the CBTE Regulations.

i) The Trading Licensee shall ensure that the generating company located in the neighbouring country shall, abide by all the applicable laws with respect to cross-border trade of electricity for seamless supply of dispatchable electricity to Utility at the Delivery Point. In this regard, the Bidder shall provide such documents, evidence as may be required by Utility from time to time.

j) Trading Licensee together with the developer shall be liable for all compliance in relation to Foreign Exchange Management Act, 1999 and rules and regulations framed thereunder including for all payments required to be made to the generating company located in the neighboring country.

ARTICLE 6 - OBLIGATIONS OF THE UTILITY

6.1. Obligations of the Utility

6.1.1. The Utility shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder. Additionally, the responsibility of evacuating the power beyond Delivery Point shall be borne by the Utility.

6.1.2. The Utility agrees to provide support on best effort basis, without any obligations on the Utility, to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

(a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the applicable permits required from any Government Instrumentality for operation of the Project; Non- grant of long-term open access (GNA/TGNA) shall be mutually decided by the Utility and Supplier, in case no mutual decision is reached between the Parties, this Agreement may be terminated with no further liability on the Utility

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

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

ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Supplier

7.1.1. The Supplier represents and warrants to the Utility that:

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

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

(c) along with its Associates (if Supplier is NOT a Trading Licensee, or insert the Developer if Supplier is a Trading Licensee) has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

(l) the selected bidder and [its Associates if Supplier are NOT a Trading Licensee, or the Developer if Supplier is a Trading Licensee] have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

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

(n) Omitted.

(o) Omitted.

(p) [it has a good and valid right to the Station Premises if Supplier is NOT a Trading Licensee, or the Developer has a good and valid right to the Station Premises and the Power Purchase Agreement executed between the Supplier and Developer is valid and shall remain valid during the Contract Period" if Supplier is a Trading Licensee.]

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

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

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

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

7.2. Representations and warranties of the Utility

7.2.1. The Utility represents and warrants to the Supplier that:

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

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

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

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

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

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

7.3. Disclosure

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

ARTICLE 8 – DISCLAIMER

8.1. Disclaimer

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

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

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

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

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

8.1.6. The Supplier acknowledges and agrees for communicating the daily availability of the dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. The Supplier also agrees to supply dispatchable hydro power electricity in accordance with the scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis. Further, Supplier to ensure compliance with applicable grid codes, regulations, and directives of the relevant Load Dispatch Centre(s).

PART III - OPERATIONS

ARTICLE 9- PERFORMANCE SECURITY

9.1. Performance Security

9.1.1. The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 45 (forty-five) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 10,00,000 per MW (Rupees Ten Lakhs per MW) of Dispatchable Contracted Capacity in the form set forth in Schedule-B (the "**Performance Security**"). Such Performance Security shall be issued for 12 months and shall be continuously kept valid and subsisting for the entire Contract Period. In case of early termination of this Agreement the same shall subject to other provisions of this Agreement be valid until said date of termination. ("**BG Tenure**"). The same shall be reviewed and renewed annually by the Supplier during the entire BG Tenure. Supplier shall be solely responsible and shall ensure that the Performance Security is kept valid and renewed once it is submitted at least fifteen (15) days before the expiry of the said Performance Security. The amount towards the Performance Security can be paid through NEFT/RTGS/ also.

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

9.1.3. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 45 (Forty- Five) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2. Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, in 7 bank working days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

9.3. References to Performance Security

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

ARTICLE 10 - ALLOCATION OF CAPACITY

10.1. Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a dispatchable capacity up to 200 MW to the Utility as the capacity contracted hereunder (the **"Capacity"**) and the Contracted Capacity shall at all times be operated and utilized in accordance with the provisions of this Agreement.

10.2. Dispatch of unutilized Capacity

In the event the Utility, does not schedule a quantum of power out of its dispatchable Contracted Capacity before opening of bidding window of power exchange for day head collective transactions, the supplier shall be entitled to sell such un-requisitioned power on power exchange under day ahead or real time collective transaction or intraday transactions

Provided that in such cases, Utility shall not be entitled to recall full or part of its un-requisitioned capacity.

Provided that Utility shall be liable to pay Fixed Charges for such unscheduled quantum of power out of its dispatchable Contracted Capacity. The energy for which Fixed Charges shall be paid shall equal to Monthly dispatchable Contracted Supply (monthly CEA approved Design Energy) of the relevant month, after adjusting the weighted Average CTU loss (as notified by the Grid Controller of India Limited/NLDC), In proportion to un-requisitioned capacity relevant to contracted Capacity.

Provided also that if the Supplier fails to offer such un-requisitioned power in the power exchange, the un-requestioned power to the extent not offered in the power exchange (unless prohibited by applicable statute/rules/regulation) up to the declared capacity shall not be considered as available for the payment of fixed charges.

Provided further that if the Supplier is able to sell the un-requisitioned power, sharing of gain (The gain will be calculated as the difference between selling price (RTM rate) of such power in the power exchange and applicable Variable Charges as per the PPA) from such sale of such power shall be as per following:
(i) Recovery of fixed charges
(ii) The balance shall be shared in the ratio of 50:50 between the Utility and the supplier

Liability of the Utility for payment of fixed charges shall be reduced in line with the above provision.

10.3. Substitute Supply

In the event the availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, delay in commissioning of the Project, shortage of Availability of Water or Force Majeure, the Supplier may, with prior consent of the Utility, which the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply of dispatchable electricity from any alternative source, (in case the alternate dispatchable supply is not from a RE source bidder shall have to compensate through procurement of RECs commensurate to the power quantum supplied by it), and such dispatchable supply shall, for payment of Fixed Charge and Variable Charge as agreed herein and no more, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of dispatchable electricity offered hereunder from an alternative source, the Supplier shall subject to demonstration of its actual ability to source and supply dispatchable electricity from the hydro source at the agreed rate be deemed to be in compliance with this Agreement for the purpose of determination of dispatchable Supply and payment of Fixed Charge.

10.4. Excess Generation:

In case of any excess generation of electricity, over and above the dispatchable Contracted Capacity (design energy), the Supplier ("**Excess Generation**") shall be allowed to supply such dispatchable electricity corresponding to the Excess Generation to a third party, however, the Utility shall have the first right of refusal to accept any Excess generation to the extent of additional 10% , sought to be supplied by the Supplier at the PPA tariff. The Procurer shall not be liable for any consequential losses in case it may choose not to offtake any such Excess Generation.

10.5. Omitted

10.6. Declaration of Daily Availability:

The Supplier has to communicate the daily availability of dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. For each month from May to October, the Supplier has to ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours on daily basis as communicated by Tata Power-D by 09:00 hours of previous day . The Supplier has to supply dispatchable hydro power electricity in accordance with scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis.

PART IV - FINANCIAL COVENANTS

ARTICLE 11 - TARIFF

11.1. Tariff

11.1.1. The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Utility to the Supplier for supply of electricity, in accordance with the provisions of this Agreement (the "**Tariff**"). The tariff shall remain the same throughout the entire term of the HPPA period i.e. 30 years.

11.1.2. As a part of the Tariff, the Utility shall pay to the Supplier an amount, determined in accordance with the provisions of this Article 11, (the "**Fixed Charge**").

11.1.3. The Supplier agrees that any expenditure after commissioning of the Project to be incurred by the Supplier in any future contingency shall be borne by the Supplier and shall not be reimbursed by the Utility.

11.2. Base Fixed Charge

The Parties agree that the fixed charge payable for energy , corresponding to dispatchable Contracted Capacity, during the month shall, in accordance with the offer of the Supplier for the Base Year, be Rs. ..... (Rupees .....) per kWh (the "**Base Fixed Charge**").

11.3. Fixed Charge

11.3.1. For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall not be revised annually.

11.4. Computation of Fixed Charge

11.4.1. Subject to the provisions of this Clause 11.4, the Base Fixed Charge, shall be the Fixed Charge payable for dispatchable energy in each month of the relevant Accounting Year.

11.4.2. The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the scheduled energy in each month computed with reference to the dispatchable Contracted Capacity (the "**Capacity Charge**").

11.4.3. Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for scheduled energy in excess of Dispatchable Contracted Supply, and in the event it supplies electricity to the Procurer in excess of such Dispatchable Contracted Supply, such excess supply shall be eligible only for payment of Variable Charge (i.e. generating cost of electricity, transmission charges and transmission losses).

11.4.4. In the event that any shortfall in supply of dispatchable electricity to the Procurer occurs on account of deficiency in Intra State transmission system in accordance with the provision of Clause 5.5, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Utilities or Buyers, as the case may be, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4. Provided further that sharing of gain from sale of such power shall be in the same manner as provided for sale of un-requisitioned power in applicable rules issued by the Ministry of Power, as amended from time to time. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder.

11.4.5. In the event that any shortfall in supply of Dispatchable Electricity to the Procurer occurs on account of shortage of availability of water, supply shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3.

11.4.6. The Parties agree that within 30 days of the close of May to October period of each Accounting Year, the Parties shall determine the cumulative monthly dispatchable energy for the period from May to October. If the Supplier has achieved at least 90% of the dispatchable Contracted Supply after adjusting the weighted Average CTU losses (as notified by the Grid Controller on India Limited/NLDC), the Fixed Charges shall be payable, as follows:

- For any month in which the Supplier has achieved monthly dispatchable energy equal to or more than 90% of the monthly dispatchable contracted supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), 100% of the Fixed Charge shall be payable for that month.

- However, if in any month, the monthly dispatchable energy falls below 90% of the monthly dispatchable contracted supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), the Fixed Charges payable will be adjusted based on actual monthly dispatchable energy achieved on pro rata basis with respect to 90% of monthly dispatchable contracted supply.

- In case, if the cumulative Plant Availability Factor (PAF) for dispatchable contracted supply period (i.e., May to October) after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), is equal to or more than 90%, the balance Fixed Charge deducted for these months shall be payable and this adjustment shall be reflected in October bill.

- However, in case, if the cumulative PAF for dispatchable contracted supply period (i.e., May to October) falls below 90% after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), the Fixed Charge shall be proportionately reduced with respect to 90% of dispatchable contracted supply for this period and this adjustment shall be reflected in October bill.

11.4.7. The Parties agree that for the months of November to April period of each Accounting Year, the Fixed Charges will be payable, as follows:

- For any month in which the Supplier has achieved monthly dispatchable energy equal to or more than 90% of the monthly dispatchable contracted supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), 100% of the Fixed Charge shall be payable for that month.

- However, if in any month, the monthly dispatchable energy falls below 90% of the monthly dispatchable contracted supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), the Fixed Charges payable will be adjusted based on actual monthly dispatchable energy achieved on pro rata basis with respect to 90% of monthly dispatchable contracted supply.

- It is clarified that the Supplier will not be eligible to claim the balance Fixed Charges even if the cumulative Plant Availability Factor (PAF) for dispatchable contracted supply period (i.e., November to April) after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), is equal to or more than 90%.

Illustration:1 – Determination of Monthly Charges and Adjustment based on Monthly and Cumulative PAF ≤ 90% for Dispatchable Contracted Supply

Sr No	Months	Fixed Charges	Variable Charges	Total Tariff	Dispatchable Contracted Supply /Monthly Design Energy (CEA Approved)	Availability w.r.t to Design Energy (Plant Availability Factor)	Monthly Energy Declared or Dispatchable Energy	Monthly Energy Scheduled w.r.t to Monthly Energy Declared	Monthly Energy Scheduled	Fixed Charges payable on Monthly Dispatchable Energy	Fixed Charges Deducted against the monthly Dispatchable Energy	Monthly Fixed Charges Payable @ 90% Dispatchable Contracted Supply	Fixed Charges payable on Monthly basis	Fixed Charges deducted on Monthly basis	Fixed Charges Payable on account of PAF (May to Oct)	Total Fixed Charges	Total Variable Charges	Total Charges Payable
a	**b**	**C**	**d**	**e=c+d**	**F**	**G**	**h=f*g**	**i**	**j=h*i**	**k= Min (100%,g/ 90%*100%)**	**l=100%- k%**	**m=100%* c*f/10**	**n=c*f *k/10**	**o=m-n**	**p**	**q=n or (n+p)**	**r= d*j/10**	**s=q+r**
		Rs/kWh	**Rs/kWh**	**Rs/kWh**	**MUs**	**Mus**	**MUs**	**%**	**MUs**	**%**	**%**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**
1	May	5.00	1.00	6.00	85.08	55%	46.79	50%	23.40	61.11%	38.89%	42.54	26.00	16.54		26.00	2.34	28.34
2	June	5.00	1.00	6.00	75.90	95%	72.11	95%	68.50	100.00%	0.00%	37.95	37.95	0.00		37.95	6.85	44.80
3	July	5.00	1.00	6.00	143.74	90%	129.37	90%	116.43	100.00%	0.00%	71.87	71.87	0.00		71.87	11.64	83.51
4	August	5.00	1.00	6.00	165.05	105%	173.30	100%	173.30	100.00%	0.00%	82.52	82.52	0.00		82.52	17.33	99.85
5	September	5.00	1.00	6.00	100.05	80%	80.04	75%	60.03	88.89%	11.11%	50.03	44.47	5.56		44.47	6.00	50.47
6	October	5.00	1.00	6.00	62.66	85%	53.26	80%	42.61	94.44%	5.56%	31.33	29.59	1.74	15.86	45.45	4.26	49.71
7	November	5.00	1.00	6.00	34.44	90%	30.99	90%	27.90	100.00%	0.00%	17.22	17.22	0.00		17.22	2.79	20.01
8	December	5.00	1.00	6.00	24.21	90%	21.79	90%	19.61	100.00%	0.00%	12.10	12.10	0.00		12.10	1.96	14.07
9	January	5.00	1.00	6.00	24.36	85%	20.70	85%	17.60	94.44%	5.56%	12.18	11.50	0.68		11.50	1.76	13.26
10	February	5.00	1.00	6.00	33.54	98%	32.87	98%	32.21	100.00%	0.00%	16.77	16.77	0.00		16.77	3.22	19.99
11	March	5.00	1.00	6.00	50.17	95%	47.66	95%	45.28	100.00%	0.00%	25.09	25.09	0.00		25.09	4.53	29.61
12	April	5.00	1.00	6.00	76.81	110%	84.49	110%	92.94	100.00%	0.00%	38.40	38.40	0.00		38.40	9.29	47.70
13	**Total for the year**				**876.00**	**91%**	**793.37**	**91%**	**719.80**			**438.00**	**413.48**	**24.52**	**15.86**	**429.34**	**71.98**	**501.32**

14	**May to October**				**632.48**	**88%**	**554.87**	**87%**	**484.27**									
15	**Annual CUF(%)**				**50%**													

Illustration:2 –Determination of Monthly Charges and Adjustment based on Monthly and Cumulative PAF ≥ 90% for Dispatchable Contracted Supply

Sr No	**Months**	**Fixed Charges**	**Variable Charges**	**Total Tariff**	**Dispatchable Contracted Supply /Monthly Design Energy (CEA Approved)**	**Availability w.r.t to Design Energy(Plant Availability Factor)**	**Monthly Energy Declared or Dispatchable Energy**	**Monthly Energy Scheduled w.r.t to Monthly Energy Declared**	**Monthly Energy Scheduled**	**Fixed Charges payable on Monthly Dispatchable Energy**	**Fixed Charges Deducted against the monthly Dispatchable Energy**	**Monthly Fixed Charges Payable @ 90% Dispatchable Contracted Supply**	**Fixed Charges payable on Monthly basis**	**Fixed Charges deducted on Monthly basis**	**Fixed Charges Payable on account of PAF (May to Oct)**	**Total Fixed Charges**	**Total Variable Charges**	**Total Charges Payable**
a	**b**	**C**	**d**	**e=c+d**	**f**	**g**	**h=f*g**	**i**	**j=h*i**	**k= Min (100%,g/ 90%*100%)**	**l=100%-k%**	**m=100%* c*f/10**	**n=c*f *k/10**	**o=m-n**	**p**	**q=n or (n+p)**	**r= d*j/10**	**s=q+r**
		Rs/kWh	**Rs/kWh**	**Rs/kWh**	**MUs**	**MUs**	**MUs**	**%**	**MUs**	**%**	**%**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**	**Rs. Crore**
1	May	5.00	1.00	6.00	85.08	75%	63.81	70%	44.67	83.33%	16.67%	42.54	35.45	7.09		35.45	4.47	39.92
2	June	5.00	1.00	6.00	75.90	95%	72.11	95%	68.50	100.00%	0.00%	37.95	37.95	0.00		37.95	6.85	44.80
3	July	5.00	1.00	6.00	143.74	98%	140.87	95%	133.82	100.00%	0.00%	71.87	71.87	0.00		71.87	13.38	85.25
4	August	5.00	1.00	6.00	165.05	110%	181.55	105%	190.63	100.00%	0.00%	82.52	82.52	0.00		82.52	19.06	101.59
5	September	5.00	1.00	6.00	100.05	80%	80.04	75%	60.03	88.89%	11.11%	50.03	44.47	5.56		44.47	6.00	50.47
6	October	5.00	1.00	6.00	62.66	85%	53.26	80%	42.61	94.44%	5.56%	31.33	29.59	1.74	14.39	43.98	4.26	48.24
7	November	5.00	1.00	6.00	34.44	85%	29.27	90%	26.35	94.44%	5.56%	17.22	16.26	0.96		16.26	2.63	18.90
8	December	5.00	1.00	6.00	24.21	60%	14.53	90%	13.07	66.67%	33.33%	12.10	8.07	4.03		8.07	1.31	9.38
9	January	5.00	1.00	6.00	24.36	70%	17.05	85%	14.49	77.78%	22.22%	12.18	9.47	2.71		9.47	1.45	10.92
10	February	5.00	1.00	6.00	33.54	90%	30.18	98%	29.58	100.00%	0.00%	16.77	16.77	0.00		16.77	2.96	19.73

11	March	5.00	1.00	6.00	50.17	85%	42.64	95%	40.51	94.44%	5.56%	25.09	23.69	1.39		23.69	4.05	27.74
12	April	5.00	1.00	6.00	76.81	90%	69.13	110%	76.04	100.00%	0.00%	38.40	38.40	0.00		38.40	7.60	46.01
13	**Total for the year**				**876.00**	**91%**	**794.44**	**93%**	**740.30**			**438.00**	**414.52**	**23.48**	**14.39**	**428.91**	**74.03**	**502.94**
14	**May to October**				**632.48**	**94%**	**591.64**	**91%**	**540.26**									
15	**Annual CUF(%)**				**50%**													

11.5. Declaration of Dispatchable Supply

11.5.1. Unless otherwise notified by the (Supplier if Supplier NOT a Trading Licensee, or Developer thorough the Supplier if Supplier is a Trading Licensee), the declared dispatchable supply for any month shall, be deemed to be 100% (one hundred per cent) of Dispatchable Contracted Supply for thereof at all times.

11.5.2. In the event that any shortfall in monthly Dispatchable supply to the Procurer occurs on account of any deficiency in intra state transmission system in accordance with clause 5.5, the monthly Dispatchable Supply shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non- Supply on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the entitlement of the Procurer in the Dispatchable Contracted Supply , the monthly dispatchable supply for such period shall be deemed to be 80% (eighty per cent) and the Non-Supply hereunder shall be notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee]to the Procurer forthwith.

11.5.3. The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month (if Supplier is NOT a Trading Licensee, or Developer's if Supplier is a Trading Licensee) maintenance schedule for that month and any reduction in dispatchable supply arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of (its if Supplier is NOT a Trading Licensee, or Developer's if Supplier is a Trading Licensee) maintenance schedule and shall confirm, with or without modifications, the reduction in dispatchable supply no later than 48 (forty eight) hours prior to its occurrence.

11.5.4. In the event of mis-declaration of dispatchable supply (the "Mis- declaration"), the supply for the relevant month shall, for the purposes of payment of Fixed Charge, be deemed to be reduced by the same proportion that dispatchable supply bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the monthly payments due to the Supplier under this Agreement.

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

11.6. Damages

11.6.1. In the event that energy supplied for the period from May to October of each Accounting Year, if in any month, the monthly dispatchable energy falls below 90% of the monthly dispatchable contracted supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), the Fixed Charges payable will be adjusted based on actual monthly dispatchable energy achieved on pro rata basis with respect to 90% of monthly dispatchable contracted supply and in addition, any reduction beyond the 80% (eighty per cent) of dispatchable Contracted Supply after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), shall be multiplied by:

(i) for sale to third party/unjustifiable reasons: the monthly average Power Exchange RTC rate of the respective month plus Rs. 1 (one) to determine the Damages payable for such reduction in dispatchable supply. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in dispatchable Contracted Supply shall be the monthly average Power Exchange RTC rate for the respective month plus Rs. 1 (one) per unit multiplied with units not supplied which is reduced on account of shortfall in dispatchable supply of energy below dispatchable Contracted Supply.

(ii) for justifiable reasons: 75% (seventy-five per cent) of applicable fixed charge to determine the Damages payable for such reduction in dispatchable supply. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in dispatchable Contracted Supply shall be equal to 75% (seventy-five per cent) of applicable fixed charge multiplied with units not supplied which is reduced on account of shortfall in dispatchable supply of energy below dispatchable Contracted Supply

Nonetheless, the determination of the validity of the reasons, i.e. reasons being justifiable or unjustifiable, presented by the Supplier shall rest with the Procurer, and the Procurer's judgment shall constitute the conclusive decision on the matter.

For the avoidance of doubt, different scenarios have been shown by way of illustration in the table below:

Monthly Dispatchable Energy	Damages to be levied
≥80% of the Dispatchable Contracted Supply	No damages
79% of the Dispatchable Contracted Supply	Yes Damages are levied on 1% of the Dispatchable Contracted Supply (total energy reduced *i.e.* 21% minus threshold *i.e.* 20%)
78% of the Dispatchable Contracted Supply	Yes Damages are levied on 2% of the Dispatchable Contracted Supply (total energy reduced *i.e.* 22% minus threshold *i.e.* 20%)
77% of the Dispatchable Contracted Supply	Yes Damages are levied on 3% of the Dispatchable Contracted Supply (total energy reduced *i.e.* 23% minus threshold *i.e.* 20%)
76% of the Dispatchable Contracted Supply	Yes Damages are levied on 4% of the Dispatchable Contracted Supply (total energy reduced *i.e.* 24% minus threshold *i.e.* 20%)
75% of the Dispatchable Contracted Supply	Yes Damages are levied on 5% of the Dispatchable Contracted Supply (total energy reduced *i.e.* 25% minus threshold *i.e.* 20%)

Illustration for one of the Case of damages is given below:

Month	Dispatchable Contracted Supply (MUs)	Sum of Monthly Dispatchable Energy (MUs)	Availability w.r.t to Dispatchable Contracted Capacity (Plant Availability Factor) (%)	Threshold Availability for no damages (%)	Damages to be levied (%)	Average Power Exchange RTC rate for the period (Rs./kWh)	Damages to be levied in Rs. Crore (for sale to third party/unjustifiable reasons)	Fixed Charge (Rs./kWh)	Damages to be levied in Rs. Crore (for justifiable reasons)
A	B	C	D=C/B	F	G=F-D	H	I=G*B*(H+1)/10	J	K=G*B*75%*J/10
Cumulative for May to October	**632.48**	**497.10**	**79%**	**80%**	**1%**	**5.50**	**5.77**	**5.00**	**3.33**

11.6.2. The Parties expressly agree that, within 30 (thirty) days of the close of May to October period of each Accounting Year, the Parties shall determine the cumulative PAF for dispatchable contracted supply and Damages for monthly dispatchable Contracted Supply for period May to October after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), as the case may be. The amount so arrived at shall be adjusted against the Damages determined for the respective month during the Period (i.e., May to October) and this adjustment shall be reflected in October invoice/bill.

It is here clarified that during the above reconciliation exercise, the damages will be computed and levied based on the weighted average rate, as mentioned in Clause 11.6.1, at which the damages are levied on monthly basis against the shortfall energy in monthly dispatchable Contracted Capacity after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC) as per Clause 11.6.1.

It is also clarified that no Damages shall be applicable for the period from November to April. Therefore, any shortfall energy in monthly dispatchable Contracted Capacity after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC) occurred between November and April period shall not trigger any Damages under Clause 11.6.1.

11.7. Damages for CUF lower than 35%

11.7.1. In the event that CUF in Contract Period is lower than 35%, the Supplier shall pay to Utility damages for the shortfall at the tariff (Fixed + Variable charge) for that Accounting Year. As an illustration if CUF is 30%, tariff is Rs. 6 per Unit and Dispatchable Contracted Capacity is 200 MW, the damages payable are worked out as follows:

Sr.	Particulars	Formula	Data
1	CUF Allowable (%)	A	35%
2	Actual CUF (%)	B	30%
3	Tariff (Fixed +Variable) in Rs./kWh	C	6
4	Dispatchable Contracted Capacity (MW)	D	200
5	No. of Hours in Contract Year	E	8760
6	Shortfall in CUF	F=A-B	5%
7	Shortfall in Dispatchable Contracted Supply (MUs)	G=D*E*F/1000	87.6
8	**Damages Payable (Rs.Crore)**	**H=C*G/10**	**52.56**

11.7.2. The Parties expressly agree that, within close of each Accounting Year, the Parties shall determine the Damages for CUF lower than 35%. The amount so arrived at shall be adjusted and be reflected in April invoice/bill.

11.7.3. **Damages for not maintaining availability for 4 hours, as communicated by Utility**

In the event that supplier is unable to maintain availability of contracted capacity for 4 hours, as communicated by procurer/utility on day-ahead basis, the Supplier shall pay to Utility damages for the shortfall energy at the rate of Tariff (Fixed + Variable charge) plus Rs 1.00 for that month. Applicable rate i.e. Rs per unit (Tariff + Rs 1.00) shall be multiplied by the shortfall energy to determine the damages payable for that particular month.

The Parties expressly agree that damages applicable in such case, shall be settled monthly and shall be accounted in monthly bill for that particular month only. This shall be applicable for the period from May to October. Therefore, any shortfall energy occurred between November to April period shall not trigger any Damages under Clause 11.7.3.

Damages Payable as per clauses 11.6, 11.7.1 and 11.7.3 shall be independently determined and shall be independently applicable as per the provisions mentioned above.

11.8. Variable Charge

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

11.9. Taxes and duties

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

11.9.2. The Tariff payable by the Utility under this Article 11 shall be exclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax or any replacement thereof, if applicable and any service tax, electricity duty, value added tax or general sales tax shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particular by the Supplier, subject to Utility being given input tax credit as per Applicable law.

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

11.10. Billing and Payment

11.10.1. Commencing from the month following the month in which the Appointed Date occurs, the supplier shall, by the 5th day of such and each succeeding month (or, if such day is not a business day, the immediately following business Day), submit in triplicate to the Utility, an invoice in the agreed form (the“ **Monthly Invoice**”) signed by the authorized signatory of the supplier setting out the computation of the Fixed Charge and Variable Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this agreement. Monthly bill shall be raised on the basis of energy supplied/scheduled to the utility as per the applicable regulation, at the delivery point. The bills shall also be submitted through email along with the physical copy.

11.10.2. The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of energy supplied for the period billed, comprising supporting documents like energy accounts and the evidence of communications regarding the extent of Non-Supply from time to time; (c) detailed calculations of the Fixed Charge in accordance with this Article 11; (d) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (e) detailed calculations of Damages in accordance with the provisions of Clause 11.6 and 11.7; (f) details in respect of taxes/duties payable/reimbursable inaccordance with the provisions of this Agreement; (g) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (h) details in respect of Damages payable in accordance with the provisions of this Agreement; and (i) the net amount payable under the Monthly Invoice and any other supporting document as required by the procurer/utility.

11.10.3. The Utility shall, within 30 (thirty) days (excluding invoice receipt date) of receipt of a Monthly Invoice, by Email, in accordance with Clause 11.9.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**"). In case the Payment Due Date is a bank holiday, then next working day shall be considered as Payment Due Date.

11.10.4. All Damages, other than Damages on account of CUF lower than 35%, and any other amounts (including interest) due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier in monthly invoice/bill of October. Damages on account of CUF lower than 35% may be deducted from the Tariff due and payable to the Supplier in monthly invoice/bill of April. In the event that the deductions hereunder exceed the Tariff payable in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month. Damages applicable, if any, as per 11.7.3 shall be adjusted in monthly bill for the period from May to October.

11.10.5. Payment of T-GNA charges – In case, Utility requires to take power under T-GNA based on the corridor availability, the due date of payment of applicable open access charges will be 7 (Seven) working days from the issue of the bill (excluding the day on which the bill is received). No discount shall be applicable for early payment. For Example: for the purpose of determination of due date, the day 1 shall be the 'X'+1 day, where 'X' is the date of receipt of bill by Utility.

11.10.6. The Parties expressly agree that, within 30 (thirty) days of the close of May to October period of each Accounting Year, the Parties shall determine the cumulative PAF for dispatchable contracted supply and Damages for monthly dispatchable Contracted Supply for period May to October after adjusting the weighted Average CTU loss (as notified by the Grid Controller on India Limited/NLDC), as the case may be. The amount so arrived at shall be adjusted against the fixed charges and damages determined for the respective month during the Period (i.e., May to October) and this adjustment shall be reflected in October invoice/bill.

11.10.7. The Parties expressly agree that, within close of each Contract Period, the Parties shall determine the Damages for CUF lower than 35%. The amount so arrived at shall be adjusted and be reflected in April invoice/bill.

11.10.8. Damages on account of shortfall in maintaining contracted capacity for 4 hours, as communicated by the utility, shall be adjusted in monthly bill for that particular month only, for the period from May to October.

11.11. **Reconciliation**

11.11.1. Supplier and Utility acknowledge that all payments made against Monthly Invoice shall be subject to annual reconciliation at the end of each Accounting Year which shall be done within 30 days from the end of every Accounting Year. It is hereby clarified that the aforementioned annual reconciliation will consider factors like energy accounts, tariff adjustment payments, tariff rebate, late payment surcharge, damages or any other reasonable circumstance provided under this Agreement.

11.11.2. Supplier and Utility, therefore, agree that as soon as all such data for Accounting Year as the case may be has been finally verified and adjusted, the Supplier and Utility shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Supplier shall make appropriate adjustments in the next Monthly Bill. Late payment surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 23.

11.12. **Disputed Amounts**

11.12.1. The Utility shall, within 15 (Fifteen) days of receiving an invoice, notify the Supplier of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Supplier shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Utility may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Utility shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time. Pursuant to an inquiry being made by the Utility, the Supplier shall be obliged to render due cooperation, assistance and information as regards the treatment given by the Supplier to the Disputed Amounts in the books of accounts maintained by it. In case any payments are made by the Utility under protest and towards the Disputed Amounts the same shall be reckoned for calculation of rebate to be offered on early payment and shall also stop carrying any interest /Delayed Payment Surcharge.

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

11.12.3. For the avoidance of doubt, it is clarified that any payment (if any) of the disputed amount will be without prejudice to its contractual, statutory, regulatory rights of the Utility.

11.13. **Discount for early payment**

For payment of any Bill on or within 7 days from the presentation of the bill (excluding bill receipt date), Rebate of 1% of the billed amount shall be given by the supplier to Utility (as provided under 36.1 of Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2024). For the purpose of rebate consideration, the 7-day period shall commence from the next business day following the date of presentation of the bill.

ARTICLE 12 - VARIABLE CHARGE

12.1. **Variable Charge**

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

12.2. **Base Variable Charge**

The Parties agree that the Variable Charge is in accordance with the offer of the Supplier for the Base Year, which is inclusive of all charges including generating cost of supply of dispatchable supply at the Delivery Point and shall be Rs._____ (Rupees) per kWh (the "**Base Variable Charge**"). The Base Variable Charge shall remain the same throughout the entire term of the HPPA, i.e., 30 years.

12.3. **Computation of Variable Charge**

The Supplier represents and warrants that it shall supply dispatchable electricity to the Utility at the Delivery Point for as per Base Variable Charge referred in Clause 12.2, and as per monthly scheduled energy as illustrated in illustration -1 and 2 of this agreement.

12.4. **Shortage of water**

In the event the Supplier anticipates a shortfall in the production of dispatchable electricity for supply to the Utility from dispatchable Contracted Capacity on account of a shortfall in availability of water for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of availability of water, notify the Utility of the nature, extent and period of shortage of availability of water and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff or any other incidental expense/ charge by whatever name called shall be payable to the Supplier for any shortfall in dispatchable Supply occurring on account of shortage of availability of water.

12.5. **Change in Design Energy**

Permanent change (i.e. subsisting for not less than a continuous period of 12 months) in hydrology or geology (including water landscape, tectonic shifts or climate change), provided it does not constitute a Force Majeure Event and significantly impacts the quoted Design Energy due to reasons not attributable nor under the control of the Supplier or the Developer, such a change shall be considered as a "Change in Design Energy". The Utility shall have the right to seek such supporting documentation as may be considered appropriate by it.

In the event that there is Change in Design Energy resulting in generation being reduced by

10% or more of the Dispatchable Contracted Capacity, then at the request of the Supplier the Utility may re-negotiate the Dispatchable Contracted Capacity. Without prejudice to the above, the Utility shall have the right to terminate this Agreement without any consequences.

ARTICLE 13 - PAYMENT SECURITY

13.1. **Default Escrow Account**

13.1.1. Omitted

13.2. **Letter of Credit**

The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, and irrevocable letter of credit for an amount equivalent to Maximum Monthly Payment (the **"Letter of Credit"**), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Maximum Monthly Payment in accordance with the provisions of this Agreement.

13.2.1. The Letter of Credit shall be procured by the Utility from a scheduled bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

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

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

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

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

13.3. **Recovery from sale of energy generation from the dispatchable Contracted Capacity**

13.3.1. In the event the Supplier is unable to recover its Tariff through the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 60 days (sixty days) (subject to the same remaining undisputed) from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the generation from the dispatchable Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such dispatchable Contracted Capacity to the Utility.

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

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

13.4. Payment security for Termination

13.4.1. The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the bank account of the bank from which Letter of Credit is being procured, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of the annual fixed Charge shall continue to be deposited into its account of the bank from which Letter of Credit is being procured until its liability for and in respect of the Termination Payment is fully discharged.

13.4.2. The Parties agree and acknowledge that upon Termination and on failure of the Supplier to make the Termination Payment within 30 (thirty) days of demand by Utility, the same shall be appropriated from Performance Security every month and paid to the Utility until discharge of the Termination Payment and any interest thereon.

13.5. Operationalization of Payment Security Mechanism

In case of non-maintenance of adequate payment security mechanism provisions of applicable rule issued by the Ministry of Power, Government of India as amended from time to time shall apply.

ARTICLE 14 - DESPATCH OF CAPACITY

14.1. Despatch of Dispatchable Contracted Capacity

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

Provided such dispatch shall be permitted over and above the Contracted Capacity by 10%.

Provided further that the Supplier has to communicate the daily availability of the dispatchable contracted capacity to Tata Power-D, based on which Tata Power-D shall schedule the dispatchable supply as per its requirements. For each month from May to October, the Supplier has to ensure that the while communicating the daily availability, contracted capacity is available for period of minimum four hours on daily basis as communicated by Tata Power-D by 09:00 hours of previous day . The Supplier has to supply dispatchable hydro power electricity in accordance with the scheduling instructions and dispatch requirements as specified by Tata Power-D on a daily basis.

14.1.2. Pursuant to the provisions of Clause 14.1.1, the (Supplier shall if the Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to) plan the production and Despatch of electricity and convey its Supply for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply dispatchable electricity in accordance with the provisions of the Grid Code and the Act.

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

14.2. Settlement of DSM charges

14.2.1. All payments due to or from the Supplier on account of any deviation in terms of the deviation settlement mechanism regulations (the "**Deviation Settlement Mechanism"** or "**DSM**") shall be solely to the account of and borne by the Supplier.

14.3. Overriding powers of the Utility

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

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

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

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

ARTICLE 15- INSURANCE

15.1. Insurance during Contract Period

The (Supplier in case Supplier is NOT a Trading Licensee or Supplier shall ensure that Developer) shall affect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Prudent Industry Practice. The Supplier shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier (and/or the Developers if Supplier is a Trading Licensee) during the Contract Period.

15.2. Insurance Cover

Without prejudice to the provisions contained in Clause 15.1, the Supplier shall, during the operations period, procure and maintain (and cause the Developer to procure and maintain, as the case may be, if the Supplier is a Trading Licensee) Insurance Cover including but not limited to the following:

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

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

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

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

(e) workmen's compensation insurance; and

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

15.3. Evidence of Insurance Cover

All insurances obtained by the Supplier (and by the Developer if Supplier is Trading Licensee) in accordance with this Article 15 shall be maintained with insurers on terms consistent with Prudent Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Utility, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Utility . In case of any proceeds being received by the Developer/ Supplier from the insurance company the same shall be used to mitigate the consequential losses if any suffered by the Utility due to fault or failure on the part of the Supplier to discharge its obligations.

15.4. **Remedy for failure to insure**

If the Supplier (and/or the Developer if Supplier is Trading Licensee) shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier (and/or the Developer if Supplier is Trading Licensee).

15.5. **Waiver of subrogation**

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

15.6. **Supplier's waiver**

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

15.7. **Application of insurance proceeds**

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

ARTICLE 16 ACCOUNTS AND AUDIT

16.1. Audited accounts

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

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

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

16.2. Appointment of auditors

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

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

16.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Utility shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the **"Additional Auditors"**) of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

16.3. Certification of claims by Statutory Auditors

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

16.4. Set-off

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

16.5. Dispute resolution

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

PART V - FORCE MAJEURE AND TERMINATION

ARTICLE 17- FORCE MAJEURE

17.1. **Force Majeure**

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

17.2. **Non-Political Event**

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

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

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

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

(d) any delay or failure of an overseas contractor to deliver equipment in India/ neighbouring country where Project is located/country where the contractor is dependent for equipment, if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] by such contractor;

(e) any judgment or order of any court of competent jurisdiction or statutory authority made against the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) in any proceedings for reasons other than (i) failure of the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) to comply with any Applicable Law or

Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement bythe Utility;

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

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

17.3. **Indirect Political Event**

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

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

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

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

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

(e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any off-setting compensation being payable to the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) by or on behalf of such Contractor;

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

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

17.4. **Political Event**

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

(a) Change in Law in India, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 21;

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

(c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Supplier, (Developer if Supplier is a Trading Licensee) or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, (Developer's if Supplier is a Trading Licensee) or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any off-setting compensation being payable to the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) by or on behalf of such Contractor; or

(e) any failure or delay of the Supplier in supply of energy due to non- approval of grant for supply of cross border power by the Government of India, wherein the reason for non-approval of grant is not attributable to Supplier; and

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

17.5. **Duty to report Force Majeure Event**

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

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

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

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

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

17.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure

Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

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

17.6. Effect of Force Majeure Event on the Procurement Contract

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

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

17.7. Termination Notice for Force Majeure Event

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

17.8. Excuse from performance of obligations

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

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

17.9. **Relief for Unforeseen Events**

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

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

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

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

(a) an Unforeseen Event has occurred;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party byany act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 17.10.

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

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;

(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) quantified and restricted in terms of relief or remedy.

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

ARTICLE 18 - COMPENSATION FOR BREACH OFAGREEMENT

18.1. **Compensation for default by the Supplier**

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

18.2. **Compensation for default by the Utility**

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

ARTICLE 19 - TERMINATION

19.1. Termination for Supplier Default

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

(a) The Performance Security has been encashed and/ or pursuant to being encashed is not being reinstated instantaneously;

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

(c) a breach of the Project Agreements by the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] has caused a Material Adverse Effect;

(d) the (Supplier if Supplier is NOT a Trading Licensee, or Supplier or Developer if Supplier is Trading Licensee) creates any Encumbrance in breach of this Agreement;

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

(f) (insert this clause if Supplier is a Trading Licensee "the Power Purchase Agreement between the Supplier and the Developer stands expired,cancelled or terminated, for any reason whatsoever;)

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

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

(i) the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee) fails to achieve a monthly dispatchable Supply of 70% (seventy per cent) for a period of 4 (four) consecutive months save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee) or (iii) shortage of availability of water occurring for reasons not attributable to the (Supplier if

Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee);

(j) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee) under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee), and such transfer causes a Material Adverse Effect;

(k) an execution levied on any of the assets of the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) has caused a Material Adverse Effect;

(l) the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) or for the whole or material part of its assets that has a material bearing on the Project;

(m) the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;

(n) a resolution for winding up of the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer if Supplier is a Trading Licensee) is passed;

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

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

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the (Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or Developer, as the case may be, if Supplier is a Trading Licensee) as at the Appointed Date;

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

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

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

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

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

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

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

(u) the Supplier, in case of procurement of power from Power Station located outside India, fails to seek and maintain necessary approval from the Designated Authority as per the obligations under Clause 5.9 of this Agreement, subject to provision of Clause 17.4 of this Agreement.

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

19.2. Termination for Utility Default

19.2.1. In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the "**Utility Default**") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

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

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

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

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

19.3. **Termination Payment**

19.3.1. Upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for dispatchable Contracted Capacity for a period of [6 (six) months] as if the dispatchable Contracted Capacity was Available for such [6 (six) months] from the date of Termination or remaining Contract Period whichever is less.

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

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

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

19.4. **Instructions to RLDC and SLDC**

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

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

19.5. **Survival of rights**

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

PART VI - OTHER PROVISIONS

ARTICLE 20 - ASSIGNMENT AND CHARGES

20.1. Restrictions on assignment and charges

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

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

20.2. Permitted assignment and charges

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

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

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

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

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

20.3. Assignment by the Utility/Appropriate Commission

Notwithstanding anything to the contrary contained in this Agreement, the Utility may, after giving 60 (sixty) days notice to the Supplier, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement toan assignee who is, in the reasonable opinion of the Utility, capable of fulfillingall of the Utility's then outstanding obligations under this Agreement and hasthe financial standing necessary for this purpose. The appropriate commission may appoint an administrator in place of the utility in case it may be so required.

20.4. Approvals for assignment

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

ARTICLE 21- CHANGE IN LAW IN INDIA

21.1. **Definitions**

In this Article 21, the following terms shall the following meanings:

21.1.1. In this Article 21, the term Change in Law shall refer to occurrence of any of the following events pertaining to the Project (including cross border project)only after the last date of bid submission, (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit, or license or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Supplier; or (v) any change in the rates of any taxes including any duties and cess or introduction of any new tax made applicable for setting up of the power project and supply of dispatchable electricity from the Project by Supplier which have direct adverse effect on the legality or propriety of the projector which interferes with the ability of the party affected to perform and discharge its obligations as contained herein:

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of Supplier.

21.1.2. In the event of occurrence of any events as provided in Clause 21.1.1 which results in any increase or decrease in the project cost, the Supplier or Utility shall be entitled to compensation by the other party, as the case may be, subject to condition that such 'Change in Law' is approved by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

However, in case of change in rates of GST after the last date of bid submission and resulting in change in project cost, then such change shall be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party by the other party as per Article 21 subject to the provision at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be binding on both the Parties.

21.2. **Relief for Change in Law**

21.2.1. The aggrieved party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

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

21.3. **Notification of Change in Law**

21.3.1. If Supplier / Utility is affected by Change in Law in accordance with Article 21 and wishes to claim a Change in Law under this Article, it shall give notice to Utility as soon as reasonably practicable (but not later than 60 (sixty) days from the date of occurrence of such Change in Law)

21.3.2. Any notice service pursuant to Clauses 21.3.1. and 21.1.3, shall provide, amongst other things, precise details of Change in Law and its effect on the project cost, supported by documentary evidence including Statutory Auditor certificates to this effect so as to establish one to one correlation and its impact on the project cost.

ARTICLE 22 - LIABILITY AND INDEMNITY

22.1. General indemnity

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

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

22.2. Indemnity by the Supplier

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

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

(b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

22.2.2. Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising outof claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to anymaterials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the (Supplier shall if Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to if Supplier is a Trading Licensee) promptly make every reasonable effort to secure for the Utility a license, at no cost to the Utility, authorizing continued use of the infringing work. If the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is Trading Licensee) is unable to secure such license within a reasonable time, the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is Trading Licensee) shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non- infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3. **Notice and contest of claims**

22.3.1. In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 22 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

22.4. **Defense of claims**

22.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security tothe Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

22.4.2. If the Indemnifying Party has exercised its rights under Clause 22.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

22.4.3. If the Indemnifying Party exercises its rights under Clause 22.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independentcounsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 22.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

22.5. No consequential claims

22.5.1. Notwithstanding anything to the contrary contained in this Article 22, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

ARTICLE 23 - DISPUTE RESOLUTION

23.1. **Dispute resolution**

23.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 23.2.

23.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

23.1.3. In case of Cross-border (imported) hydro power, the Disputed Settlement and Resolution mechanism provided in the CERC (Cross Border Trade of Electricity) Regulations, 2019 as amended from time to time, shall be applicable.

Provided that in case the disputed is escalated to International Arbitration Centre, then the same shall be referred to the Indian International Arbitration Centre at Mumbai, India.

Further, for domestic hydro power, following provisions shall be applicable.

23.2. **Conciliation**

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Utility or their nominees and Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 23.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 23.3.

23.3. **Arbitration**

23.3.1. If the dispute arises out of or in connection with any claims not covered in Clause 23.4 (i) such Dispute shall be resolved by arbitration under the provisions of (Indian) Arbitration and Conciliation Act, 1996 and amendments thereof.

23.3.2. The place of arbitration shall be Mumbai. The language of the arbitration shall be English.

23.3.3. The arbitral tribunal shall consist of three arbitrators. Each party shall appoint an arbitrator and the arbitrators so appointed shall appoint the presiding arbitrator.

23.3.4. The arbitral tribunal award shall be substantiated in writing. The arbitral tribunal shall also decide on the costs of the arbitration proceedings and allocation thereof.

23.3.5. The provision of this Article shall survive the termination of this Agreement for any reason whatsoever.

23.4. Adjudication by the Commission

23.4.1. In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 23.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

23.4.2. Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 23.3 shall be followed to the extent applicable.

23.5. Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 23.3 and 23.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 24 - DISCLOSURE

24.1. **Disclosure of specified documents**

The Supplier shall make available for inspection by any person, copies of this Agreement (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Supplier's registered office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a "no profit no loss" basis.

24.2. **Disclosure of documents relating to safety**

The (Supplier shall if Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to if Supplier is a Trading Licensee) make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier's Registered Office and the Power Station at the cost and expense of the person intending to inspect. The (Supplier shall if Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to if Supplier is a Trading Licensee) shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

24.3. **Withholding disclosure of Protected Documents**

Notwithstanding the provisions of Clauses 24.1 and 24.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time totime, to withhold the disclosure of Protected Documents (as defined herein below)to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 24.1 and 24.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of theRight to Information Act, 2005.

ARTICLE 25- MISCELLANEOUS

25.1. **Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

25.2. **Waiver of immunity**

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial act done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or awardagainst it in any such proceedings to the giving of any relief or the issue ofany process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

25.3. **Interest**

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis.

25.4. **Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at the Bank Rate and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

25.5. **Waiver**

25.5.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

25.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

25.6. **Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

25.7. **Survival**

25.7.1. Termination shall:

a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 22; and

b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

25.7.2. All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

25.8. **Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Proposal, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.9. **Severability**

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, thevalidity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agree to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10. **No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Neither Party shall have the right to use the trademark /logo of the other without the prior written consent of such other Party. Further neither Party shall make any press release or public announcement as regards the negotiation and /or execution of this agreement without prior consent obtained from the other Party.

25.11. **Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

25.12. **Successors and assigns**

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

25.13. **Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Utility; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Utility

.

{Attention:
Designation:
Address:
Fax No:
Email:}

(b) in the case of the Utility, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Utility Representative or such other person as the Utility may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Utility, it may send such notice by facsimile or e- mail and by registered acknowledgement due, or by courier.

{Name:
Designation:
Address:
Fax No:
Email:}; and

(c) any notice or communication by a Party to the other Party, given inaccordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all othercases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

25.14. **Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

25.15. **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

–

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVEREDTHIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE UTILITY
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the day of 20 hereunto affixed in the presence of .... Director, who has signed these presents in token thereof and............Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

2.

SCHEDULES

SCHEDULE A - SITE OF THE POWERSTATION

1. **The Site**

   Site of the Power Station shall include the land, buildings, structures as briefly described in Annex-I of this Schedule A.

2. **Power Station**

   The principal features of the Power Station are described in Annex-I of this Schedule-A.

Annex – I
(Schedule-A)

1. **Description of Hydro-based Power Station**

   The Site of the Hydro-electric Power station shall include the land, building and structures comprising a Dam/Barrage, HRT, Penstocks/Pressure Shaft, Power House (Underground/Surface/Semi surface) & TRT. The Power Station may be based on reservoir, pondage, or pumped storage capabilities..

2. **Capacity of the Hydro Power Station**

2.1 The Power Station shall have a dispatchable generating capacity of ……. MW.

2.2 The configuration of Units is given below:

(a) The number of Units is ....

(b) The name plate capacity of each Unit is ...... MW.

3. **Head**

   Maximum net head available for power generation is _____-, which is the maximum gross head less all the losses in the water conductor system including penstock.

   Minimum net head results from the difference in elevation between the minimum head water level (MDDL) and the maximum tailrace water level (TWL0, minus losses with all turbines operating at full gate opening.

4. **Overloading Limits**

   All Units of Hydro Power Station shall be capable of increasing their output by 10% (ten per cent). The rate of increase or decrease in machine output shall be governed by change in speed/pressure rise in compliance other relevant IS.

5. **Ramp Rates**

   Each Units of the Hydro Power Station shall have the capacity to ramp up from spinning at zero load to reach full capacity within 5 minutes.

6. **Description of the Power Station**

   The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.
   The Power Station is briefly described below:

A. Intake

(i) Number:

(ii) Invert Level:

(iii) Design Discharge:

(iv) Intake Gates (Size) :

B. Head Race Tunnel

(i) Number:

(ii) Size:

(iii) Shape:

(iv) Length:

(v) Design Discharge:

(vi) Velocity

C. Surge Shaft

(i) Number:

(ii) Type:

(iii) Size:

(iv) Height:

(v) Max. Surge Level:

(vi) Min Surge Level:

D Penstock

(i) Number:

(ii) Diameter:

(iii) Length:

(iv) Shape:

(v) Design Discharge:

D. Water Levels

(i) Full Reservoir Level:

(ii) Minimum Draw Down Level:

(iii) Minimum TWL:

(iv) Maximum TWL:

E. Power House

(i) Type:

(ii) Installed Capacity:

(iii) Number of Units:

(iv) Power House Cavern Size:

(v) Type of Turbine:

(vi) Type & Capacity of Generator:

(vii) Number & Rating of Transformer:

(viii) Overall efficiency:

F. Tail Race Tunnel

(i) Type:

(ii) Size:

(iii) Length:

(iv) Design Discharge:

G. Design Energy

Month	**Design Energy of installed capacity in kWh/ per year**	**Design Energy of offered capacity in kWh/ per year at the Delivery Point**
May		
June		
July		
August		
September		
October		
November		
December		
January		
February		
March		
April		
Total		

SCHEDULE B - PERFORMANCE SECURITY

(See Clause 9.1.1)

The ....,
Distribution Company
State of....

WHEREAS:

(A) .... (the "**Supplier**") and [the.... Distribution Company] represented by and having its principal offices at.... ("**Utility**") have entered into an Agreement for Procurement of Power dated (the "**Agreement**") whereby the Utility has agreed to the (Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee) undertaking the financing and operation of the Power Station with a dispatchable generating capacity of .... MW in the State of .... on finance, own and operate (the "**FOO**") basis, subject to and in accordance with the provisions of theAgreement.

(B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [Rs.... cr. (Rupees. crore)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).

(C) We,.... through our Branch at .....the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees andaffirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum ofthe Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default

shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.

5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditionsof the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation underthese presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of anyother matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demandor claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of theUtility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Security.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

Signed and sealed this.... day of ....20.... at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)

(Name)
(Designation)
(Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

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Schedule-C

(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

Omitted

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SCHEDULE – D

DEED OF HYPOTHECATION

Omitted

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SCHEDULE E - LETTER OF CREDIT

(See Clause 13.2.1)

DATE: ....

TO ....Limited (the "**Supplier**")

FROM: (Specify the name and address of the bank issuing the Letter of Credit) **(**the "**Bank**"**)**

The Bank hereby issues this unconditional, irrevocable letter of credit (the "**Letter of Credit**") No.... in favour of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. Rupees.)(the "**Maximum Monthly Payment**"), payable not more than once in a month upon noticereceived from the Supplier to this effect.

2. The Letter of Credit shall come into force with effect from...., 20. and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the "**Expiry Date**"), and shall be renewed every year by the Bank as directed by Utility, prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewedperiod hereunder shall be deemed to be the Expiry Date for the purposes hereof.

3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under an Agreement for Procurement of dispatchable electricity dated. entered into between the Utility and the Supplier (the "**Agreement for Procurement of Power**") for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

4. Any reference to the Agreement for Procurement of dispatchable electricity or other agreement is for information only and does not in any way incorporate the terms and conditions of such Agreement for Procurement of dispatchable electricity or agreement into the terms and conditions of this Letter of Credit.

5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

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(i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of dispatchable electricity) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and

(ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director/Authorized personnel of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of dispatchable electricity) is in accordance with the Agreement for Procurement of dispatchable electricity and that the amount due has remained unpaid and has not been disputed by the Utility.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall bemade within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

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14. This Letter of Credit is governed by the Laws of India.

15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

    To: ….. (Name of Utility representative)
    ….. (Designation)
    ….. (Address, telephone and fax numbers)

    To: ….. (Name of the Bank representative)
    ….. (Designation)
    ….. (Address, telephone and fax numbers)

    To: ….. (Name of the Supplier representative)
    ….. (Designation)
    ….. (Address, telephone and fax numbers)

Signed and sealed this.... day of ....20…. at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

NOTES:

(Signature)
(Name)(Designation) (Code Number)
(Address)

(a) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
(b) The address, telephone number and other details of the Head Office of the Bank as well as ofissuing Branch should be mentioned on the covering letter of issuing Branch.