



PFC CONSULTING LIMITED

(A wholly owned subsidiary of PFC Ltd.)

NOTICE INVITING TENDER

PFC Consulting Limited (PFCCL), a wholly owned subsidiary of Power Finance Corporation Limited (A Government of India Undertaking), the Authorized Representative appointed by Ministry of Power under para B (v) of Shakti Policy, 2017, invites proposals for “Procurement of Aggregate Power requirement of Group of States for undertaking tariff based competitive bidding for medium term procurement of Power”.

Bidders may download the Bidding Document from MoP website, PFCCL website or MSTC ecommerce website.

The last date for bidders to seek clarification is **25.05.2023** and the last date of submission of Bid is **15.06.2023** at or before 15:00 hrs (IST) on DEEP Portal. Response to invitation will be opened on the same day at 15:30 hrs (IST) on DEEP Portal.

Bidders should regularly visit website to keep themselves updated regarding clarifications / amendments / time extensions, etc., if any.

Note: PFC Consulting Limited reserves the right to cancel or modify the process without assigning any reason and without any liability. This is not an offer.

PFC Consulting Limited

(A Wholly owned Subsidiary of Power Finance Corporation Ltd. – A Govt. of India Undertaking)

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Website : **www.pfcclindia.com**

**Request for Selection
of Bidder (s)**

for

**Procurement of Aggregated Power
for Group of States**

Through

e-Tender on

**Discovery of Efficient Electricity Price (DEEP) Portal
(Event No PFC Consulting Limited/Medium/ATP B (v)/23-24/ET/49)**

**Issued by
PFC Consulting Limited**

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May 15, 2023

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DISCLAIMER

The information contained in this document or subsequently provided to Applicant(s)/Bidders, whether verbally or in documentary or any other form, by or on behalf of the Authorised Representative or any of its employees or advisors, is provided to Applicant(s)/Bidder(s) on the terms and conditions set out here and such other terms and conditions subject to which such information is provided (the “**Request for Selection (RfS)**”). The RfS along with **Power Purchase Agreement (PPA)** shall collectively be referred as the “**Bidding Document**”.

This Bidding Document is not an agreement and is not an offer to the prospective Applicants/Bidders or any other person. The purpose of this Bidding Document is to provide interested parties with information that may be useful to them in the formulation of their application (the “**Application**”) for qualification and financial bid (the “**Bid**”) for selection pursuant to the Bidding Document. This Bidding Document includes statements, which reflect various assumptions and assessments arrived at by the Authorised Representative in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Bidding Document may not be appropriate for all persons, and it is not possible for the Authorised Representative, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Bidding Document. The assumptions, assessments, statements and information contained in this Bidding Document may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Bidding Document and obtain independent advice from appropriate sources.

Information provided in this Bidding Document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Authorised Representative accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authorised Representative, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Bidding Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Bidding Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Bidding Document or arising in any way with pre-qualification of Bidders for participation in the Bidding Process.

The Authorised Representative also accept(s) no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Bidding Document.

The Authorised Representative may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Bidding Document.

The issue of this Bidding Document does not imply that the Authorised Representative are bound to select and short-list pre-qualified Applications for opening of the Bids or to appoint the selected Bidder or Supplier, as the case may be, for the Project and the Authorised Representative reserve the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Application and Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authorised Representative or any other costs incurred in connection with or relating to its Application and Bid. All such costs and expenses will remain with the Bidder and the Authorised Representative shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Application and Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Applicant	As defined in Clause 1.1.6
Application	As defined in the Disclaimer
PPA	As defined in Clause 1.1.3
Authorised Representative	As defined in Clause 1.1.1
Bid Due Date	As defined in Clause 1.1.6
Bids	As defined in the Disclaimer
Bid Security	As defined in Clause 1.2.11
Bidder(s)	As defined in Clause 1.1.3
Bidding Document	As defined in the Disclaimer
Bidding Process	As defined in Clause 1.2.1
e-Tender Stage	As defined in Clause 1.2.2
BOLT	Build, Own, Lease and Transfer
BOO	Build, Own and Operate
BOOT	Build, Own, Operate and Transfer
BOT	Build, Operate and Transfer
FOO	Finance, Own and Operate
Government	Government of India/State
LOA	Letter of Award
Lowest Bidder or L1	As defined in Clause 1.2
PPP	Public Private Partnership
Qualification	As defined in Clause 1.2.2
Qualified Bidders	As defined in Clause 1.1.3
Re. or Rs. or INR	Indian Rupee
Request for Selection (RfS)	As defined in the Disclaimer
Selected Bidder	As defined in Clause 1.1.7
Supplier	As defined in Clause 1.1.7
Supply of Electricity	As defined in Clause 1.1.2
Successful Bidder	As defined in Clause 1.1.7
Tariff	As defined in Clause 1.2.21
Technical Capacity	As defined in Clause 2.2.2

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove.

Name of Utilities are as follow:

Sl. No	Name of Utility*	Requisite Quantum* (MW)
1.	Gujarat Urja Vikas Nigam Ltd.	1000
2.	Maharashtra State Electricity Distribution Company Ltd.	1000
3.	Madhya Pradesh Power Management Company Ltd.	660
4.	New Delhi Municipal Corporation	250
5.	Tamil Nadu Generation and Distribution Corporation Ltd.	1500
6.	Haryana Power Purchase Committee	500

*tentative

(Collectively referred to as the “Utilities”)

1 INTRODUCTION

1.1 Background

1.1.1 PFC Consulting Limited, a wholly owned subsidiary of Power Finance Corporation Limited (Government of India Undertaking) (the “**Authorised Representative**”), has been authorised by the Ministry of Power, Government of India to aggregate power with or without the requisition of the States or by an agency authorised by such States (the “**Authorised Representative**”) and to carry out the Bidding Process for selection of the Successful Bidder(s), on behalf of the Utilities.

1.1.2 The Authorised Representative/Utilities has decided to procure electricity from a power generating station that would dedicate a contracted capacity of 4500 MW for production of electricity and supply thereof for a period of 5 (five) years (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Finance, Own and Operate (the “**FOO**”) basis, by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier in accordance with the draft PPA (the “**Supply of Electricity**”), and Authorised Representative has, therefore, decided to carry out the Bidding Process for selection of a corporate entity (ies) as the Successful Bidder(s) to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Document.

A. Brief particulars of the Supply of Electricity are as follows:

Requisition	Capacity Required (in MW)	Period when supply must commence	Delivery Point
RTC	4500 (Gross) (For Calculation of quantity of coal)	September 1, 2023	Terminals of Generating Units.
	4178 (Contracted Capacity at Delivery Point for quoting Tariff)		Nearest interconnection point of the Power Station with the CTU System i.e. point of grid connection.

B. Brief particulars of the Coal Linkage are as follows:

S. No	Name of Subsidiary	Grade	Source	Quantity of Coal (MTPA*)	Power Quantum (MW) Gross Capacity	Power Quantu m (MW) Contrac ted Capacit

						y
1	MCL	G-13	Talcher field	15	2812	2611
2			IB - Field	9	1688	1567
			Total	24	4500	4178

*MTPA: Million Tonnes per Annum

Note:

1. Auxilliary Power Consumption considered (in %) as per CERC Tariff Regulation 2019-

2024 : 7.125

2. Transmission losses is not considered. Coal req. has been worked out considering

Contracted Capacity at Ex bus bar of TPS

3. CEA ACQ norms dated 01.04.2019 has been considered for calculation.

- 1.1.3 The Utilities shall sign power purchase agreement with the Successful Bidder(s) (the “**Power Purchase Agreement**” or the “**PPA**”) in the form provided as part of the Bidding Documents pursuant hereto. The Authorised Representative intends to pre-qualify and short-list suitable Applicant(s) (the “**Qualified Bidders**”) whose Bid shall be opened on the date specified at Clause 1.3 of the Bidding Document (the “**Bidders**”), for awarding the contract through an open competitive bidding process in accordance with the procedure set out herein.
- 1.1.4 The scope of work will broadly include operation and maintenance of the Power Station and supply of electricity, in accordance with the terms of the PPA.
- 1.1.5 All Applicants shall indicate the particulars of the relevant Power Station in the form specified at Annex-IV of Appendix-I and as available at e-Bidding Portal (“**DEEP Portal**”). Applicants may bid for minimum 100 (one hundred) MW.
- 1.1.6 The Authorised Representative shall receive Applications pursuant to the Bidding Document in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authorised Representative, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Bid Due Date**”) by the prospective bidders (the “**Applicants**”).
- 1.1.7 The Qualified Bidder(s) who are issued Letter of Award (LoA) (the “**Selected Bidder(s)**”) and who accept the LoA (the “**Successful Bidder**” or the “**Supplier**”) shall be responsible for financing, operation and maintenance of the power station, under and in accordance with the provisions of PPA.

1.2 BRIEF DESCRIPTION OF BIDDING PROCESS

- 1.2.1 The Authorised Representative has adopted a single-stage bidding process (“**Bidding Process**”) for selection of the bidder for award of the Supply of Electricity.
- 1.2.2 The single stage (the “**e-Tender Stage**”) of the process involves qualification (the

“Qualification”) of interested parties who submit Application and Bids in accordance with the provisions of this Bidding Document. Prior to submission of the Application, the Bidder shall pay to the Authorised Representative a sum of Rs 5,00, 000 (Rupees Five Lakhs only) plus applicable taxes as indicated above, as the cost of the Bidding Process. The requisite fee plus applicable taxes shall be deposited to Authorized Representative through identified mode of payment.

Bank details of Authorised Representative:

Name	PFC CONSULTING LTD E-Deep
Bank	ICICI Bank
Account No.	000705050220
IFS Code	ICIC0000007

1.2.3 Omitted

1.2.4 All the Applicants would be able to participate in the e-Bidding events on making payment of the requisite fees of Rs. 8000 (Rupees Eight Thousand) per MW, to the Authorized Representative to participate in the e-Bidding event. The requisite fee plus applicable taxes shall be deposited to Authorized Representative through identified mode of payment. All the Applicants are requested to submit the vendor form along with the supporting documents in the format at Appendix–V.

1.2.5 After the completion of the Bidding Process, i.e. issuance of LoA to Selected Bidder (s) only the Selected Bidder(s) will be charged the requisite fees for the quantum allocated to each Selected Bidder @ Rs. 8000 per MW plus applicable taxes. The balance amount will be refunded by the Authorized Representative within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s) without any interest for the quantum of power for which LoA is not issued.

1.2.6 The fee deposited by non-Selected Bidder(s) will also be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s).

1.2.7 At the e-Tender Stage, the Bidder will be required to submit its Application and Bid online at the DEEP Portal on or before the Bid Due Date.

1.2.8 In the e-Tender Stage, Applicants would be required to furnish all the information specified in the Bidding Document by submitting

- Application for qualification in accordance with the eligibility requirement under the Bidding Document and
- Bid in accordance with Bidding Document.

1.2.9 The Bid shall be valid for a period of not less than 120 days from the Bid Due Date or as may be mutually extended. The Bids of only those Applicants that are pre-qualified and short-listed by the Authorised Representative after evaluation of their Application, shall be opened on such date as specified under Clause 1.3 of the Bidding Document.

1.2.10 The Authorised Representative is likely to provide a comparatively short time span for submission of the Bids for the Supply of Electricity. The Bidders are, therefore, advised to familiarise themselves with the terms of the PPA that will govern the structure of the Supply of Electricity. The model PPA has been notified by the Government under section 63 of the Electricity Act 2003 for tariff-based bidding by the Authorised Representative.

1.2.11 **BID SECURITY**

- a. In terms of the Bidding Document, a Bidder will be required to deposit, along with its Bid, a bid security of **Rs 5,00,000 (Rupees Five lakh) per MW of maximum capacity to be offered by the Bidder** (the "**Bid Security**"), either through NEFT/RTGS transfer in the account of the Authorised Representative as specified under Clause 1.2.2 of RfS, or in the form of a bank guarantee or e-bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Authorised Representative in the format at Appendix–III (the “Bank Guarantee”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authorised Representative and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- b. The Bid Security deposited by non-Selected Bidder(s) will be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s), except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PPA.
- c. The Applicants will have an option to provide Bid Security in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authorised Representative and payable at Delhi (the “**Demand Draft**”). The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Authorised Representative and the Bidder from time to time. The Authorised Representative shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free
- d. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authorised Representative and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- e. Any Bid not accompanied by the Bid Security shall be summarily rejected by the

Authorised Representative as non-responsive.

- f. The Successful Bidder's Bid Security will be returned, without any interest, upon the Supplier signing the PPA and furnishing the Performance Security in accordance with the provisions thereof. The Authorised Representative may, at the Successful Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the PPA.
 - g. The Authorised Representative shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified herein below. The Bidder, by submitting its Bid, shall be deemed to have acknowledged and confirmed that the Authorised Representative will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in the Bidding Document. No relaxation of any kind on Bid Security shall be given to any Bidder.
 - h. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authorised Representative under the Bidding Document and/ or under the PPA, or otherwise, if,
 - i. a Bidder submits a non-responsive Bid;
 - ii. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in the Bidding Document;
 - iii. a Bidder withdraws its Bid during the period of Bid validity as specified in the Bidding Document and as extended by mutual consent of the respective Bidder(s) and the Authorised Representative ;
 - iv. the Successful Bidder fails within the specified time limit-
 - 1) to sign and return the duplicate copy of LoA;
 - 2) to sign the PPA; or
 - 3) to furnish the Performance Security within the period prescribed therefor in the PPA; or
 - v. the Successful Bidder, having signed the PPA, commits any breach thereof prior to furnishing the Performance Security.
- 1.2.12 The Bid evaluation shall be done coal source wise with bucket filling approach.
- 1.2.13 The list of Shortlisted Bidders for consideration of evaluation for a source shall be arrived at by considering the last Bidder whose Bid is less than or equal to 110% of bid (total quoted Tariff in Rs/kWh) of the L1 Bidder for that source.
- 1.2.14 The bids shall be evaluated source wise starting with the source with higher quantity of coal. In case two sources have equal coal quantity, the source having the lowest average price per kWh quoted by the Bidders shall be taken up first.

- 1.2.15 The Lowest Bidder for a source shall be allocated maximum coal from that source subject to coal quantity commensurate with the capacity offered by that Bidder. Thereafter, if further quantity of coal is available in that source, quantity offered by the next Lowest Bidder after L1 shall be exhausted. This will continue for remaining Bidders until the last Qualified Bidder or the source quantity is exhausted, whichever is earlier. If any Bidder has spare capacity after exhaustion of a source, it shall be considered for shortlisting in other sources also for the balance capacity.
- 1.2.16 In case there is a tie between the prices offered by two Bidders, the Bidder quoting lower Fixed Charge per kWh shall be selected first.
- 1.2.17 After the entire process, the constraint for minimum offer quantity shall be checked against all the Selected Bidders. In case any Bidder is allocated a total quantity which is less than its minimum offered quantity, the coal allocation to such Bidder shall not be considered and aggregate quantity of power procurement shall get modified to that extent.
- 1.2.18 Omitted
- 1.2.19 As part of the Bidding Documents, the Authorised Representative will provide a Draft PPA.
- 1.2.20 Bids are invited for the Supply of Electricity under this Bidding Document, on the basis of a tariff to be offered by a Bidder for production and supply of electricity in accordance with the terms of the Draft PPA forming part of the Bidding Documents.
- 1.2.21 For the purposes of bidding hereunder, the Base Fixed Charge and the Base Variable Charge shall constitute the tariff for Supply of Electricity (the “**Tariff**”).
- 1.2.22 The Bidder shall quote a Tariff comprising of Base Fixed Charge and Base Variable Charge for each source of coal. The cost of Fuel and the transportation/transit thereof, shall form part of the Base Variable Charge.

The Base Fixed Charge specified in the bid shall be in the range of 35% to 50% of the quoted Tariff. The Bid for the Project shall, therefore, comprise the Base Fixed Charge and the Base Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder. Responsibility for arranging access, payment of transmission charges and for bearing losses in respect of inter-state transmission shall be that of the Utility. Responsibility for arranging access, payment of transmission charges and for bearing losses in respect of intra-state transmission shall be that of the Supplier.

- 1.2.23 Since the Selected Bidder is expected to source fuel from allocated coal source a mentioned in clause 1.1.2 of RfS.

The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff for each source shall be the Selected Bidder.

1.2.24 Based on its Bid, a tariff shall be paid to the Supplier comprising of

- (a) a Fixed Charge, as per the provisions of Article 11 of the PPA; and
- (b) a Variable Charge, as per the provisions of Article 12 of the PPA

The Tariff shall be revised as per the terms of the PPA.

1.2.25 Further details of the process for submission of Bid to be followed at the Bid Stage and the terms thereof has been spelt out in the Bidding Document.

1.2.26 Any queries or request for additional information concerning the Bidding Document/ Bidding Process shall be submitted in writing by speed post/courier and e-mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.12.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: Bidding for Procurement of Aggregated Power for Group of States - Supply of Electricity".

1.3 Schedule of Bidding Process

The Authorised Representative shall endeavour to adhere to the following schedule:

	Event Description	Date
1.	Publication of Bidding Document	Monday, 15 May, 2023
2.	Last date and time for receiving queries on Bidding Document	Thursday, 25 May, 2023
3.	Pre-Application/Bid Meeting	Tuesday, 30 May, 2023
4.	Response to queries latest by the Applicants	Monday, 5 June, 2023
5.	Last date and time of submission of application and bid (Bid Due Date)	Thursday, 15 June, 2023
6.	Opening of Application to the extent of only qualification requirement	Thursday, 15 June, 2023
7.	Intimation to short-listed and pre-qualified Bidders for opening of their Bids	Thursday, 22 June, 2023
8.	Opening of Bids of qualified bidders and completion of bid evaluation process	Friday, 30 June, 2023
9.	Letter of Award (LoA) (to Selected Bidder(s))	Within 10 days of the completion of bid evaluation process

	Event Description	Date
10.	Validity of Bids	120 days of Bid Due Date or as may be mutually extended
11.	Signing of PPAs (between successful bidders and procuring Utilities on one to one basis based on allocated capacity)	Within 10 days of award of LoA

1.4 Pre-Application/Bid Meeting

The date, time and venue of the Pre- **Application**/Bid Meeting shall be:

Date: 30.05.2023

Time: Will be informed later

Venue: Will be informed later

2. INSTRUCTIONS TO APPLICANT

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Authorised Representative wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for opening of the Bids in the Bidding process.
- 2.1.2 The Bids of the short-listed Applicants may be opened subsequently as per the schedule specified in Clause 1.3 of this Bidding Document.

2.2 Eligibility of Applicant

- 2.2.1 For determining the eligibility of the Applicant for their pre-qualification hereunder, the following shall apply:
- (a) The Applicant should be a corporate entity;
 - (b) The Applicant should own and be responsible for operation of the commissioned Power Station from where electricity shall be supplied
 - (c) The Applicant should not have an existing power purchase agreement for the quantum of power quoted under this Bid;
- 2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following condition of eligibility:
- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “Technical Capacity”), the Applicant shall own and operate power generating station(s) having an installed capacity at least equivalent to the untied capacity for which the Applicant is willing to Bid.
- 2.2.3 The Applicant shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following[§]:
- (i) Certificate(s) from statutory auditors of the Applicant , stating the power stations which are owned and operated by the Applicant, as the case may be, as specified in paragraph 2.2.2 (A) above; and
- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Applicant to sign the document and also digitally sign and submit the Application and Bid at e-Tender Stage.
- 2.2.5 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar

[§] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.3.

subsists as on the date of Application, would not be eligible to submit an Application. The Bidder should submit a statement as per Annex-1 of Appendix-I.

2.2.6 An Applicant should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Bidding Document is such that it does not reflect

- i. any malfeasance on its part in relation to such cause or event;
- ii. any wilful default or patent breach of the material terms of the relevant contract;
- iii. any fraud, deceit or misrepresentation in relation to such contract; or
- iv. any rescinding or abandoning of such contract,

it may make a representation to this effect to the Authorised Representative for seeking a waiver from the disqualification hereunder and the Authorised Representative may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the Supply of Electricity. The Bidder should submit a statement as per Annex-1 of Appendix-I.

Further, entity who has acquired the stressed project/Non Performing Assets (NPA) through NCLT under IBC and stressed project/NPA admitted to insolvency proceedings in NCLT are eligible to submit the Application.

2.2.7 Omitted

2.2.8 The following conditions shall be adhered to while submitting an Application:

- (a) Applicant should submit their Application online at the DEEP Portal only and upload clearly marked and referenced documents/sheets in the e-Tender Stage.
- (b) information supplied by a Applicant must apply to the Applicant named in the Application and not, unless specifically requested, to other associated companies or firms. The Bid of only those Bidders will be opened whose identity and/ or constitution is identical to that at pre-qualification; and
- (c) in responding to the pre-qualification submissions, Applicant should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.9 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 1 (one) years,

preceding its latest financial year.

- 2.2.10 For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Number of Applications and Costs thereof

- 2.3.1 No Applicant shall submit more than one Application for Supply of Electricity.
- 2.3.2 The Applicant shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bidding Process. The Authorised Representative will not be responsible or in any way be liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4 Verification of information

- 2.4.1 Applicant(s) are encouraged to submit their respective Applications after assessing physical conditions of the Power Station, including the transmission systems, applicable laws and regulations, and any other matter considered relevant by them.

2.5 Acknowledgement by Applicant

- 2.5.1 It shall be deemed that by submitting the Application, the Applicant has:
- (a) made a complete and careful examination of the Bidding Documents;
 - (b) received all relevant information requested from the Authorised Representative;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authorised Representative relating to any of the matters referred to in Clause 2.4 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.5.2 The Authorised Representative shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to this document or the Bidding Process, including any error or mistake therein or in any information or data given by the Authorised Representative.

2.6 Right to accept or reject any or all Applications/ Bids

- 2.6.1 Notwithstanding anything contained in this Bidding Document, the Authorised Representative reserve the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any

liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Authorised Representative reject or annul all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.6.2 The Authorised Representative reserve the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authorised Representative, the supplemental information sought by the Authorised Representative for evaluation of the Application.

If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Authorised Representative reserve the right to take any such measure as may be deemed fit in the sole discretion of the Authorised Representative, including annulment of the Bidding Process.

2.6.3 In case it is found during the evaluation or at any time before signing of the PPA or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Authorised Representative, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LoA or entering into of the PPA, and if the Bidder has already been issued the LoA or has entered into the PPA, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Bidding Document, be liable to be terminated, by a communication in writing by the Authorised Representative to the Bidder, without the Authorised Representative being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Authorised Representative may have under this Bidding Document, the PPA or under applicable law.

The Authorised Representative reserve the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Document. Any such verification or lack of such verification by the Authorised Representative shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authorised Representative thereunder.

B. DOCUMENTS

2.7 Contents of the Bidding Document

This Bidding Document comprises the glossary; disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.13.

Invitation for Qualification

Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Criteria for Evaluation
Section 4	Selection of Bidder
Section 5	Fraud & Corrupt Practices
Section 6	Pre – Application Conference
Section 7	Miscellaneous

Appendices

- I. Letter comprising the Application/Bid
- II. Power of Attorney for signing of Application/ Bid
- III. Bank Guarantee for Bid Security
- IV. Pre-Contract Integrity Pact

2.8 Clarifications

- 2.8.1 Applicant(s) requiring any clarification on the Bidding Documents may notify the Authorised Representative in writing by speed post/courier and e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.26. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3 of the Bidding Document.

The Authorised Representative shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The queries and its responses of all Applicants will be uploaded on website of Authorised Representative and DEEP Portal.

- 2.8.2 The Authorised Representative shall endeavour to respond to the questions raised or clarifications sought by the Applicant(s). However, the Authorised Representative reserve the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authorised Representative to respond to any question or to provide any clarification.
- 2.8.3 The Authorised Representative may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicant. All clarifications and interpretations issued by the Authorised Representative shall be deemed to be part of the Bidding Document. Verbal clarifications and information given by Authorised Representative or its employees or representatives shall not in any way

or manner be binding on the Authorised Representative.

- 2.8.4 In order to afford the Applicant(s) a reasonable time for taking response to clarifications into account, or for any other reason, the Authorised Representative may, in its sole discretion, extend the Bid Due Date.[#]

2.9 Amendment of Bidding Documents

- 2.9.1 At any time prior to the deadline for submission of Application, the Authorised Representative may, for any reason, whether at its own initiative or in response to clarifications requested by a Applicant, modify the Bidding Documents by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued will be available at the website of Authorised Represntative and DEEP Portal. The Applicant(s) are advised to check the DEEP Portal for any amendments or notifications.
- 2.9.3 In order to afford the Applicant(s) a reasonable time for taking an Addendum into account, or for any other reason, the Authorised Representative may, in its sole discretion, extend the Bid Due Date.^{\$}

[#] While extending the Bid Due Date on account of response to the clarifications, the Authorised Representative shall have due regard for the time required by Applicant(s) to address the clarifications specified therein. In the case of significant clarifications, at least 15 (fifteen) days shall be provided between the date of issuance of clarifications and the Bid Due Date, and in the case of minor clarifications, at least 7 (seven) days shall be provided.

^{\$} While extending the Bid Due Date on account of an addendum, the Authorised Representative shall have due regard for the time required by Applicant(s) to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.10 Language

2.10.1 The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.11 Format And Signing Of Application/Bid

2.11.1 The Bidder shall provide all the information sought under this Bidding Documents. The Authorised Representative will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.

2.11.2 The Bidder shall submit their Application online on the DEEP portal, signed by a valid digital signature of the authorized signatory of the Bidder.

2.11.3 For the documents uploaded online, the Application shall be typed or written in indelible ink. It shall be signed by the authorized signatory of the Applicant who shall also initial each page(including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application/Bid. The Application shall contain page numbers.

2.11.4 The Applicant shall ensure that its authorized signatory has a Digital Signature Certificate (DSC).

2.11.5 The Applicant shall register on the DEEP Portal for participation in the Bidding Process.

2.11.6 The Official Copy of the Bidding Document shall be available for download on the DEEP Portal and on the website of Authorised Representative.

2.12 Sealing and Marking of Applications

2.12.1 The Applicant shall submit the Application in the format specified at Appendix-I and the format created online in the DEEP portal, together with the documents specified in Clause 2.12.2.

2.12.2 Documents required to be uploaded as per this Bidding Document shall contain:

- (i) Application/Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;

- (ii) Power of Attorney for digitally signing the Application/Bid as per the format at Appendix-II;
- (iii) copy of Memorandum and Articles of Association, if the Bidder is a body corporate;
- (iv) copies of Bidder's duly audited balance sheet and profit and loss account for the preceding three years;
- (v) Bank Guarantee as per the format at Appendix-III; and
- (vi) Pre-Contract Integrity Pact as per format provided in Appendix IV
- (vii) NCLT order under IBC for acquiring Power Station for the Bidder who has acquired the stressed project/Non Performing Assets (NPA) through NCLT ;
- (viii) NCLT order under IBC for Admissibility of the stressed project/NPA, appointment of RP/IRP and consent of CoC for the submitting Bid under this Bidding Process;

2.12.3 The Applicant(s) shall send the hard copy of all the original documents stated at Clause 2.12.2 in an envelope clearly indicating the name and address of the Applicant, addressed to:

ATTN. OF: Sh. Neeraj Singh.

DESIGNATION: Chief General Manager

ADDRESS: PFC Consulting Limited,
9th Floor, A wing, Statesman House
Barakhamba Road, Connaught Place
New Delhi – 110001

E-MAIL ADDRESS: neeraj_singh@pfcindia.com /
deep-pfcc@pfcindia.com

Such hard copies should reach the aforementioned address within 2 working days after the opening of the Application in accordance with Clause 1.3 of this Bidding Document. The Applicant(s) are notified that in case of any discrepancy in the documents uploaded online at the DEEP Portal and the hard copies submitted in accordance with this Clause 2.12, the documents uploaded online shall prevail.

2.12.4 If the Application is not uploaded and digitally signed as instructed above, the Authorised Representative assume no responsibility for rejection of the Application and consequent losses, if any, suffered by the Applicant.

Applications submitted by fax or e-mail shall not be entertained and shall be rejected.

- 2.12.5 In the e-Tender Stage, all Applicant(s)/Bidders after uploading on the DEEP Portal the Application and the Bid as per the Bidding Document and digitally signing the same must click on 'Final submit' button to finally submit their Application and Bid, without clicking the 'Final submit' button the system will not consider the Application or the Bid.

2.13 Bid Due Date

- 2.13.1 Applications should be submitted online latest by 15:00 hours IST on the Bid Due Date, at the DEEP Portal in the manner and form as detailed in this Bidding Document.
- 2.13.2 The Authorised Representative may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.14 Late Applications

- 2.14.1 Applications will not be accepted for submission at the DEEP Portal after the time specified on the Bid Due Date.

2.15 Modifications/ Substitution/ Withdrawal of Applications

- 2.15.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that such modification, substitution or withdrawal is made prior to the Bid Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Bid Due Date except as provided in clause 2.15.3. The DEEP Portal shall provide the option to Applicant(s), after submission of the Application and the Bid, to withdraw and delete the Application and the Bid. By clicking on withdraw, Application and Bid will be withdrawn by the Bidders from the DEEP Portal and further submission will be allowed only by another login id on or before the Bid Due Date. While clicking on delete, Application and Bid saved on the DEEP Portal in encrypted form will be deleted and the Applicant may submit fresh Application and Bid with same login id on or before the Bid Due Date.
- 2.15.2 However, notwithstanding any other provision, all Bids submitted will be considered final and cannot be modified after the Bid has been accepted by the DEEP Portal.
- 2.15.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authorised Representative, shall be disregarded.

D. EVALUATION PROCESS

2.16 Opening and Evaluation of Applications

- 2.16.1 The Authorised Representative shall open the Applications at 15:30 hours IST on the Bid Due Date..
- 2.16.2 Application and Bid which are withdrawn in accordance with Clause 2.15, the envelope containing hard copy shall not be opened and payments if any made shall be refunded without any interest within 7 working days after declaration of Successful Bidder / issuance of Letter of Award.
- 2.16.3 The Authorised Representative will subsequently examine and evaluate Applications in accordance with the provisions set out in the Bidding Process.
- 2.16.4 Applicant(s) are advised that pre-qualification of Bidders will be entirely at the discretion of the Authorised Representative. Applicant(s) will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.16.5 Any information contained in the Application shall not in any way be construed as binding on the Authorised Representative, its agents, successors or assigns, but shall be binding against the Bidder if the Supply of Electricity is subsequently awarded to it on the basis of such information.
- 2.16.6 The Authorised Representative reserve the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s)/ Bid(s) without assigning any reasons.
- 2.16.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authorised Representative may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Applicant.

2.17 Confidentiality

- 2.17.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicant(s) shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authorised Representative in relation to, or matters arising out of, or concerning the Bidding Process. The Authorised Representative will treat all information, submitted as part of Application and Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authorised Representative may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authorised Representative or as may be required by law or in connection with any legal process.

2.18 Tests of responsiveness

2.18.1 Prior to evaluation of Applications, the Authorised Representative shall determine whether each Application is responsive to the requirements of the Bidding Document. An Application shall be considered responsive if:

- (a) it is received as per format at Appendix-I.
- (b) omitted;
- (c) it is digitally signed and uploaded as stipulated in Clauses 2.11 and 2.12;
- (d) it is accompanied by the Power of Attorney;
- (e) it contains the information and documents) as requested in this Bidding Document;
- (f) it contains information in formats same as those specified in this Bidding Document;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the Bidding Document for Power Station;
- (h) it contains an attested copy of the banking system generated receipt by the authorised signatory or receipt of the Authorised Representative for payments towards the cost of the Bidding Process, fees submitted to the Authorized Representative and Bid Security as specified in Clause 1.2.2, 1.2.4 and 1.2.11 respectively;
- (i) a legal opinion from the legal counsel of the Bidder with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;
- (j) submitted the Capacity Certificate and evidence of the capacity of the Power Station;
- (k) it contains the Pre-Contract Integrity Pact as per format provided in Appendix IV
- (l) it does not contain any condition or qualification; and
- (m) it is not non-responsive in terms hereof.

2.18.2 The Authorised Representative reserve the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authorised Representative in respect of such Application. The Authorised Representative may, in its discretion, allow the Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application. Provided, however, the Authorised Representative may allow, in its discretion, any modification as provided under Clause 2.15.

2.19 Clarifications and/ or Additional Information

2.19.1 To facilitate evaluation of Applications, the Authorised Representative may, in its sole discretion, seek clarifications and/ or additional information from any Applicant(s)/Bidder regarding its Application/Bid. Such clarification(s) and/ or additional information shall be provided within the time specified by the Authorised Representative for this purpose. Any request for clarification(s) and/ or additional information and all clarification(s) and/ or additional information in response thereto shall be provided in writing through email in desired format and hard copy.

2.19.2 If an Applicant/Bidder does not provide clarifications and/ or additional information sought under Clause 2.19.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authorised Representative may proceed to evaluate the Application by construing the particulars requiring clarification and/ or additional information to the best of its understanding, and the Applicant/Bidder shall be barred from subsequently questioning such interpretation of the Authorised Representative and evaluation shall be binding on the Applicant/ Bidder.

E. QUALIFICATION

2.20 Pre-qualification and notification

- 2.20.1 After the evaluation of Applications, the Authorised Representative would announce a list of Qualified Bidders whose Bid shall be opened on the date specified in accordance with this Bidding Document. At the same time, the Authorised Representative would notify the other Bidders that they have not been pre-qualified. The Authorised Representative will not entertain any query or clarification from Bidders who fail to qualify.
- 2.20.2 The Bid Security deposited by Applicant(s) who do not qualify after the evaluation of the Applications shall be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s).

2.21 Submission of Bids

- 2.21.1 The Applicant will submit the Bid online in the form and manner to be set out in the Bidding Document.
- 2.21.2 The Bids of only Qualified Bidders shall be opened by the Authorised Representative on such date as specified in this Bidding Document. The Applicant(s) are advised to examine the Bidding Documents, and to carry out such scrutiny and studies as may be required for submitting their respective Bids for award of the Supply of Electricity. No extension of time is likely to be considered for submission of Applications/ Bids.

2.22 Proprietary data

- 2.22.1 All documents and other information supplied by the Authorised Representative or submitted by an Applicant/ Bidder to the Authorised Representative shall remain or become the property of the Authorised Representative. Applicant (s) are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Authorised Representative will not return any Application or any information provided along therewith.

2.23 Correspondence with the Applicant / Bidder

- 2.23.1 Save and except as provided in this Bidding Document, the Authorised Representative shall not entertain any further correspondence with any Applicant /Bidder in relation to the acceptance or rejection of any Application/ Bid.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

- 3.1.1 Only those Applicant(s) who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Clause 3. Applications of Applicant(s) who do not meet these criteria shall be rejected.
- 3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity;

3.2 Technical Capacity for purposes of evaluation

- 3.2.1 Subject to the provisions of Clause 2.2, the Bidders must establish the minimum Technical Capacity specified in Clause 2.2.2 (A) (the "Eligible Projects"). For a power generating project to qualify as an Eligible Project, it should be owned and operated by the Applicant, and shall include a power station built and operated on PPP, BOLT, BOO, BOOT, BOT, DBFOO or on other similar basis.
- 3.2.2 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-II of Appendix-I.

4. SELECTION OF BIDDER

- 4.1 Subject to the provisions of Bidding Document, the Bidder whose Bid is adjudged as responsive in terms of Bidding Document and who quotes the Lowest Tariff offered to the Authorised Representative, in conformity with the provisions of Clause 4.8 shall be declared as the selected Bidder(s) (the “**Selected Bidder(s)**”). In the event that the Authorised Representative rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 4.2 The list of Qualified Bidders for consideration of evaluation for a coal source shall be arrived at by considering the last Bidder whose Bid is less than or equal to 110% of Fixed Charge plus fuel component of Variable charge of the L1 Bidder for that coal source.
- 4.3 The minimum number of qualified bidders against each source shall be at least two. If, in case of a particular source, it is found that only 1 (one) bidder has offered bid, the Authorised Representative may cancel the bidding process for such source and shall proceed with selection of bidders for other sources.
- 4.4 The Bids shall be evaluated coal source wise starting with the source with higher quantity of coal. In case two sources have equal coal quantity, the source having the lowest average price per kWh quoted by the Bidders shall be taken up first.
- 4.5 The lowest bidder (L1) for a source shall be allocated maximum coal from that source subject to coal quantity commensurate with the capacity offered by that bidder. Thereafter, if further quantity of coal is available in that source, quantity offered by the next lowest bidder after L1 shall be exhausted. This will continue for remaining bidders until the last Qualified Bidder or the source quantity is exhausted whichever is earlier. If any bidder has spare capacity after exhaustion of a source, it shall be considered for shortlisting in other sources also for the balance capacity.
- 4.6 In case there is a tie between the prices offered by two bidders, the bidder quoting lower Fixed Charge per kWh shall be selected first.
- 4.7 After the entire process, the constraint for minimum offer quantity shall be checked against all the successful bidders. In case any bidder is allocated a total quantity which is less than its minimum offered quantity, the allocation to such bidder shall not be considered and aggregate quantity of power procurement shall get modified to that extent.
- 4.8 After selection, a Letter of Award (the “LoA”) shall be issued, in duplicate, by the Authorised Representative to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LoA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authorised Representative may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next

eligible Bidder may be considered.

- 4.9 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Supplier to execute the PPA within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PPA.

4.10 Contacts during Bid Evaluation

- 4.10.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authorised Representative makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authorised Representative and/ or their employees/ representatives on matters related to the Bids under consideration.

- 4.11 The coal allocated for the purposes of the Project would be either from a single source (coal field) or from multiple sources.

4.12 Allocation of Capacity to Various States:

- 4.12.1 The Capacity of each Successful Bidder shall be allocated amongst various states on proportionate basis. By way of illustration, if aggregate power requirement is 1000 MW (State A: 500 MW, State B: 200 MW and State C:300 MW) and there are two successful bidders (B1: 600 MW and B2:400 MW), State A will get 300 MW ($=600 \times 500/1000$) from B1 and 200 MW ($=400 \times 500/1000$) from B2. Similar, capacity allocations shall be made for each participating state from each Successful Bidder.
- 4.13 The Energy Charge Rate (ECR) for each Supplier (i.e. Successful Bidder) for a month shall be based on weighted average cost of the coal consumed during that month from allocated linkage coal sources).

5. FRAUD AND CORRUPT PRACTICES

- 5.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authorised Representative may reject an Application without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 5.2 Without prejudice to the rights of the Authorised Representative under Clause 5.1 hereinabove, if an Bidder is found by the Authorised Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or Bidding Document A issued by the Authorised Representative during a period of 2 (two) years from the date such Bidder is found by the Authorised Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 5.3 For the purposes of this Clause 5, the following terms shall have the meaning hereinafter respectively assigned to them:

“corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authorised Representative who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PPA or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authorised Representative , shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under this Bidding Document, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PPA, who at any time has been or is a legal, financial or technical adviser of the Authorised Representative in relation to any matter concerning the Project;

“fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

“coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

“undesirable practice” means establishing contact with any person connected with or employed or engaged by the Authorised Representative with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process;; and

“restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

- 5.4 The bidder(s) shall execute the pre-contract Integrity Pact in the format annexed as Appendix IV.

6. PRE-APPLICAITON/Bid MEETING

- 6.1 A Pre-Application/Bid meeting of the interested parties shall be convened at the designated date, time and place. Only those persons who have registered at the DEEP Portal for participating in the Bidding Process shall be allowed to participate in the Pre-Application/Bid meeting.
- 6.2 During the course of Pre-Application/Bid meeting, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authorised Representative. The Authorised Representative shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

7. MISCELLANEOUS

- 7.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 7.2 The Authorised Representative , in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authorised Representative by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 7.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authorised Representative , its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I

Letter Comprising the Application for Pre-Qualification and Bid – to be uploaded during e-Tender Stage

To,

[The
.....
.....
.....

Ph. No. :

Fax No:

E-Mail:]

Sub: Application for pre-qualification and Bid for Procurement of Aggregated Power of 4500 MW – Supply of Electricity

Dated:

Dear Sir,

1. With reference to your Bidding Document dated[§], I/we, having examined the Bidding Document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid Supply of Electricity. The Application and Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authorised Representative will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Bidders for the aforesaid Supply of Electricity, and we certify that all information provided in the Application and is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Qualified Bidder for the aforesaid Supply of Electricity and for sale of power to the Authorised Representative.
4. I/ We shall make available to the Authorised Representative any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Authorised Representative to reject our Application without assigning any reason or otherwise and hereby waive, to the

[§] All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
 - 7.1 I/ We have examined and have no reservations to the Bidding Document, including any Addendum issued by the Authorised Representative
 - 7.2 I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the Bidding Document, in respect of any tender or of the Bidding Document issued by or any agreement entered into with the Authorised Representative or any other public sector enterprise or any government, Central or State; and
 - 7.3 I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of the Bidding Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to open the Bid of the Bidders, without incurring any liability to the Bidders, in accordance with Clause of the Bidding Document.
9. I/ We certify that in regard to matters other than security and integrity of the country, I/ we have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Supply of Electricity or which relates to a grave offence that outrages the moral sense of the community.
10. I/ We further certify that in regard to matters relating to security and integrity of the country, I/ we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
11. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our directors/managers/ employees^{\$}.

^{\$} In case the Applicant is unable to provide the certification specified in para 11, it may precede the paragraph by the words, viz. "Except as specified in Schedule **** hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authorised Representative will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are of a nature that could cast a doubt on the ability or suitability of the Applicant to undertake the Project.

12. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Bidding Document, we shall intimate the Authorised Representative of the same immediately.
13. The Statement of Legal Capacity as per format provided in the Bidding Document, and duly signed, is enclosed.
14. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authorised Representative in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Supply of Electricity and the terms and implementation thereof.
15. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Document.
16. I/ We certify that in terms of the Bidding Document, my/our Technical Capacity is equivalent toMW (MW in words).
17. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to Clause 1.1.2 of the Bidding Document out of the Capacity Required of 4500 MW given under Clause 1.1.2 of the Bidding Document and minimum Capacity of 100 MW which conforms to Clause 4.7 of the Bidding Document.
18. I/ We offer a Bid Security of Rs..... (Rupeesonly) to the Authorised Representative in accordance with the Bidding Document.
19. The Bid Security in the form of a Demand Draft/ Bank Guarantee/NEFT/RTGS (strike out whichever is not applicable) is attached.
20. I/ We undertake to feed electric supply into the grid at a point that is economical and efficient, as determined by the RLDC or SLDC, as the case may be.
21. I/ We shall keep this offer valid for 120 (One Twenty) days from the Bid Due Date specified in the Bidding Document.
22. I/ We hereby submit the following Bid and offer for each source of coal separately, on DEEP Portal, as on the Bid Due Date, in accordance with the provisions of the Bidding Documents

A Tariff of Rs.... and paise ... (Rupees .. and paise ..) per kWh comprising

- a. Base Fixed Charge Rs.....and paise..... (Rupeesand paise) per kWh;
- b. Base Variable Charge of Rs.....and paise .. (Rupees ..and paise..) per kWh including
 - i. Rs.. and paise.. (Rupees .. and paise ..) per kWh as the cost of fuel;

ii. Rs.. and paise .. (Rupees .. and paise ..) per kWh as the cost of fuel transportation.

23. I/ We certify that the information provided in response in terms of the Bidding Document are true and authentic to the best of my knowledge and belief.

In witness thereof, I/ we submit this application under and in accordance with the terms of the Bidding Documents.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Applicant

ANNEX-I
Particulars of the Bidder

1.

Sr. No	Description	Details
1.	Name	
2.	Date of commencement of business	
3.	Address of the corporate headquarters	

2. Brief description of the Company including details of its main lines of business:

3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:

Sr. No	Description	Details
1.	Name	
2.	Designation	
3.	Address	
4.	Telephone Number	
5.	Mobile Number	
6.	E-Mail Address	
7.	Fax Number	

4. Particulars of the Authorised Signatory of the Bidder:

Sr. No	Description	Details
1.	Name	
2.	Designation	
3.	Address	
4.	Telephone Number	
5.	Mobile Number	
6.	E-Mail Address	
7.	Fax Number	

5. The following information shall also be provided for the Bidder:

Name of Bidder:

No.	Criteria	Yes	No
1.	Has the Bidder been barred by the Central/State Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Bidder paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

5. A statement by the Bidder disclosing material non- performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary): Please mention 'NIL' in case there is no such cases.

6. A statement by the Bidder disclosing imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach in the recent past is given below (Attach extra sheets, if necessary): Please mention 'NIL' in case there is no such cases.

ANNEX-II

Technical Capacity of the Applicant
(Refer to Clauses 2.2.2(A) of the Bidding Document)

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title of the Power Station		
Location		
Capital Cost of the Power Station	1	
Date of completion/ Commissioning	2	
Installed capacity of the plant	4	
Untied Capacity	5	

Instructions:

1. Provide the capital cost of the Project.
2. The date of commissioning of the project, upon completion, should be indicated.
3. The total number of units along with the details of the capacity of each unit should be provided
4. Certificate from the Applicant's, as applicable, statutory auditor^{\$} must be furnished as per formats below for Power Station.
5. Provide the untied Capacity in MW

^{\$} In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

Certificate from the Statutory Auditor ^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder*) is an equity shareholder in (*title of the project company*) and holds Rs.

..... cr. (Rupees crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company. The project was commissioned on (*date of commissioning of the project*).

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the
authorised signatory)

Date:

^Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary.

6. In case the generating station is not under a separate SPV the following format shall be used, Certificate from the Applicant's statutory auditor must be furnished as per formats below for Power Station.

Certificate from Statutory Auditor regarding Eligible Projects

Based on its book of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder*) having its registered office atown the (*name of Project*) from(*date*).

The project was commissioned on(*date of commissioning of the project*).

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

7. In the absence of any detail in the above certificates, the information would be considered inadequate and could lead to disqualification of the project.

ANNEX-III
Statement of Legal Capacity
(To be forwarded on the letterhead of the Applicant)

Ref.

Date:

To,

.....
.....
.....
.....

Ph. No. :

Fax No:

E-Mail:

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the Bidding Document.

We have agreed that (insert individual's name) will act as our representative on its behalf and has been duly authorized to submit the Application and the Bid. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

ANNEX-IV
Particulars of the Power Station

Sr. No	Description	Details			
1.	Details of Applicant				
	a. Name of the Applicant				
	b. Date of commencement of business				
	c. Address of the corporate headquarters				
	d. Brief description of the Company including details of its main lines of business				
2.	Details of Power Station (from which capacity is offered)				
	a. Name of the Power Station				
	b. Location of Power Station (Specify place, District and State)				
	c. Unit and installed capacity of each unit (MW)	Unit No.	1	2	...
		Installed Capacity (MW)			
		COD			
		Quantum of power contracted with other purchasers, if any (MW)			
		Details of surplus/untied capacity (MW)			
	d. Total Proposed Supply of Electricity (MW) irrespective of power been supplied from any Unit				
	e. Minimum Proposed Supply of Electricity (MW)				

Signature:
Name:
Designation:
Date:
Place:

APPENDIX II
Power of Attorney for signing of Application and Bid^{\$}
(Refer Clause 2.2.4)

Know all men by these presents, we..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorised Mr/ Ms (name), son/daughter/wife of and presently residing at..., who is presently employed with us and holding the position of...., as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the Procurement of Aggregated Power of 4500 MW – Supply of Electricity proposed by the PFC Consulting Limited (the “**Authorised Representative**”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the **Authorised Representative**, representing us in all matters before the Authorised Representative, signing and execution of all contracts including the Agreement for Procurement of Aggregated Power for Group of States (PPA) and undertakings consequent to acceptance of our bid, and generally dealing with the Authorised Representative in all matters in connection with or relating to or arising out of our bid for the said Supply of Electricity and/ or upon award thereof to us and/or till the entering into of the PPA with the Authorised Representative/Utility (ies).

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ... DAY OF2.....

For

....

(Signature, name, designation and address)

Witnesses:

^{\$} To be submitted in original.

Affixation of Common Seal

1.

(Notarised)

2

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as aboard or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*

APPENDIX – III
Bank Guarantee for Bid Security

B.G. No.

Dated:

1. In consideration of you, *****, having its office at *****, (hereinafter referred to as the “Authorised Representative”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of(a company registered under the Companies Act, 1956/2013) and having its registered office at ((hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Procurement of Aggregated Power of 4500 MW (hereinafter referred to as the “Supply of Electricity”) pursuant to the Bidding Document dated issued in respect of the Supply of Electricity and other related documents including without limitation the draft Agreement for Procurement of Aggregated Power for Group of States (PPA) (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 1.2.11 c) read with Clause 1.2.11 d) of the Bidding Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Document by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authorised Representative an amount of Rs. ***** (Rupees ***** only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authorised Representative stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authorised Representative is disputed by the Bidder or not, merely on the first demand from the Authorised Representative stating that the amount claimed is due to the Authorised Representative by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. ***** (Rupees ***** only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authorised Representative and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authorised Representative shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authorised Representative that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authorised Representative and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authorised Representative shall be entitled to treat the Bank as the principal debtor. The Authorised Representative shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authorised Representative, and the Bank shall not be released from its liability under these presents by any exercise by the Authorised Representative of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authorised Representative or any indulgence by the Authorised Representative to the said Bidder or by any change in the constitution of the Authorised Representative or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authorised Representative to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authorised Representative may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authorised Representative in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authorised Representative serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days from the Bid Due Date)].

Signed and Delivered by Bank
By the hand of Mr./Ms, its .. and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

APPENDIX – IV

Pre-Contract Integrity Pact

General

This Pre-Contract Integrity Pact is made on ____ day _____ of the month of ____ 20____, between, on one hand, PFC Consulting Limited through _____ (hereinafter called the "Authorized Representative", which expression shall mean and include, unless the context otherwise requires, his successors in the office and assigns) of the First Part

AND

M/s _____ represented by ____ *Insert Name & Designation of AUTHORIZED SIGNATORY of the Bidder (hereinafter called the "Bidder" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the Authorized Representative is conducting the bidding process for selection of Supplier to whom the contract may be awarded for production of electricity as per terms and conditions specified in the Bidding Documents.

WHEREAS the Bidder is a Company constituted in accordance with the relevant law in the matter and the Authorized Representative is a Public Sector Undertaking (PSU) performing its function on behalf of the Ministry of Power, Government of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings during the complete bidding process with a view to:-

Enabling the Authorized Representative to select the bidder as the Supplier in conformity with the defined procedures by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling Bidder to abstain from bribing or indulging in any corrupt practice in order to emerge as selected bidder by providing assurance to them that their competitors will also abstain from bribing and other practices and the Authorized Representative will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

1. Commitments of Authorized Representative

- 1.1 The Authorized Representative undertakes that no official of the Authorized Representative, connected directly or indirectly with the bidding process, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the bidding process in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The Authorized Representative will, during the bidding stage, treat all bidders alike, and will provide to all bidders the same information and will not provide any such information to any particular bidder which could afford an advantage to that particular bidder in comparison to the other bidders.
- 1.3 All the officials of the Authorized Representative will report the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Authorized Representative with the full and verifiable facts and the same is prima facie found to be correct by the Authorized Representative, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Authorized Representative and such a person shall be debarred from further dealings related to the bidding process. In such a case while an enquiry is being conducted by the Authorized Representative the proceedings under the bidding process would not be stalled.

3. Commitments of Bidder.

The Bidder commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre award stage in order to emerge as Selected Bidder or in furtherance to secure it and in particular commits itself to the following:-

- 3.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authorized Representative, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the bidding process in exchange for any advantage in the bidding, evaluation, contracting and implementation of the bidding process.

- 3.2 The Bidder further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authorized Representative or otherwise in bidding process or for bearing to do or having done any act in relation to bidding process or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the bidding process or any other contract with the Government.
- 3.3 The Bidder shall disclose the name and address of agents and representatives and Indian Bidder shall disclose their foreign principals or associates.
- 3.4 The Bidder shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid.
- 3.5 The Bidder further confirms and declares to the Authorized Representative that the Bidder has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Authorized Representative or any of its functionaries, whether officially or unofficially for selection of Bidder as Supplier, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The Bidder, either while presenting the bid or during pre-award negotiations or before signing the Agreement for Procurement of Aggregated Power for Group of States (“PPA”) , shall disclose any payments he has made, is committed to or intends to make to officials of the Authorized Representative or their family members, agents, brokers or any other intermediaries in connection with the bidding process and the details of services agreed upon for such payments.
- 3.7 The Bidder will not collude with other parties interested in the bidding process to impair the transparency, fairness and progress of the bidding process.
- 3.8 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The Bidder shall not use improperly, for purpose of competition or personal gain, or pass on to others, any information provided by the Authorized Representative as part of the business relationship, regarding plans, technical proposal and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

- 3.11 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Authorized Representative.

4. Previous Transgression

- 4.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Bidder's exclusion from the bidding process.
- 4.2 The Bidder agrees that if it makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. Bid Security

- 5.1 Along with the technical bid, the BIDDER has submitted Bid Security, with the Authorized Representative.
- 5.2 The Bid Security shall be valid & retained by the Authorized Representative for such period as specified in the RfS Document.

6. Sanctions for Violations

- 6.1 Any breach of the aforesaid provisions by the Bidder or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder) shall entitle the Authorized Representative to take all or anyone of the following actions, wherever required:-
- (i) To immediately call off the pre-award negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder (s) would continue.
 - (ii) The Bid Security (in pre-award stage) shall stand forfeited either fully or partially, as decided by the Authorized Representative and the Authorized Representative shall not be required to assign any reason therefore.
 - (iii) To immediately cancel the award, if already awarded, without giving any compensation to the Bidder.

- (iv) To cancel all or any other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Authorized Representative resulting from such cancellation/rescission.
 - (v) To debar the Bidder from participation in any tender or RfS issued by any Authorized Representative for an indefinite period.
 - (vi) To recover all sums paid in violation of this Pact by Bidder to any middleman or agent or broker with a view to securing the award.
- 6.2 The Authorized Representative will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (vi) of this Pact also on the Commission by the Bidder or anyone employed by it or acting on its behalf (whether with or without the knowledge of the Bidder), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the Authorized Representative to the effect that a breach of the provisions of this Pact has been committed by the Bidder shall be final and conclusive on the Bidder. However, the Bidder can approach the Independent Monitor(s) appointed for the purposes of this Pact.

7. Independent Monitors

- 7.1 The Authorized Representative has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 7.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 7.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 7.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the Authorized Representative.
- 7.6 The Bidder accepts that the Monitors has the right to access without restriction to all Project documentation of the Authorized Representative including that provided by the Bidder. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder/Subcontractors(s) with confidentiality. [As all the bid documents are with Authorized Representative only]

- 7.7 The Authorized Representative will provide to the Monitors sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the monitor the option to participate in such meetings.
- 7.8 The Monitor will submit a written report to the designated Authority of the Authorized Representative within 8 to 10 weeks from the date of reference or intimation to him by the Authorized Representative / Bidder and, should the occasion arise, submit proposals for correcting problematic situations.

8. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the Authorized Representative or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder and the Bidder shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

9. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Authorized Representative.

10. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the any extent law in force relating to any civil or criminal proceedings.

11. Validity

- 11.1 The validity of this Integrity Pact shall be from date of its signing and upto 6 months from the date of signing of PPA. In case Bidder is unsuccessful, this Integrity Pact shall expire after 15 days from the date of signing of PPA.
- 11.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

The Parties hereby sign this Integrity Pact at on

Authorized Representative)
Name of the Officer Designation
Name of the Authorized Representative with address

Witness:

- 1.
- 2.

BIDDER

Name of Whole time Director/Authorized

Signatory

Name of the Bidder with address

Witness:

- 1.

APPENDIX – V

Vendor Form

Ref. No.....

Date:.....

(To be filled by Account Department)

SR. Manager (F&A)

PFC Consulting Ltd.

New Delhi.

All details to be submitted in Capital Letters and all fields are mandatory to be filled.

S.No.	Particulars	Details
A.	General Details	
1.	Name	
2.	Address..... (Line 1)	
3.	Address..... (Line 2)	
4.	Address..... (Line 3)	
5.	City	
6.	State (From where goods/service to be supplied)	
7.	Pin	
8.	Country	
9.	PAN No. (Copy to be enclosed 1)	
10.	TAN No.	
11.	Mobile No/Landline	
12.	Email ID	
12.	Recipient State where goods/services to be supplied (As per Place of Supply provision in GST)	
13.	Constitution of Business (Proprietor, HUF, Partnership, LLP, Pvt/Public Ltd Company, Society/Club/Trust/AOP, Foreign Co & Govt Dept, others)	
14.	Whether MSME registered? (Copy to be enclosed 2)	
15.	Whether Government entity? If Yes, please mention nature of government (Central, State, Board, Ministry, etc.)	
16.	GST registration *If Yes, then please mention GSTIN & attach GST	

a.	registration certificate. *Whether Registered under composition scheme or not. (Copy to be enclosed 3)	
b.		
17.	Specify description of goods/ nature of service	
18.	HSN Code / SAC	
B.	Details for payment through RTGS/NEFT(Cancelled Cheque/Pass Book) (Copy to be enclosed 4)	
1.	Bank Name	
2.	Name in Bank Account	
3.	Bank Account No.	
4.	IFSC Code	
5.	Branch Name & Address	
6.	Type of Account	
C.	Task Manager (Employee of PFC/PFCCL)	

With Regards,

(Signature of Party)

DRAFT
POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF AGGREGATED POWER
FOR GROUP OF STATES

ON
FINANCE, OWN AND OPERATE BASIS

May 15, 2023

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Part I

Preliminary

AGREEMENT FOR PROCUREMENT OF POWER¹

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

BETWEEN

- 1 [The Distribution Company], a company incorporated under the provisions of the Companies Act, 1956/2013, represented by its [Managing Director/Authorised Person]and having its registered offices at (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

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

WHEREAS:

- (A) The Utility has resolved to procure electricity from a power generating station that would deliver a Contracted Capacity of *** MW at the Delivery Point corresponding to ***MW of gross generation² on finance, own and operate (the “**FOO**”) basis,[by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier,]³ in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.
- (B) The Nodal Agency on behalf of the Utility had accordingly invited proposals by its Request for Selection dated 21.11.2022 (the “**Request for Selection**” or “**RfS**”) for

¹Instructions for project-specific customisation of this document

This Draft Power Purchase Agreement (PPA) may be customised for project-specific use in accordance with the instructions below:

Note 1: Serially numbered footnotes in this PPA are for guidance of the Utility and should be omitted from the draft Power Purchase Agreement forming part of Bidding Documents.

Note 2: All Project-specific provisions in this PPA have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Power Purchase Agreement to Bidders.

Note 3: The Asterisks in this PPA should be substituted by project-specific particulars before issuing the draft Power Purchase Agreement to Bidders.

Note 4: The provisions in curly brackets are to be retained in the draft Power Purchase Agreement forming part of Bidding Documents and shall be suitably modified after the issuance of Letter of Award (LOA) in order to reflect the bid specific particulars in the Power Purchase Agreement. (See Appendix-I)

Note 5: Blank spaces are to be retained in the draft Power Purchase Agreement and shall be suitably filled after the issuance of LOA in order to reflect bid specific particulars in the Power Purchase Agreement. However, blank spaces shall be retained in all schedules, which contain formats that are to be used after the Power Purchase Agreement is executed. (See Appendix-I)

Note 6: Footnotes marked “£” are to be retained in the draft Power Purchase Agreement. These Footnotes are for the Guidance of the selected Bidders and shall be omitted before executing the Power Purchase Agreement. However, Footnotes marked “\$” or “\$\$” shall be retained in the Power Purchase Agreement as a part thereof. (See Appendix-I)

Note 7: the draft agreement for Procurement of Power issued as part of Bidding Document shall retain Notes 4, 5 and 6, to be renumbered as Notes 1, 2 and 3 respectively. The remaining instructions shall be omitted.

²The gross generation is to be computed from contracted capacity at delivery point by adding transmission losses, auxiliary consumption upto the generator terminals.,

³To be modified as per the source of fuel selected by the Utility.

short listing of Bidders who offer to supply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia*, the selected bidder.

- (C) The Nodal Agency on behalf of the Utility had prescribed the technical and commercial terms and conditions and invited bids in accordance with the Guidelines under Section 63 of the Electricity Act, 2003 for procurement of power on FOO basis under para B(v) of the SHAKTI Policy issued on 20.10.2022 by Ministry of Power vide Notification No. 23/03/2022-R&R dated 20.10.2022 and amendments thereof from the Bidders shortlisted pursuant to the RfS for undertaking the Project.
- (D) After evaluation of the Bids received, the Nodal Agency on behalf of the Utility had accepted the Bid of the selected bidder and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the selected bidder requiring, *inter alia*, the execution of this Power Purchase Agreement within 10 (ten) days of the date of issue thereof.
- (E) The Supplier has obtained the Letter of Assurance, dated [**] issued by [**]⁴ (“**Coal Supplier**”) in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement (“**Letter of Assurance**” appended herein as **Annexure 1**) for the purposes of the Gross Capacity;
- (F) In pursuance of the LOA, the Parties have agreed to enter into this Power Purchase Agreement on the terms and conditions set forth hereinafter.

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

⁴Insert the name of the coal company

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Power Station is situate are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**kWh**” shall mean kilowatt hour and “**kCal**” shall mean kilo calories;
- (r) “**lakh**” shall mean a hundred thousand (100,000) and “**crore**” shall mean ten million (10,000,000);
- (s) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument,

licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Utility hereunder or pursuant hereto in any manner whatsoever;

- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
 - (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
 - (z) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
 - (za) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Utility shall be provided free of cost and in three copies, and if the Utility is required to return any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein,
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II

The Procurement Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement utilizing the Coal Linkage/ Allocated Coal Linkage in accordance with the terms contained herein read with the terms and conditions of the Fuel Supply Agreement and the Letter of Assurance;
- (b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.

ARTICLE 3
GRANT OF PROCUREMENT CONTRACT

3.1 The Procurement Contract

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

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

- (a) finance, own, operate and maintain the Power Station in accordance with this Agreement”;
- (b) Omitted;
- (c) to receive Fixed Charge from the Utility in respect of the Availability of Contracted Capacity;
- (d) to receive Variable Charge in accordance with the provisions of this Agreement;
- (e) perform and fulfil all of the Supplier’s obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement.

3.2 Substitution of the Utility

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

3.2.2 In the event of additional Licensees operating in the same area of supply post the signing of this Agreement, the existing PPA may be reallocated in full or part by the competent authority to the other licensees in proportion to the number of consumers/ demand of power with the different licensees and the present Agreement shall apply to all such subsequent Licensees.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

4.1.2 The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after [15 (fifteen) days]⁵ from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of [30 (thirty) days]⁶ of the notice, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have:

- (a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;
- (b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;
- (c) procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and
- (d) Omitted;
- (e) provided Performance Security to the Supplier;
- (f) Provided to the Supplier, an unconditional, revolving and irrevocable Letter of Credit in accordance with the provisions of Clause 13.2.1.

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 90 (Ninety) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of [90 (ninety) days]⁷ 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;

⁵ Change as per schedule of commencement of supply

⁶ Change as per schedule of commencement of supply

⁷ Change as per scheduled commencement of supply

- (b) delivered to the Utility a legal opinion from the legal counsel of the Supplier with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;
- (c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;
- (d) submitted the Capacity Certificate and evidence of the capacity of the Power Station;
- (e) Obtained the letter of assurance, dated [**] issued by [**]⁸ (“**Coal Supplier**”) in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement (“**Letter of Assurance**” appended herein as **Annexure 1**) for the purposes of the Project.
- (f) The Supplier shall have executed the Fuel Supply Agreement upon the fulfillment of all the conditions laid down in the Letter of Assurance;
- (g) procured access to the intrastate transmission system required for carrying electricity from the Power Station to the Delivery Point;

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

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of the Performance Security-and upon making such maximum, the Supplier may at its sole discretion, terminate this Agreement

⁸Insert the name of the coal company

4.3 Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, [120 (one hundred twenty) days]⁹ from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier and the Utility under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the parties, and the Power Purchase Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as Damages thereof. Provided further that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Utility, the Performance Security given by the Utility shall be encashed and appropriated by the Supplier as Damages thereof.

4.5 Extension of Term of Agreement

In the event the damages are paid by the defaulting party as per provisions of clause 4.2 and 4.3 and the Agreement has not been terminated as per the provisions of Clause 4.4, the term of the Agreement shall be deemed to have been extended corresponding to the period of delay in fulfilment of conditions precedent. For eg – If there is a delay of 15 days in the fulfilment of conditions precedent and the defaulting party has paid the applicable damages, the Appointed date shall start after 15 days from the originally stipulated Appointed Date.

4.6 Date of Commencement of Supply

The date of commencement of supply shall be 01.04.2023. The date of commencement shall be advanced by such number of days by which the Appointed Date has been extended as per Clause 4.5

⁹Change as per scheduled commencement of supply

ARTICLE 5
OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, at its own cost and expense, procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Supplier shall operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) each year of the Contract Period (the “**Normative Availability**”).

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to []kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the “**Availability**”).

For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.2 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership without giving prior information to Utility.

5.3 Obligations relating to transmission charges

The inter-state transmission of electricity shall be undertaken solely at the risk and cost of the Utility and all liabilities arising out of any failure of inter-state transmission shall be borne by the Utility. If the Power Station is connected to intra-state transmission system of a state other than the state where the Utility is located, such intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of intra-state transmission shall, subject to the provisions of Clause 11.4.3, be borne by the Supplier.

A. Inter State Transmission Charges

The Utility shall be liable for inter-state transmission charges under Applicable Laws.

B. Intra State Transmission Charges

Transmission Charges up to the Deliver Point shall be borne by the Supplier.

5.4 Obligations relating to transmission losses

A. Inter-State Transmission losses:

The Utility shall be liable for inter-state transmission losses under Applicable Laws.

B. Intra-State Transmission Losses

The Supplier shall bear transmission losses up to the Delivery Point. For avoidance of doubt the parties agree that the Contracted Capacity shall be delivered at the Delivery Point.

5.5 Obligations relating to SLDC and RLDC charges

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

5.6 Obligations relating to taxes

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

5.7 Obligations relating to reporting requirements

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

ARTICLE 6
OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

- 6.1.1 The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws and upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Utility shall ensure adequate GNA for drawal of power from inter-state transmission system for contracted capacity and under Applicable Laws;
- 6.1.2 The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal

liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.2; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;
- (k) the selected bidder have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) the selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Utility to enter into this Agreement with {itself/the Supplier} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement;
- (n) it has a good and valid right to the Station Premises and shall remain valid during the Contract Period;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Utility or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Utility in connection therewith;
- (q) all information provided by the selected bidder in response to the Request for Selection or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (r) all undertakings and obligations of the Supplier arising from the Request for Selection or otherwise shall be binding on the Supplier as if they form part of this Agreement.

7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

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

- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Utility's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

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

ARTICLE 8
DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Supplier acknowledge that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Selection, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder..
- 8.1.2. The Utility affirm, the accuracy, adequacy, correctness reliability and/or completeness of assessment, assumption, statement or information provided by it.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error;

Part III

Operations

ARTICLE 9

PERFORMANCE SECURITY BY THE SUPPLIER AND THE UTILITY¹⁰

9.1 Performance Security

- 9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹¹ in the form set forth in Schedule-B (the “**Performance Security**”) valid for a period ending 6 (six) months after date of commencement of supply. The amount towards the Performance Security can be paid through NEFT/RTGS also.
- 9.1.2 The Utility shall, for the performance of its obligations hereunder, provide to the Supplier no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹² in the form set forth in Schedule-B (the “**Performance Security-Utility**”) valid for a period ending 6 (six) months after date of commencement of supply.
- 9.1.3 Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Utility shall release the Bid Security to the Supplier.
- 9.1.4 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 45(forty five) days from the date of this Agreement the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

- 9.2.1 Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security,

¹⁰The Performance Security may be replaced by an Insurance Bond or a similar instrument at the discretion of the Utility.

¹¹To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity. This may be increased to Rs. 15,00,000 (Rs. Fifteen lakh) per MW of Contracted Capacity if Contracted Capacity is less than 500 MW and Rs. 8,00,000 (Rs. eight lakh) per MW of Contracted Capacity if Contracted Capacity is more than 1000 MW.

¹²To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity. This may be increased to Rs. 15,00,000 (Rs. Fifteen lakh) per MW of Contracted Capacity if Contracted Capacity is less than 500 MW and Rs. 8,00,000 (Rs. eight lakh) per MW of Contracted Capacity if Contracted Capacity is more than 1000 MW.

the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

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

9.3 References to Performance Security

References to Performance Security or Performance Security-Utility occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by one party to the other, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the parties.

Provided that in case of Damages payable by the Suppliers determined shall be appropriated from the Bid Security prior to the submission of the Performance Security.

ARTICLE 10
ALLOCATION OF CAPACITY

10.1 Gross Capacity and Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a capacity of ***** MW to the Utility as the gross capacity hereunder (the “Gross Capacity”).

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

10.2 Dispatch of unutilized Contracted Capacity

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

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

Provided further that if the Supplier is able to sell the unrequisitioned power, sharing of gain from such sale of such power shall be as per applicable rules issued by the Ministry of Power.

10.3 Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, delay in commercial operation, shortage of Fuel or Force Majeure, the Supplier may, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. Provided further that such supply of electricity from any alternative source shall be limited to 180(one eighty) days at a time and 365(three hundred and sixty five) days for the entire Contract Period. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.

Provided also that the Supplier may supply the Contracted Capacity in a flexible manner by bundling with renewable sources and storage power as per Government of India orders in this regard.

10.4 Supply during Designated Hours

Omitted

10.5 Supply on Round the Clock Basis

The Supplier shall ensure the Availability of the Power Station on round the clock 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 Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the “**Tariff**”).

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

11.2 Base Fixed Charge

The Parties agree that the fixed charge payable for Availability shall, in accordance with the offer of the Supplier for the Base Year, be Rs.....(Rupees)^{\$}perkWh (the “**Base Fixed Charge**”), which shall be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.

11.3 Fixed Charge

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

11.4 Computation of Fixed Charge

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

11.4.2 The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) computed with reference to the Contracted Capacity (the “**Capacity Charge**”).

Provided that the Availability to be considered for calculation of Fixed Charges shall be reconciled annually on cumulative basis.

^{\$} This amount shall be the amount specified in the Bid, which shall not less than Re. 1 (Rupee one) per kWh in any case or such minimum amount as may be specified in the RFS.

- 11.4.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in intra state transmission system in accordance with the provision of Clause 5.3, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Utilities or Buyers, as the case may be, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.3.

Provided further that sharing of gain from sale of such power shall be in the same manner as provided for sale of un-requisitioned power in applicable rules issued by the Ministry of Power, as amended from time to time. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder.

11.4.4 Omitted

11.5 Declaration of Availability

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

- 11.5.2 In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in intra state transmission system in accordance with clause 5.3, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the entitlement of the Utility in the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the Supplier to the Utility forthwith.

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

Provided that where the Fuel is being supplied under allocated coal linkage, the Supplier shall have an option to arrange the Fuel from an alternate source. The Utility shall be intimated if the increase in Variable Charge is greater than 30 % (thirty percent).

Provided that if the Utility does not schedule the power, the Supplier shall have the option to offer such power in the power exchange.

Provided further that compliance of any order issued by the central government in respect of blending of imported fuel shall be binding on the parties.

Provided also that in case of shortage of linkage coal and the Supplier arranges coal from alternate sources, the Energy Charge shall be calculated as per methodology specified in Schedule F.

- 11.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.
- 11.5.5 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Contracted Capacity or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the “**Mis-declaration**”) shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Fixed Charge, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.
- 11.5.6 Notwithstanding the provisions of Clause 11.5.5, any reduction in Availability arising out of outage due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clause 17.5.

11.6 Damages

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

Provided that a penalty at the rate of upto 1 % (one per cent) of annual Fixed Charge shall be applicable in case of failure to achieve ramp rate of 1% per minute as per methodology described in Schedule-G.

- 11.6.2 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the Damages, if any, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted

against the damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

11.7 Variable Charge

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

11.8 Taxes and duties

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

11.8.2 Omitted

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

11.9 Billing and Payment

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

Provided that the Monthly Invoice and supporting documents specified in 11.9.2 submitted through email shall also be acceptable to the Utility. However, hard copies of Monthly Invoice and supporting documents specified in 11.9.2 should reach office of the Utility within 5 days of email.

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.3; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.4; and (l) the net amount payable under the Monthly Invoice.

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

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

11.10 Disputed Amounts

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

11.10.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and provisions of the applicable rules issued by the Ministry of Powers, as amended from time to time, shall be applicable on such amounts.

11.11 Discount for early payment

The Parties expressly agree that in the event the Utility pays the billed amount within the periods as specified below, it shall be entitled to deduct specified percentage of the amount by way of discount for early payment:

- (i) Upto 5 days from the date of submission of the invoice - 1.5%
- (ii) 6 - 10 days from the date of submission of the invoice - 1.4%
- (iii) 11 - 15 days from the date of submission of the invoice - 1.3%
- (iv) 16 - 20 days from the date of submission of the invoice - 1.2%
- (v) 21 - 25 days from the date of submission of the invoice - 1.1%
- (vi) 26 - 30 days from the date of submission of the invoice - 1.0%

Provided that the counting of days shall be exclusive of the day of submission of invoice.

Provided further that in case of computation of days, the number of days shall be counted consecutively without considering any holiday.

ARTICLE 12

12. VARIABLE CHARGE

12.1 Variable Charge

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

12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs.(Rupees)⁵ per kWh, [comprising Rs....(Rupees...) per kWh as the cost of Fuel/generating cost and Rs....(Rupees....) per kWh as the cost of transportation of which Rs.....(Rupees....) per kWh shall be in respect of domestic transportation, (the “**Base Variable Charge**”) which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period.

12.3 Computation of Variable Charge

Coal from Linkage Coal

- 12.3.1. For the Fuel supplied by CIL through Letter of Assurance, the price of Fuel shall be as specified by the Supplier in its Bid. The Supplier represents and warrants that this is based on price notified by CIL of Rs. (Rupees) .per tonne and coal grade ...as on Bid Date. This component of Variable Charge shall be revised in subsequent years in proportion to the revision in price notified by CIL
- 12.3.2 The total cost of transportation of domestic Fuel shall be the cost of transportation as specified by the Supplier in its Bid. The Supplier represents and warrants that this is based on prevailing freight of Indian Railways of Rs(.....)/Tonne for a distance of (.....) km. This component of Variable Charge shall be revised in subsequent years in proportion to the revision in the notified freight rate of Indian Railways
- 12.3.3 Due to non-availability of rail transportation, the Supplier may arrange for part road transport for transporting coal to nearest feasible railway siding. The distance of such road transport shall be reduced from the distance of rail transport for computation of cost of transportation under clause 12.3.2 above. The cost of road transport shall be payable for the distance of road transportation as above. The cost of fuel transport by road as on the 7 days prior to the publication of RfS shall be considered as Rs. 11.52 per tonne per km. Provided that this rate shall be escalated on monthly basis based on the appropriate component in the CPI. The cost of road transport as computed above shall be recovered as part of the monthly invoice billed to the Utility by the Supplier

⁵ The amount shown as blank in clause 12.2 shall be specified in the Bid.

12.4 Shortage of Fuel

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

12.5 Take or Pay supply of Fuel

Omitted

ARTICLE 13

PAYMENT SECURITY

13.1 Default Escrow Account

13.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where Utility's revenue of at least twice the Monthly Payment are normally deposited (the "**Default Escrow Bank**"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than twice the Monthly Payment shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 1.1 times the sum of 1/12th of the applicable annual Capacity Charge for the relevant year and 1/12th of the total amount paid on account of variable charge for the last year (the "**Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.

Provided that in the first year of operation, total amount of variable charge shall be assessed by multiplying energy generation at normative availability and applicable variable charge.

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

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

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

13.2 Letter of Credit

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

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

- 13.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least twice the value of the Monthly Payment are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.3 Recovery

- 13.3.1 In the event the Utility fails to pay the Monthly Invoice on or before the relevant Payment Due Date(s) or the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice or the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then the recovery shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.
- 13.3.2 The sale of Contracted Capacity pursuant to Clause 13.3.1 shall not extinguish any liability of the Utility or any claim that the Supplier may have against the Utility, save and except to the extent of amounts recovered under the provisions of Clause 13.3.1.
- 13.3.3 Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.

13.4 Payment security for Termination

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

13.5 Operationalization of Payment security mechanism

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

ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1 Despatch of Contracted Capacity

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

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

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

However, if the Utility does not schedule the full or part of Contracted Capacity, Supplier may sell the same through the power exchange in line with the applicable rules issued by the Ministry of Power, as amended from time to time.

14.2 Settlement of DSM charges

14.2.1 All payments due to or from the Supplier on account of any deviation in terms of the DSM Regulations (the “**Deviation Settlement Mechanism**” or “**DSM**”) shall be solely to the account of and borne by the Supplier

14.3 Overriding powers of the Utility

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

- 14.3.2 In the event the Supplier does not comply with the directions of the Utility issued in pursuance of Clause 14.3.1, the Utility may issue directions to the RLDC and SLDC to undertake despatch and scheduling in accordance with such instructions as the Utility may issue hereunder from time to time.
- 14.3.3 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the RLDC and SLDC, the Supplier shall be deemed to have agreed and undertaken to abide by the provisions of this Clause 14.3 and to have given irrevocable instructions to the RLDC and SLDC to carry out all the directions given by the Utility hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Clause 14.3 shall remain in force and effect until the Termination Payment, if any, has been made by the Supplier to the Utility.
- 14.3.4 The exercise of any overriding powers by the Utility under this Clause 14.3 shall not in any manner affect or diminish the liability and obligation of the Utility to make payments to the Supplier for the electricity supplied or the Availability of Contracted Capacity and the Utility shall, for this purpose, ensure and procure compliance of the provisions of Article 13. Notwithstanding anything to the contrary contained in this Clause 14.3, the Utility shall not be entitled to issue any directions hereunder nor shall the RLDC and SLDC comply with such directions to the extent and for the period during which Utility is in material breach of the provisions of Article 13 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 13.3 shall apply.

14.4 Ramp up of Despatch

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

ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

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

15.2 Insurance Cover

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

- (a) Loss, damage or destruction of the Project Assets at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Utility or others caused by the Project;
- (c) the Supplier's general liability arising out of the Procurement Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Supplier and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

15.3 Evidence of Insurance Cover

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

15.4 Remedy for failure to insure

If the Supplier shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the

Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier

15.5 Waiver of subrogation

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

15.6 Supplier's waiver

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

15.7 Application of insurance proceeds

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

ARTICLE 16
ACCOUNTS AND AUDIT

16.1 Audited accounts

- 16.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Utility, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Utility shall have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Utility for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 16.1.2 The Supplier shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Utility its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 16.1.3 On or before the thirty-first day of May each Year, the Supplier shall provide to the Utility, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as the Utility may reasonably require.

16.2 Appointment of auditors

- 16.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it and acceptable to the Utility. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.
- 16.2.2 The Supplier may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Utility, subject to the replacement Statutory Auditors being appointed in the manner specified in Clause 16.2.1.
- 16.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Utility shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

16.3 Certification of claims by Statutory Auditors

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

16.4 Set-off

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

16.5 Dispute resolution

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

Part V

Force Majeure and Termination

ARTICLE 17
FORCE MAJEURE

17.1 Force Majeure

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

17.2 Force Majeure Events

Force Majeure Events shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);
- (b) strikes or boycotts (other than those involving the Supplier, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Utility;
- (d) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.
- (f) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (g) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (h) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (i) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (j) any event or circumstances of a nature analogous to any of the foregoing.

17.3 Other Events

One or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 21 and its effect, in financial terms, exceeds the sum specified in Clause 21.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Event mentioned in 17.3 and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

17.4 Duty to report Force Majeure Event

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

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

- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

17.4.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.4.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.5 Effect of Force Majeure Event on the Procurement Contract

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

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

17.6 Allocation of costs arising out of Force Majeure

Upon occurrence of a Force Majeure Event after the Appointed Date, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

17.7 Termination Notice for Force Majeure Event

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

17.8 Excuse from performance of obligations

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

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

ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier

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

18.2 Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, then the recovery by the Supplier shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.

18.3 Extension of Contract Period

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

ARTICLE 19
TERMINATION

19.1 Termination for Supplier Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Supplier has failed to make any payment to the Utility within the period specified in this Agreement;
- (d) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;
- (e) the Supplier creates any Encumbrance in breach of this Agreement;
- (f) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;
- (g) Omitted
- (h) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 14.1.3;
- (i) a Change in Ownership has occurred in breach of the provisions of Clause 5.2;
- (j) the Supplier fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4 (four) months within any continuous period of 12 (twelve) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the Supplier or (iii) shortage of Fuel occurring for reasons not attributable to the Supplier;

Provided that duration of outage due to approved planned outage shall not be considered as Non Availability for the purpose of this clause.

- (k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, without prior intimation to the Utility, and such transfer causes a Material Adverse Effect;
- (l) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;
- (m) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;
- (n) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;
- (o) a resolution for winding up of the Supplier is passed;
- (p) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;
 - (iii) each of the Project Agreements remains in full force and effect; and
 - (iv) such amalgamation or reconstruction is approved by the Commission.
- (q) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;
- (r) the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;

- (s) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (t) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
- (u) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

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

19.2 Termination for Utility Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the “**Utility Default**”) unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security-Utility has been encashed and appropriated in accordance with Clause 9.2 and the Utility fails to replenish or provide fresh Performance Security-Utility within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security-Utility in accordance with Clause 9.2, the Utility fails to meet any Condition Precedent or cure the Utility Default, as the case may be, for which whole or part of the Performance Security-Utility was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) The Utility commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;
- (d) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts in accordance with the provisions of the applicable rules issued by the Ministry of Power; or
- (e) the Utility repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

19.3 Termination Payment

19.3.1 Apart from the other payments to be made by the Supplier on Supplier Default, upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [6 (six) months]¹³ as if the Contracted Capacity was Available for such [6 (six) months] from the date of Termination.

19.3.2 Apart from the other payments to be made by the Utility on Utility Default, upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [6(six) months]¹⁴ as if the Contracted Capacity was Available for such [6(six) months] from the date of Termination.

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

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

19.4 Instructions to RLDC and SLDC

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

¹³ This period may equal to about 10% (ten per cent) of the Contract Period.

¹⁴ This period may equal to about 5% (five per cent) of the Contract Period.

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

19.5 Survival of rights

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

[19.6 The expiry of this Agreement on account of efflux of time or earlier Termination thereof shall lead to the automatic termination of Fuel Supply Agreement in accordance with the terms thereof]¹⁵

¹⁵To be retained only if coal is being sourced from the Allocated Coal Linkage provided by the Utility.

Part VI
Other Provisions

ARTICLE 20
ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

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

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

20.2 Permitted assignment and charges

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

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;
- (b) mortgages/pledges/hypothecation of Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security only for indebtedness to its Lenders and/or for working capital arrangements for the Power Station;
- (c) assignment of rights, interest and obligations of the Supplier to or in favour of its as security for financing provided by them; and
- (d) liens or encumbrances required by any Applicable Law.

20.3 Assignment by the Utility

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

20.4 Approvals for assignment

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

ARTICLE 21
CHANGE IN LAW

21.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds 0.1% (zero point one percent) of the Capacity Charge in any Accounting Year or if as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds 0.1% (zero point one percent) of the Capacity Charge in any Accounting Year, the impact of Change in Law to be adjusted and recovered shall be computed in accordance with the procedure provided in the applicable rules issued by the Ministry of Power’.

21.3 No claim in the event of recovery from Buyers

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

21.4 Exclusions to the Change in Law

The term ‘Change in Law’ shall not include any change in any withholding tax on income or dividends distributed to the shareholders of the Seller.

ARTICLE 22
LIABILITY AND INDEMNITY

22.1 General indemnity

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

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

22.2 Indemnity by the Supplier

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

- (a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier’s contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

22.2.2 Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason

of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the Supplier is unable to secure such licence within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3 Notice and contest of claims

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

22.4 Defence of claims

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

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

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

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

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

22.5 No consequential claims

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

ARTICLE 23
DISPUTE RESOLUTION

23.1 Dispute resolution

- 23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably.
- 23.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 23.1.3 If in spite of their best efforts, the parties fail to resolve the dispute, the same shall be referred for resolution under the Conciliation Committee of Independent Experts (CCIE) constituted by the Appropriate Government.

23.2 Adjudication by the Commission

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

23.3 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

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 shallmake available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier’s Registered Office and the Power Station. The Supplier shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

24.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 24.1 and 34.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

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

ARTICLE 25
MISCELLANEOUS

25.1 Governing law and jurisdiction

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

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

25.3 Interest

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis on quarterly rests.

25.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and in the event of delay beyond such period the recovery thereof shall be in accordance with the applicable rules issued by the Ministry of Power, as amended from time to time.

25.5 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

25.6 Exclusion of implied warranties etc.

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

25.7 Survival

25.7.1 Termination shall:

- (a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 22; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

25.8 Entire Agreement

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

25.9 Severability

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

25.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

25.11 Third parties

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

25.12 Successors and assigns

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

25.13 Notices

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

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

{ Attention:
Designation:
Address:

Fax No:
Email: }

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

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

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

25.14 Language

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

25.15 Counterparts

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

25.16 Omitted

ARTICLE 26
DEFINITIONS

26.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Act” means the Electricity Act, 2003;

“Affected Party” shall have the meaning as set forth in Clause 17.1;

“Agreement” or **“Power Purchase Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Allocated Coal Linkage” shall mean [Insert details of coal linkage]

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

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

“Appointed Date” means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

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

“Availability” shall have the meaning as set forth in Clause 5.1.2 and the term **“Available”** shall be construed accordingly;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Base Fixed Charge” shall have the meaning as set forth in Clause 11.2;

“Base Year” means the Accounting Year in which the Bid was received;

“Bid” means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Selection in accordance with the provisions thereof and

“Bids” shall mean the bids submitted by any and all pre-qualified bidders;

“Bid Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Selection;

“Bid Security” means the security provided by the Supplier to the Utility along with the Bid in accordance with the Request for Selection, and which is to remain in force until substituted by the Performance Security;

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

“CIL” means Coal India Limited or any subsidiary thereof, and shall include any substitute or successor thereof;

“Capacity Certificate” means the certificate issued by the duly authorised representative of the Supplier certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

“Capacity Charge” shall have the meaning as set forth in Clause 11.4.2;

“Change in Law” means the occurrence of any of the following after the Bid Date:

- (a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any Applicable Law;
- (b) the commencement of any Applicable Law which has not entered into effect until the Bid Date;
- (c) a change in the interpretation or application of any Applicable Law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (d) any change in the rates of any of the Taxes that have a direct effect on the Project
- (e) change in any Applicable Permits, available or obtained for the Project, otherwise than for default of the Supplier;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate

holding of the promoters, together with their Associates in the total Equity to decline, at any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

“**Commission**” means the Appropriate Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 4.1.1;

“**Contract Period**” means the period starting on and from date of commencement of supply as per clause 4.6 of this agreement and ending on the earlier of the [***] anniversary of the date of commencement of supply and the date of termination of the Agreement;

“**Contracted Capacity**” shall have the meaning as set forth in Clause 10.1;

“**Contractor**” means the person or persons, as the case may be, with whom the Supplier has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

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

“**Damages**” shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

“**Deed of Hypothecation**” shall have the meaning as set forth in Clause 13.1.2;

“**Default Escrow Account**” shall have the meaning as set forth in Clause 13.1.1;

“**Default Escrow Agreement**” shall have the meaning as set forth in Clause 13.1.1;

“**Default Escrow Bank**” shall have the meaning as set forth in Clause 13.1.1;

“**Delivery Point**” means any point in the Inter-State Transmission System where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located;

“Despatch” shall have the meaning as set forth in Clause 14.1.1;

“Dispute” shall have the meaning as set forth in Clause 23.1.1;

“Disputed Amounts” shall have the meaning as set forth in Clause 11.9.3;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 23;

“Distribution Licensee” means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

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

“DSM Regulations” means the CERC Deviation Settlement Mechanism and Related Matters Regulations, 2022;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Supplier, and any interest-free funds advanced by any shareholder of the Supplier for meeting such equity component;

“Fixed Charge” shall have the meaning as set forth in Clause 11.1.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 17.1;

“Fuel” means the coal which is fit for use in generation of electricity at the Power Station;

“Fuel Supply Agreement” means the agreement entered into between the Supplier and a supplier of Fuel [and includes any arrangement for purchase of Fuel at spot prices];

“GOI” means the Government of India;

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

“Government” means the Government of India or the Government of the State, as the case may be;

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

“Grid” means the high voltage backbone system of inter-connected transmission lines and sub-stations;

“Grid Code” means the Indian Electricity Grid Code 2010 or any substitute thereof;

“Gross Capacity” shall have the meaning as set forth in Clause 10.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 22;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 22;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 15, and includes all insurances required to be taken out by the Supplier under Clause 15.1 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;

“Linkage Coal” shall mean the coal linkage provided by Coal India Limited at notified price for regulated sector of thermal power;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (D);

“Letter of Credit” shall have the meaning as set forth in Clause 13.2.1;

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

“Monthly Payment” shall have the meaning as set forth in Clause 13.1.1;

“Mis-declaration” shall have the meaning as set forth in Clause 11.5.5;

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

“Non-Availability” means any partial or total lack of Availability for any other reason;

“Normative Availability” shall have the meaning as set forth in Clause 5.1.2;

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

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

“Performance Security” shall mean the performance security to be provided by the Supplier in terms of Clause 9.1.1;

“Performance Security-Utility” shall mean the performance security to be provided by the Utility in terms of Clause 9.1.2;

“Power Station” means the generating station as described in Recital (A) or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities;

“Procurement Contract” shall have the meaning as set forth in Clause 3.1.1;

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

“Project Agreements” means this Agreement, Fuel Supply Agreement, O&M contract and any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

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

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

“RLDC” means the Regional load Despatch Centre as specified in the Act;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Request for Selection” or “RfS” shall have the meaning as set forth in Recital (B);

“Revenues” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Utility in the form of cash receipts or receivables from

any and all sources, save and except any capital receipts of the Utility for and in relation to any capital expenditure for creation of assets;

“**SLDC**” means the State Load Despatch Centre as specified in the Act;

“**Scope of the Agreement**” shall have the meaning as set forth in Clause 2.1;

“**Secured Obligations**” means:

- (a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;
- (b) obligations of the Utility for payment of Tariff under and in accordance with this Agreement; and
- (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

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

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

“**Station Premises**” shall mean and include the site, real estate, assets, equipments, facilities and amenities comprising the Power Station;

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

“**Supplier**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Supplier Default**” shall have the meaning as set forth in Clause 19.1.1;

“**Tariff**” shall have the meaning as set forth in Clause 11.1.1;

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

“**Termination**” means the expiry or termination of this Agreement and the Procurement Contract hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

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

“Utility” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Utility Default” shall have the meaning as set forth in Clause 19.2.1;

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

“Variable Charge” shall have the meaning as set forth in clause 12.1; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 11.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE UTILITY by:

(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 theday
of 20....hereunto affixed in the presence of
.... Director, who has signed these presents
in token thereof andCompany Secretary
/ Authorised Officer who has
countersigned the same in token thereof[£]:

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

2.

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

Schedules

SCHEDULE – A
(See Clause 2.1)

SITE OF THE POWER STATION

1 The Site

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

2 Power Station

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

Annex –I¹⁶
(Schedule-A)

Annex-I: Description of Coal-based Power Station\$

1 The site

The Site of the Power station shall include the land, building and structures as briefly described below:

{Provide a brief description here.}

2 Capacity of the Power Station

2.1 The Power Station shall have a generating capacity of not less than MW.

2.2 The configuration of Units is given below:

(a) The number of Units is

(b) The nameplate capacity of each Unit is..... MW.

3 Dedicated communication

The Power Station shall have a dedicated communication linkage with the Utility.

3 Specifications and Standards

The Power Station shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-C.

4 Station Heat Rate

The Station Heat Rate of the Power station is¹⁷ kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.

5 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) as per the applicable technical standards/regulation notified by CEA.

6 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of 4 (four) hours from the time of each start.

7 Description of the Power Station

¹⁶Three formats have been provided for this Annex-I. Depending on project-specific requirements, the appropriate format of Annex-I may be retained and the remaining two formats may be omitted. In case of non-conventional sources of energy, a suitable format may be evolved.

⁵Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.

¹⁷This figure to be provided by Supplier.

The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Power Station is briefly described below:

A. Boiler

- | | | |
|-------|---|-----------------------------|
| (i) | Type | --- |
| (ii) | Number of steam generators with auxiliaries | |
| (iii) | Steaming capacity (BMCR) | ---T/hr |
| (iv) | Pressure at SH outlet | ---kg/cm ² (abs) |
| (v) | Temperature at SH outlet | ---°C |
| (vi) | Temperature at RH outlet | ---°C |

B. Steam Turbine

- | | | |
|--------|---------------------------------------|-----------------------|
| (i) | Type | |
| (ii) | Number | |
| (iii) | TMCR output | ---MW |
| (iv) | VWO output | ---MW |
| (v) | Turbine inlet pressure at TMCR | ---kg/cm ² |
| (vi) | MS temperature at turbine inlet | ---°C |
| (vii) | RH temperature at turbine inlet | ---°C |
| (viii) | HP/LP by pass | ---% |
| (ix) | Boiler feed pump | |
| | (a) TDBFPCapacity(m ³ /hr) | --- |
| | (b) MDBFPCapacity(m ³ /hr) | --- |

C. Condenser

- | | | |
|-------|----------------------------------|---------------|
| (i) | Type | |
| (ii) | Design cooling water temperature | ---°C |
| (iii) | Tube material | |
| (iv) | Type of cooling water | |
| (v) | Condensate polishing plant | ---(Capacity) |

D. Generator

- | | | |
|-------|--------------|--------|
| (i) | Number | --- |
| (ii) | Capacity | ---MVA |
| (iii) | Power factor | --- |
| (iv) | Cooling | |
| | (a) Rotor | --- |
| | (b) Stator | --- |

SCHEDULE –B
(See Clause 9.1)

PERFORMANCE SECURITY BY THE SUPPLIER AND THE UTILITY

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

WHEREAS:

- (A) (the “**Supplier**”) and [the.... Distribution Company] represented by....and having its principal offices at.... (“**Utility**”) have entered into an Power Purchase Agreement dated(the “**Agreement**”) whereby the Utility has agreed to the Supplier undertaking the financing and operation of the Power Station with a generating capacity ofMW in the State ofon finance, own and operate (the “**FOO**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Parties to furnish a Performance Security in a sum of [Rs..... cr. (Rupees.... crore)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).
- (C) We,.... through our Branch atthe “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.
5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Parties shall have provided another Performance Security in substitution of this Performance Security.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith,

and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

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

Signed and sealed this.... day of20.... 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.

SCHEDULE – C
(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of20....

AMONGST

1.Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2.(name and particulars of the Default Escrow Bank), through itsbranch, and having its registered office at.... (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The....Distribution Company represented byand having its principal offices at(hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Utility has entered into a agreement datedwith the Supplier (the “Power Purchase Agreement”) for supply of.... MW of electricity from the Power Station at....in the State of...., and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Utility’s payment obligations to the Supplier under the Power Purchase Agreement, the Utility is required to establish a default escrow account on the terms and conditions stated therein (the “**Default Escrow Account**”).

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Utility, and shall commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

“Default Escrow Account” shall have the meaning set forth in Recital B of this Agreement;

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

“Power Purchase Agreement” shall have the meaning set forth in Recital A of this Agreement;

“Security” shall have the meaning set forth in Clause 3.1;

“Utility Account” shall have the meaning set forth in Clause 2.4;

“Utility Escrow Default” shall have the meaning set forth in Clause 8.1;

“Utility’s Lenders” means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Utility and who have, for the repayment and/or discharge of obligations of the Utility been provided security by way of a charge on the Revenues of the Utility, as specified in Annex-I hereto.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Power Purchase Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Purchase Agreement.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Power Purchase Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Utility hereby appoints the Default Escrow Bank to act as trustee for the Supplier and the Utility in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Utility pursuant to the provisions of this Agreement and the Power Purchase Agreement. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Utility with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Supplier and the Utility, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.
- 2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

The Default Escrow Bank and the Utility acknowledge that at least 30% (thirty per cent) of the Utility's total monthly Revenues are being deposited in the Utility's existing account at the Default Escrow Bank (the "**Utility Account**"), and the Utility undertakes to maintain the Utility Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Utility. For the avoidance of doubt, the Default Escrow Bank shall be entitled to

deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Power Purchase Agreement, the rights of the Supplier and the Utility in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Utility expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Monthly Payment for and in respect of each and every month until termination of this Agreement (the “**Security**”).

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Utility Account from the Utility Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Utility and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Utility Escrow Default and until delivery of notice that the Utility Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to the Utility and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Utility of the Secured Obligations in the manner contemplated under this Agreement and the Power Purchase Agreement.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Utility upon a certificate signed by or on behalf of the Utility;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Utility in connection herewith; and
- (d) shall within 5 (five) business days after receipt, deliver a copy to the Utility of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE UTILITY

4.1 General

- 4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Power Purchase Agreement and this Agreement.
- 4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues

therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

- 4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

- 4.2.1 The Utility hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Utility further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Utility's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Utility's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Supplier pursuant to the Deed of Hypothecation. The Utility expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.
- 4.2.2 The Utility agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Supplier in accordance with Clause 4.2.1.
- 4.2.3 The Utility may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Supplier over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Utility in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Utility Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Utility from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

- 5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.
- 5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Utility or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Utility

The Utility and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Utility Account, without any further authorisation or instructions from the Utility, funds aggregating an amount equal to the Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Utility irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Utility Account to the Default Escrow Account on a monthly basis, an amount equal to the Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Contract Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 Drawal against Letter of Credit

- 5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Power Purchase Agreement, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

- 5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Monthly Payment.

5.6 Withdrawals upon Termination

- 5.6.1 Upon Termination of the Agreement For Procurement of Power, if the Utility fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Power Purchase Agreement, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.
- 5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Power Purchase Agreement .
- 5.6.3 The Utility expressly acknowledges and agrees that upon Termination of the Power Purchase Agreement, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Utility Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Utility agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Supplier or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

- (a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or
 - (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;
- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;

- (i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Utility and the Supplier as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at and its branch among others, at and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or
 - (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favour of any other person other than the Supplier, save and except those created in favour of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Default Escrow Bank and the Utility that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Supplier has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or
 - (ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Supplier before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Supplier to perform its duties and obligations under this Agreement.

7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;
- (b) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;
- (c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of

Hypothecation , in favour of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;

- (d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:
 - (i) the execution, delivery, performance and observance by the Utility of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
 - (iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;
- (e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Agreement and the Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

Following events shall constitute an event of default by the Utility (a “**Utility Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

- (a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Utility Account as provided herein and fails to cure such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;
- (b) the Utility does not deposit or cause to be deposited an amount equal to the Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;

- (d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;
- (g) the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Power Purchase Agreement; and
- (i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Utility in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow

Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (i) cease therewith accepting any payments or deposits into the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within 30 (thirty) days of such closing, provide to the Utility and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Utility and the Supplier, made on or after the payment by the Utility of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Utility. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Utility shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

11.1.1 The Utility will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Agreement or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

11.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Utility's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

11.1.3 The Default Escrow Bank will indemnify, defend and hold the Utility and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Utility or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

- 12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where the headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

13.3 Priority of agreements

In the event of any conflict between the Power Purchase Agreement and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

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

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

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

SIGNED, SEALED
AND
DELIVERED
For and on behalf of
THE DEFAULT
ESCROW BANK by:

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

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

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

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

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors

In the presence of:

1.

2.

Annex- I
(Schedule-C)

Annex-I: Utility's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

SCHEDULE – D
(See Clause 13.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this theday of20....

BETWEEN

1. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. TheDistribution Company represented byand having its principal offices at.... (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Utility has entered into a agreement dated.... with the Supplier (the “**Power Purchase Agreement**”) for supply of MW of electricity from the Power Station atin the State ofand a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Utility’s payment obligations to the Supplier under and in accordance with the Power Purchase Agreement, the Utility is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement datedentered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.
- (C) To further secure the Secured Obligations, the Utility has agreed to grant a charge and security interest in favour of the Supplier on the Utility’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Deed” means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

“Default Escrow Agreement” shall have the meaning set forth in Recital B of this Deed;

“Hypothecated Interest” shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

“Power Purchase Agreement” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Power Purchase Agreement or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Purchase Agreement or the Default Escrow Agreement, as the case may be.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Power Purchase Agreement shall apply, *mutatis mutandis*, to this Deed.

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Power Purchase Agreement and agreeing to make available to the Utility the Contracted Capacity, subject to the terms and conditions set out in the Power Purchase Agreement, the Utility hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Power Purchase Agreement.

2.2 Creation of Charge

- 2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Power Purchase Agreement, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Monthly Payment for and in respect of any month (collectively, the **“Hypothecated Interest”**).
- 2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Utility Escrow Default.

- 2.2.3 At any time after a Utility Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Power Purchase Agreement.
- 2.2.4 Following the occurrence of a Utility Escrow Default, the Supplier shall not, save and except as may be required under the Power Purchase Agreement, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:
- (a) take action or obtain judgement or any arbitration award against the Utility in any court or before any arbitrator;
 - (b) make or file any claim or proof in a winding up or dissolution of the Utility; and
 - (c) exercise any legal remedies, which may be available to it under or in respect of the Power Purchase Agreement.

2.3 Release of Charge

- 2.3.1 Upon termination of the Power Purchase Agreement in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.
- 2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:
- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
 - (b) re-assign, retransfer or re-convey to the Utility, or as it may direct, the Hypothecated Interest; and
 - (c) execute all such documents and do all such other acts as may be required by the Utility in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

- 3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Utility shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Utility, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.
- 3.2 The Utility shall be entitled to create a subordinate/second charge in favour of the Utility's Lenders or any other entity over the Hypothecated Interest, provided,

however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

- (a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Supplier;
- (d) based on available records, the Revenues are believed by the Utility to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Utility and the Utility has full right and interest in the Revenues;
- (e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;
- (f) the execution, delivery and performance of this Deed by the Utility have been duly authorised by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or
 - (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Utility routed through the Default Escrow Account after the date hereof, except as permitted under this Deed;

- (h) as of the date hereof and until the expiry of this Deed, the Utility Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and
- (i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;
- (b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and
- (c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or
 - (ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. UTILITY'S COVENANTS

5.1 The Utility covenants that during the term of this Deed:

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;
- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain

and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;

- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:
 - (i) the execution, delivery, performance and observance by the Utility of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;
- (i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

The Utility shall, from time to time, upon the request of the Supplier, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Deed or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

7.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Utility's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and

- (b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Supplier to the Utility or to any other party providing Security for the Secured Obligations;
- (b) any amendment to the Power Purchase Agreement or the Default Escrow Agreement not agreed to by the Supplier;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Power Purchase Agreement or the Default Escrow Agreement or any documents connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Utility's liability hereunder; and
- (e) any change in the structure or organisation of the Utility as a result of a Change in Law, insolvency of the Utility or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Deed constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Deed or any transaction contemplated by this Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Power Purchase Agreement and this Agreement, the provisions contained in this Deed shall prevail over the Power Purchase Agreement.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Deed in any manner.

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

10.6 No third party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

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

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the

signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE UTILITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

SCHEDULE –E
(See Clause 13.2.1)
LETTER OF CREDIT

DATE:....

TO: Limited (the “**Supplier**”)

FROM: (Specify the name and address of the bank issuing the Letter of Credit)^{\$}(the “**Bank**”)

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

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs.Rupees....)^{\$\$}(the “**Monthly Payment**”), payable not more than once in a month upon notice received from the Supplier to this effect.
2. The Letter of Credit shall come into force with effect from...., 20.... and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the “**Expiry Date**”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under an Power Purchase Agreement dated....entered into between the Utility and the Supplier (the “**Power Purchase Agreement**”) for supply ofMW of electricity from the Power Station owned and operated by the Supplier in the State of
4. Any reference to the Power Purchase Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Power Purchase Agreement 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:

^{\$} As provided in Article 13 of the Power Purchase Agreement, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement

^{\$\$} The Letter of Credit shall be modified and renewed once every year to reflect the revision in Monthly Payment in accordance with the provisions of the Agreement

- (i) a copy of the Monthly Invoice (as defined in the Power Purchase Agreement) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and
 - (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Power Purchase Agreement) is in accordance with the Power Purchase Agreement and that the amount due has remained unpaid and has not been disputed by the Utility.
- 6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
- 7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.
- 8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated, entered into between the Bank, the Utility and the Supplier.
- 9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
- 10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.
- 11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.
- 12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.
- 13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
- 14. This Letter of Credit is governed by the Laws of India.

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

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

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

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

Signed and sealed this.... day of20....at

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

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

NOTES:

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

Schedule F

F. METHODOLOGY FOR CALCULATION OF ECR FOR BLENDING WITH ALTERNATE SOURCES

Methodology for calculation of compensation due to blending of Imported coal or coal arranged by Supplier from alternate sources due to shortfall in linkage coal

The SHR and Auxiliary Consumption for calculations shall be as considered by CERC for similar projects whose tariff is being determined under section 62 of the Act for relevant unit capacity and configuration.

Methodology for calculating compensation

Step-1: ECR linkage Coal_(Delivery point) = ECR Quoted

Step -2: ECR imported Coal/arranged from other sources _(Delivery point) = $\{ [GSHR/GCV \text{ of imported /other Coal}] \times [\text{Price of Imported/other Coal}] \times [1/(1-AuxConsumption)] \times [1/(1-Applicable Transmission losses)] \}$

Step-3: ECR Chargeable_(Delivery point) = $\{ (GXECR \text{ at Step-1}) + [ECR \text{ computed at Step-2} \times (1-G)] \}$

Step-4: Compensation = $\{ (ECR \text{ as computed at Step-3} \text{ minus } ECR \text{ at Step-1}) \times \text{Scheduled Generation at Delivery Point} \}$.

Where,

G = % Generation achieved based on Actual linkage Coal received;

GSHR = Normative Gross Station Heat Rate for similar generating units as per applicable CERC Regulations under Section 62 of the Act;

Aux Consumption = Normative auxiliary consumption for similar generating units as per applicable CERC Regulations under Section 62 of the Act;

Note:

- a) If the actual generation at delivery point is less than scheduled generation at delivery point, it will be restricted to actual generation at delivery point in step 4above.
 - b) All facts, figures and computations in this regard should be duly certified by the auditor.
 - c) The coal consumed from all the sources on month to months hall be duly certified by the auditor and the same shall be reconciled annually with the Opening Stock, coal received during the year, coal consumed during the year and the closing stock.
 - d) Total Generation Ex-bus and Scheduled Generation Ex-bus on month to month basis as per the meters at the station switchyard bus shall be reconciled with the relevant/SCADA data of SLDC/RLDC and/or Regional Energy Accounting of RPC/RLDC for the month.
2. There are some plants which are supplying electricity under Section 62 as well as 63 of the Act. In such cases the percentage of blending will be assumed to be same for PPAs under Section 62 and 63 of the Act.
3. The recovery of fixed charge shall continue to remain on the same basis as provided in the PPA.

SCHEDULE –G

G. METHODOLOGY FOR CALCULATION OF RAMP RATE PENALTY

Penalty calculation methodology for Ramp rates < 1%/minute

Td - The number of blocks in which both declared ramp up rate and declared ramp down rate are 1%/minute or greater (i.e. 15% of ex-bus generation corresponding to MCR per time block) shall be counted as “Td”

Tm - The total number of time blocks in the period of computation shall be counted as “Tm”. The blocks in which no units are on-bar (i.e zero DC on-bar) and the blocks in which the schedule is less than technical minimum (i.e. start-up or shutdown) shall not form part of “Td” and “Tm”.

D - Number of time blocks during the computation period when the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule.

F - Number of blocks in which the station has achieved ramp rate greater than or equal to 1%/min, out of the blocks in which the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule. F is a subset of D.

$R = \text{minimum of } (Td/Tm, F/D)$

For $R \geq 0.9$, $P=0$

For $0.75 < R < 0.9$, $P = 6.003 - 6.67R$

& for $R \leq 0.75$, $P=1$

Where P is the fraction to be multiplied to annual fixed charges to get penalty for ramp rate as specified in 11.6.1