

**IMPLEMENTATION AGREEMENT**

**FOR**

**..... MW CONVENTIONAL FUEL BASED THERMAL POWER PROJECT**

This Implementation Agreement (hereinafter referred to as the “**Agreement**”) made on this .....day of ....., 20.....

**BETWEEN**

The Governor of Madhya Pradesh acting through (its) Secretary to Government of Madhya Pradesh, Energy Department, Mantralaya, Vallabh Bhawan, Bhopal (hereinafter referred to as the “**Government**” which expression unless repugnant to the context or meaning thereof, shall include its successors and permitted assignees), as the **FIRST PART**;

**AND**

M/s ..... a company incorporated under the Companies Act, 1956 (1 of 1956) having its registered office at ..... (hereinafter referred to as the “**Company**” which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assignees), through Shri ..... who has been duly authorized by the Company vide their Board resolution dated ..... to execute this Agreement, as the **SECOND PART**.

The Government and the Company shall hereinafter be collectively referred to as “**The Parties**” and individually referred to as “**The Party**”.

*[Insert this recital only in case of a consortium]* **AND WHEREAS**, the Company, being the lead member of the Developer consortium (as per the consortium agreement annexed as Annexure – B1), is executing this Implementation Agreement on behalf of the consortium for establishing and operating a ..... MW Thermal Power Station (hereinafter referred to as “**The Project**”) along with the other members of the consortium at ..... in the State of Madhya Pradesh with the proposed investment of approximately Rs. .... Crores in accordance with the provisions of the **Madhya Pradesh (Investment in Power Generation Projects) Policy, 2012**;

**AND WHEREAS**, the Parties entered into a Memorandum of Understanding (hereinafter referred as “**MoU**”) for implementation of the Project on ..... day of ....., 20..... in accordance with the provisions of the **Madhya Pradesh (Investment in Power Generation Projects) Policy, 2012**;

**AND WHEREAS**, as per the requirement of Clause 25 of the MoU, the Company has achieved the required milestones as annexed in Annexure - B2;

**AND WHEREAS**, as per the Clause 24 of the MoU, the Parties have agreed to replace the said MoU by an Implementation Agreement (IA) during the validity of the MoU;

**AND WHEREAS**, the company is now desirous of undertaking the implementation of the Project in accordance with the conditions set forth in this Agreement;

**Now therefore**, in consideration of the foregoing and all other related factors, the Government and the Company execute this Agreement on the terms, assurances, obligations and commitments as set out herein below:

## ARTICLE I

### DEFINITIONS & INTERPRETATIONS

#### 1.1 DEFINITIONS

In this agreement, the following words and expressions shall have the respective meanings set forth below, unless the context otherwise requires:

- 1.1.1 **“Act” or “Electricity Act 2003”** shall mean “The Electricity Act 2003” (36 of 2003) as amended from time to time;
- 1.1.2 **“Agreement” or “Implementation Agreement” or “IA”** shall mean this agreement together with all its annexures and schedules, if any, and any amendments thereto, made in accordance with the provisions contained herein;
- 1.1.3 **“Agreement Period”** shall have the meaning as specified in Article II;
- 1.1.4 **“Applicable Permits”** shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project Site during the subsistence of this Agreement;
- 1.1.5 **“Appropriate Commission”** shall mean Central Electricity Regulatory Commission (CERC) or Madhya Pradesh Electricity Regulatory Commission (MPERC) as the case may be;
- 1.1.6 **“Arbitration Act”** means the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, and shall include modifications to or any re-enactment thereof as in force from time to time;
- 1.1.7 **“Authority”** shall mean the Central Electricity Authority constituted under Sub-section (1) of Section 70 of Electricity Act, 2003 or its successors;
- 1.1.8 **“Commercial Operation Date” or “COD”**, in relation to a Unit shall mean the date declared by the Company after notice to the First Party on demonstrating the Maximum Continuous Rating (MCR) of installed capacity through a successful trial run; and in relation to the Power Station shall mean the Commercial Operation Date of the last Unit of the Power Station;
- 1.1.9 **“Company”** shall mean **M/s** ....., a company incorporated under the Companies Act, 1956 (1 of 1956) having its registered office at ....., India, ..... [*Insert the following in case of the Developer being a consortium: “and has been identified as the lead member of the consortium intending to develop a power project under this Agreement as per the consortium agreement annexed as Annexure – B1 to this Agreement”*], and shall, unless repugnant to the context or meaning thereof, also include their successors, administrators or permitted assignees acting through Shri ....., who has been duly authorized by the Company vide their Board resolution ..... dated ..... to execute this Agreement;
- 1.1.10 **“Concessional Energy”** Shall have the same meaning as set forth in Article III.

- 1.1.11 “**Contractor**” shall mean any person, firm or body corporate engaged by the Company for the implementation / operation of the Project;
- 1.1.12 “**Control Centre**” or “**State Load Despatch Centre**” shall mean the State Load Despatch Centre (SLDC) located at Jabalpur or such other control center designated by the GoMP from time to time (but not more than one at a time) wherefrom Despatch Instructions shall be issued;
- 1.1.13 “**Debt**” shall mean the amount of any loan, non-convertible debenture or other financial facility, raised and received by the Company under the Financing Agreements, and actually expended (or to be expended) for the Project and which shall not be greater than the principal amount of debt specified in the applicable currency in the estimate of the project cost as per Financing Documents;
- 1.1.14 “**Delivery Point**” shall mean the ex-bus point of the Power Station at the Power Station switchyard;
- 1.1.15 “**Despatch**” means to schedule and control the generation from the Power Station in order to commence, increase, decrease or cease the Electrical Output as delivered to the Grid System in accordance with the instructions from the Control Centre / LDC in conformity with the Grid Code, this Agreement and Prudent Utility practices;
- 1.1.16 “**Despatch Instruction**” shall mean any instruction for scheduling of power issued by the GoMP through the concerned State Load Despatch Centre and/or RLDC to the Company, in accordance with applicable Grid Code and this Agreement;
- 1.1.17 “**Dispute**” means any dispute or difference of any kind between the Government and the Company in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement;
- 1.1.18 “**Developer**” shall mean a single company or a consortium of companies formed for jointly developing a power project under the **Madhya Pradesh (Investment in Power Generation Projects) Policy, 2012**.
- 1.1.19 “**Effective Date**” shall mean the date of signing of this Agreement;
- 1.1.20 “**Electrical Output**” or “**Net Power**” shall mean the gross electrical energy in kilo watt hour (kWh) generated by one or more Unit(s) or the Power Station, as the case may be, reduced by normative auxiliary consumption for power station(s) having similar Unit capacity(s) as prescribed by the Appropriate Commission and delivered at the Delivery Point;
- 1.1.21 “**Electricity Laws**” means the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments and replacements thereof in whole or in part and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
- 1.1.22 “**Equity**” shall mean the aggregate of all subscribed and paid up share capital of the Company in different currencies as converted to Rupees, by application of the procedure approved by the applicable authority / Government of India, as invested in the Project and held by one or more shareholders in the Company;

- 1.1.23 **“Detailed Project Report”** or **“DPR”** shall mean the Detailed Project Report (DPR) submitted by the Company after carrying out necessary detailed investigations / confirmatory surveys, etc for the project mentioned in this Agreement;
- 1.1.24 **“Financial Closure”** shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedent there under and/or waiver; of any of such conditions precedent for the initial draw down of funds there under;
- 1.1.25 **“Financing Agreements”** shall mean the agreements pursuant to which the Company has sought financing for the Power Station including the loan agreements, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the GoMP;
- 1.1.26 **“Financing Package”** means the financing package of the Project indicating the Project Cost and the means of financing thereof as per the Detailed Project Report (DPR) for the project;
- 1.1.27 **“Force Majeure”** shall have the meaning as described thereto in Article;
- 1.1.28 **“GOI”** shall mean the Government of India;
- 1.1.29 **“GoMP”** shall mean the Government of Madhya Pradesh;
- 1.1.30 **“Governmental Approvals”** means all approvals, consents, permits, licenses or other actions, required to be taken or obtained from the Government or any Governmental Instrumentality of India and / or Madhya Pradesh in connection with this Agreement or the Project;
- 1.1.31 **“Grid Code”** or **“IEGC”** shall mean any set of regulations or codes issued by the Appropriate Commission as amended and revised from time to time and as applicable to the Power Station and the GoMP governing the operation of the Grid System or any succeeding set of regulations or code;
- 1.1.32 **“Grid System”** shall mean the interconnection and transmission facilities and any other transmission or distribution facilities through which the GoMP supply electricity to its customers or the transmission company transmits electricity to the GoMP;
- 1.1.33 **“Interconnection Facilities”** shall mean all the facilities, which shall include without limitation, switching equipment, communication, protection, control and metering devices etc. at the Delivery Point(s) to be installed and maintained at the cost of the Company to enable evacuation of Net Power from the project in accordance with this Agreement;
- 1.1.34 **“Law”** means, all Regulations and Acts notified by the Government of India, Government of Madhya Pradesh and Appropriate Regulatory Commission(s) from time to time, to the extent they are applicable to this Agreement and this Project;
- 1.1.35 **“LDC”** shall mean "National Load Despatch Centre" or "Regional Load Despatch Centre" or "State Load Despatch Centre" or its successor entity notified as per the Electricity Act, 2003;
- 1.1.36 **“Lenders”** means the banks, other financial institutions, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as at Financial Closure to provide the Company

with the debt financing described in the capital structure schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned;

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

- 1.1.37 “**MOEF**” shall mean Ministry of Environment & Forests, GOI or its successor authority / agency;
- 1.1.38 “**MPERC**” means Madhya Pradesh Electricity Regulatory Commission;
- 1.1.39 “**Net Power**” shall mean the gross electrical energy in kilo watt hour (kWh) generated by one or more Unit(s) or the Power Station, as the case may be, reduced by normative auxiliary consumption for power station(s) having similar Unit capacity(s) as prescribed by the Appropriate Commission and delivered at the Delivery Point;
- 1.1.40 “**Permanent Works**” shall mean the permanent works forming part of the Project that are required to be constructed / installed and maintained as such for the implementation / operation of the Project for at least the PPA Period and shall also include housing facilities for staff to be engaged for operation and maintenance of the Project;
- 1.1.41 “**PPA**” shall mean the Power Purchase Agreement annexed at Annexure –I to this agreement;
- 1.1.42 “**Project**” shall mean the ..... conventional fuel based thermal power project having a proposed installed capacity of ..... MW and proposed to be established at ..... District ..... in the State of Madhya Pradesh, India;
- 1.1.43 “**Prudent Utility Practices**” shall mean those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safety, efficient and economic design, engineering, construction, commissioning, testing, operation and maintenance of various components of the Project of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary to take into account;
- i) Installation, Operation and maintenance guidelines recommended by the manufactures of plant and equipment to be incorporated in the Project;
  - ii) The requirement of Indian Law;
  - iii) Conditions affecting the Grid System; and
  - iv) Physical conditions at the Site.
- 1.1.44 “**Scheduled Commercial Operation Date**” or “**Scheduled COD**” shall mean the date by which the Company shall have achieved the Commercial Operation of the Project and shall be within seventy two (72) months from the Effective Date;
- 1.1.45 “**State**” shall mean the State of Madhya Pradesh;
- 1.1.46 “**Station**” shall mean the ..... Thermal Power Station;
- 1.1.47 “**Temporary Works**” shall mean all temporary works of any kind required in connection with the implementation of the Project and that are incidental and ancillary to the design,

engineering and construction of the Project and are constructed / installed and maintained till the Commercial Operation Date for the Project, and not forming part of Permanent Works;

- 1.1.48 **“Unit”** shall mean, in relation to the Power Station one steam generator, one turbine, one electrical generator and associated auxiliaries of the Power Station, all of which together are capable of generating electricity at the terminals of the electrical generator;
- 1.1.49 **“Variable Charge/Cost”** shall have the meaning ascribed to the term under “CERC Tariff Regulation 2009” in priority the following:-
- (a) in case any part of the power from the power station is sold subject to the determination of tariff (variable cost) by the Madhya Pradesh Electricity Regulatory Commission, the variable cost so determined by such Commission; and
  - (b) in case no part of the power is sold subject to the determination of the tariff (variable cost) by the Madhya Pradesh Electricity Regulatory Commission, then variable cost shall be as determined by the Madhya Pradesh Electricity Regulatory Commission on a reference being made by the GoMP requesting the said Commission for such determination of variable cost under the provisions of the Electricity Act, 2003.
- 1.1.50 **“Works”** shall mean all works of civil, electrical, mechanical, control and instrumentation in nature and including design, engineering, services, supplies and other work activities required and necessary for implementation of the Project and shall also include Permanent Works and Temporary Works;

## **1.2 INTERPRETATIONS**

In this Agreement, unless the context otherwise requires:

- 1.2.1 Any reference to a statutory provision shall include such provisions as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into here under.
- 1.2.2 The references to persons denoting natural persons shall include corporate bodies, partnerships, joint ventures and Statutory and other authorities and entities.
- 1.2.3 The nomenclature of the Agreement, headings and paragraph numbers are for the convenience of reference and shall be ignored in construing or interpreting the Agreement.
- 1.2.4 Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Article shall not operate so as to increase the liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.
- 1.2.5 Any reference to period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include such days or dates.
- 1.2.6 Unless otherwise expressly provided in this Agreement, any Documentation required to be provided or furnished by the Company to the Government shall be provided free of cost and in three copies and if Government is required to return any such Documentation with their comments and / or approval, they shall be entitled to retain two copies thereof:

The words / expressions used in this Agreement shall bear the same meaning as assigned to them in the context in which these have been used in this Agreement provided that their respective meaning, if any, assigned to such undefined word / expression in the Electricity Act, 2003 shall also be taken into consideration for harmonious interpretation of the Agreement.

## **ARTICLE II**

### **TERM OF THE AGREEMENT**

#### **2.1 Effectiveness**

The Agreement shall come into force with effect from the date of signing of this Agreement.

#### **2.2 Agreement Period**

Unless terminated earlier by either Party in accordance with the terms and conditions set forth herein, this Implementation Agreement shall remain in force ("the Term") from the Effective Date up to life of the Project.

## **ARTICLE III**

### **CONCESSIONAL ENERGY**

#### **3.1 Concessional Energy**

- i. For the term<sup>1</sup> of the PPA, the Company will provide, on an annualized basis, to the Government or its nominated agency, ten percent (10%) of the Net Power generated by the Project at the variable cost as approved by the Appropriate Regulatory Commission.
- ii. The quantum of Net Power to be provided at Variable cost, as defined in Article 3.1(i), will be computed on the basis of installed capacity of the Project, on an annualized basis. The quality of such power shall be firm power and at no time, the Company shall be supplying such power less than ninety percent (90%) of the quantum specified in Article 3.1(i). However, such percentage shall not be more than One hundred & ten percent (110%) during the off-peak period. The off peak period shall be notified by the Government or its nominated agency from time to time. The detailed protocols and procedure for supply and evacuation of such power shall be set out in the appropriate Power Purchase Agreement (PPA) to be signed between the Company and the Government or its nominated agency.

#### **3.2 Transmission and Wheeling Agreement**

The Company shall enter into a separate Wheeling Agreement, if required, to transfer power to Government or its nominated agency, as per the provisions of the Electricity Act, 2003 and in accordance with applicable regulations either through MP Power Transmission Company Ltd. or PGCIL / other Grid Lines as the conditions necessitate and as may be technically

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<sup>1</sup> Term herein shall mean the period from the date of execution of the PPA till the last anniversary of the life of the Power Station as prescribed in the appropriate regulations of the Central Electricity Regulatory Commission, as existing at the time of signing of the PPA

feasible.

## **ARTICLE IV**

### **OBLIGATIONS**

#### **4.1 Obligations of the Company**

##### **4.1.1 Formation of a SPV**

The Developer (being either a single company or a consortium of companies) shall, if not formed earlier specifically to develop the proposed Project, necessarily incorporate a new public / private limited company as a special purpose vehicle (SPV), having its registered office and corporate office in the State of Madhya Pradesh, for executing the PPA and setting up the Project.

##### **4.1.2 Signing of PPA**

###### **4.1.2.1 Signing of PPA for Concessional Energy**

A Power Purchase Agreement (PPA), as per Annexure-I, shall be executed between the SPV and the Government or its nominated agency, within six (6) months of signing this agreement for the supply of Concessional Energy for the term of the PPA specified in Article 3.1(i). However, the Government shall have sole and exclusive right to extend the above time limit for signing of PPA, at its discretion. The Company hereby acknowledges Government's right in this regard.

4.1.2.2 Failure to execute the PPA by the Company as per Articles 4.1.2.1 above within the specified period may lead to termination of the Agreement and withdrawal of all facilities provided to or availed by the Company. This shall also include recovery of all benefits gained by the Company by utilizing any or all those facilities.

##### **4.1.3 Submission of progress report, Project related Agreements**

The Company shall furnish to the Energy Department Govt. of Madhya Pradesh, quarterly progress reports of actual progress of the Project and shall give all such other relevant information as may be required by the Government.

##### **4.1.4 Wheeling**

The Company shall obtain and maintain all necessary approvals and clearances from the appropriate licensee(s) to wheel power to Government or its nominated agency as per the provisions of Electricity Act, 2003.

The Company shall pay to the licensees the wheeling charges and such other applicable charges as determined by the Appropriate Commission from time to time for the actual power wheeled through the Intra-State and Inter-State transmission lines as the case may be up to the interconnection point.

##### **4.1.5 Statutory taxes, duties / cess**

The Company shall pay all statutory taxes, duties, cess to Government of India and to the State Government, as may be applicable from time to time.

#### **4.1.6 Charge on sale of electricity outside the state**

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#### **4.1.7 Performance of obligation in PPA**

The Company shall enter into the PPA with the Government or its nominated agency for the quantum of power to be supplied to the Government or its nominated agency as specified in Article III. The Company shall perform its obligations arising under or in connection with the PPA in accordance with the terms thereof.

#### **4.1.8 To provide all information required under Approvals**

The Company shall provide all information and supporting documentation lawfully required by any competent authority in any application for the grant of or under any Governmental approval in respect of setting up, owning, operating and maintaining the Project.

#### **4.1.9 Suitable manpower**

Suitable manpower for the Project for which this Implementation Agreement is being executed will be engaged / recruited / deployed by the Company from the State of Madhya Pradesh as per the Industrial Policy or any other prevailing Policy of the Government as amended from time to time in this regard.

#### **4.1.10 Rehabilitation & Resettlement Plan**

The Company shall prepare Rehabilitation & Resettlement plan for the Project as per the prevalent Policy of the State Government and implement Rehabilitation & Resettlement of Project Affected Persons accordingly. The Company shall bear all costs related to such Rehabilitation & Resettlement.

#### **4.1.11 Compliance with statutory requirements and clearances**

The Company will abide by all Regulations and Acts notified by the Government of India, Government of Madhya Pradesh and Appropriate Commission(s) from time to time, to the extent they are applicable to the Project.

#### **4.1.12 State of the Art Technology**

The Company shall adopt appropriate State of the Art technology for setting up the Power Plant to have environment friendly, safe and commercially viable power generation, to minimize resource inputs such as fuel, coal, water etc.

#### **4.1.13 Commercial Operation Date (COD)**

The Company shall achieve COD within ..... (...) [*insert number of months not more than 72*] months from the Effective Date.

#### **4.1.14 Safety Measures**

The Company shall ensure proper safety measures during implementation of the Project including any geological study, construction and testing at the site as per applicable Laws.

#### **4.1.15 Promoters' Equity in the SPV**

The Developer shall necessarily incorporate a new public / private limited company as a special purpose vehicle (SPV), if not already incorporated specifically to develop the proposed Project, having its registered office and corporate office in the State of Madhya Pradesh, for executing the PPA and implementation of the Project. All rights and obligations under this Agreement shall thereafter be transferred to the new Company.

Unless otherwise permitted by the Government, the aggregate equity contribution of the Company (being either single company or the lead member in a consortium) in the SPV shall not be less than fifty one percent (51%) during the construction period of the Project and until two (2) years following the COD.

#### **4.1.16 Expanded Capacity**

In the event of any increase in the installed capacity or any expanded capacity to the existing Unit(s) under the Project, a fresh MoU and Implementation Agreement shall be signed for such increase in the capacity as per prevailing policies of the Government at that time.

#### **4.1.17 Offers and Special Considerations**

The Company understands that the offers and special considerations of the Government indicated in this Implementation Agreement are for the Project. The Company shall be fully responsible for any damage or loss arising out of the Project to any Property or persons.

In the event of non-implementation of the Project, the corresponding support / commitment of the Government indicated in the Implementation Agreement with regard to land, water, coal block, etc including all incentives and concessions of the Government shall be deemed to be withdrawn. The Second Party shall be under obligation to handover the land, and other property belonging to the State of Madhya Pradesh to the First Party immediately after the cancellation of the Agreement.

### **4.2 Obligations of the Government**

#### **4.2.1 Assistance in Obtaining Clearances / Approvals, etc.**

- i. On receipt of the Detailed Project Report (DPR) from the Company, the Energy Department Government of Madhya Pradesh, will verify various requirements. The Company shall proceed with the development of the Project including, but not limited to, land acquisition, water allocation, coal linkage and or, captive coal block allocation, and statutory and other clearances required under the applicable Central and State Laws for implementation of the Project. The primary responsibility of development of the Project shall be of the Company. The Government, through its Energy Department, will facilitate the Project development activities by extending cooperation to the Company.

- ii. The Government, through its Energy Department, shall facilitate grant of permissions, approvals, no objection certificates, recommendations etc. under the purview of the State Government. The Company shall be responsible to obtain all statutory clearances / approvals related to Foreign Direct Investment (FDI), if any, as per Law.
- iii. If required, the Government, through its Energy Department, shall facilitate with the concerned distribution utility in the State of Madhya Pradesh to provide power subject to applicable load regulations, for construction, erection, start-up and commissioning of the Project on payment basis at the rates, terms and conditions as prevailing on the date of such supply to the Project.

#### **4.2.2 Acquisition and transfer of land**

The Government may facilitate in acquisition of private land as may be required by the Company as per prevailing Laws for construction, operation and maintenance of the Project (acquired land). The Company shall also be allowed to acquire such land through direct negotiations with the owners in accordance with the prevailing Laws, rules and regulations in the State of Madhya Pradesh. In case the land is owned by the Government, it will be leased out to the Company as per the applicable Laws and policies. However, all the preliminary work to effect such lease shall be done by the Company at its own cost.

#### **4.3 Change in Laws**

Subsequent to the signing of this Agreement, if Government of India, through its Laws, regulations, or its policies, imposes any obligations on the Project to supply free or concessional power to the State where such Project is located, then the Government assures that it will set off such requirement against its entitlement defined under Article 3.1, as the case may be. However, conditions defined in Article – III shall prevail in case such Law / regulation / Policy is less beneficial to the State.

### **Article – V**

#### **REPRESENTATION AND WARRANTIES**

##### **5.1 Representations and Warranties of the Company**

The Company represents and warrants that as of the date hereof:

- (a) The Company is a Company duly registered and validly existing under the Laws of India and has all requisite legal powers and authority to execute this Agreement and carry out the terms, conditions, and provisions hereof :
- (b) It has the financial standing and capacity to undertake the Project;
- (c) It is subject to civil and commercial Laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

- (d) It has complied with all applicable Laws 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 material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (e) There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened against or affecting the Company before any Court or administrative body or arbitral tribunal that might materially or adversely affect the ability of the Company to meet and carry out its obligations under this Agreement;
- (f) The Company has duly paid all rents, royalties and all public demands, including provident fund dues, gratuity dues, employees State Insurance dues and outstanding sales tax, corporation tax and all other taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government / GOI revenue and other taxes;
- (g) The execution and delivery by the Company of this Agreement has been duly authorized by all requisite corporate actions, and will not contravene any provision of or constitute a default under any other agreement or instrument to which it is a party or by which it is or its property may be bound; and
- (h) No representation or warranty by the Company contained herein or in any other document furnished by it to, or to any Governmental agency in relation to clearances and approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty no misleading.

## **Article VI**

### **FORCE MAJEURE**

**6.1** Force Majeure shall mean any event or circumstances or combination of events or circumstances that wholly or partly prevent or unavoidably delay the Party claiming Force Majeure (hereinafter referred to as the "Affected Party") in the performance of its obligations under this Agreement and which act or event;

- i) is beyond the reasonable control of and not arising out of the fault of the Affected Party;
- ii) the Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums and money; and
- iii) has a materially adverse effect on the Project.

Such events may include acts of Government / Government of India either in its sovereign capacity, war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity and earthquakes.

**6.2** **Upon the occurrence of any Force Majeure Event,**

- (a) There shall be no Termination except as provided in Article VIII;
- (b) The date for achieving the specific obligations shall be extended by the period for which such Force Majeure shall exist and the Term of Agreement shall be extended accordingly; and
- (c) The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of any Force Majeure Event.

### **6.3 Obligations**

The Parties shall discharge the following obligations in relation to the occurrence of a Force Majeure Event:

- (a) The Affected Party shall not claim any relief for or in respect of any Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under the Agreement.
- (b) Any notice pursuant to the above Article 6.3(a) shall include full particulars of :
  - (i) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;
  - (ii) 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;
  - (iii) The measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (iv) Any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party's claim continues to be affected by such Force Majeure event, it shall provide the other party with regular (and not less than fortnightly) written reports containing information as required by Article 6.3(b) and such other information as the other Party may reasonably request the Affected Party to provide.
- (d) The Parties shall co-operate and negotiate in good faith and will develop implementation plan of remedial and reasonable alternative measures to remove / remedy Force Majeure Event to enable the performance of the Affected Party provided, however that no Party shall be required under this provision to settle other Party's strike or other labour dispute.
- (e) In case of any Party not willing to implement the plan of remedial and reasonable alternative measures to remove / remedy the Force Majeure event, it shall be

constructed as a default of such Party and then relevant provisions of Article VII shall apply.

- (f) If the Affected Party is rendered wholly or partially unable to perform its obligations under the 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 :
  - (i) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
  - (ii) 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
  - (iii) When the Affected Party is able to resume performance of its obligations under the Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations.

**Article VII**

**EVENTS OF DEFAULT**

**7.1 Company Event of Default**

The occurrence of and continuation of any of the following events shall constitute "Company Event of Default":

- (i) The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations hereunder, or to be bound by this Agreement;
- (ii) The Company assigns all or part of its rights or transfer its obligations under this Agreement in violation of any of the provisions of this Agreement;
- (iii) The Company abandons the implementation of the Project including withdrawing all, or a substantial number of personnel from site, for reasons other than Force Majeure for a continuous period of more than sixty (60) days.
- (iv) The transfer (a) pursuant to Law of either the Company's rights and / or its obligations under this Agreement or all or a substantial portion of the Company's assets or undertakings; or (b) the dissolution of the Company pursuant to Law including, by way of merger or consolidation, liquidation and reconstitution or reorganization unless: (i) the transferee or successor of the Company expressly assumes the obligations of the Company under this Agreement, and (ii) the transferee or successor in interest of the Company has a credit worthiness, in the reasonable opinion of the Government, at least equal to that of the Company and is otherwise fully capable of performing obligations of the Company under this Agreement;

- (v) The material breach by the Company of any terms of this Agreement other than with respect to Sub-Articles (i) and (ii) of this Article 7.1 (iv) above.
- (vi) The failure of the Company to achieve Financial Closure within thirty (30) months of signing this agreement.
- (vii) The failure of the company to achieve Scheduled CoD of the project within seventy two (72) months of signing this agreement.
- (viii) The failure of the company to execute Power Purchase Agreement (PPA) within six(6) months of signing this agreement in accordance to Article 4.1.2.1 of this Agreement or cancellation of PPA by the Government of Madhya Pradesh.

## **7.2 Cure Period**

- (i) Upon the occurrence of a default by a Party (Defaulting Party) pursuant to Article 7.1, the other Party (Non-Defaulting Party) has the right to issue a notice (Notice of Default) specifying in reasonable details the Event of Default giving rise to the Notice of Default.
- (ii) On receipt of the Notice of Default, the Defaulting Party shall take immediate steps to cure such a default within a period of sixty (60) days from the receipt of the Notice of Default with due notice to the Non-Defaulting Party of steps taken by it to cure the above default.
- (iii) In the event the reasons leading to the default have been cured to the reasonable satisfaction of the Non-Defaulting Party, the Notice of Default shall cease to have any effect.
- (iv) In the event the Defaulting Party is unable to cure the default to the reasonable satisfaction of the Non-Defaulting Party within the period specified in Article 7.2(ii) above, the provisions of Article 7.3 shall apply.

## **7.3 Action against default**

Upon the occurrence and continuation of a Company Event of Default under Article 7.3 above, and the failure by the Company to cure such a default within the applicable cure period, specified in Article 7.2(ii), the Government shall have the right to terminate this Agreement by notice to the Company in accordance with the procedures set forth in Article VIII. The Government shall take all necessary action as per applicable Laws which shall inter-alia include recovery of all benefits gained by the Company by utilizing any or all those facilities provided to or availed by the Company from GoMP.

## **ARTICLE VIII**

### **TERMINATION AND TAKING OVER OF THE PROJECT**

#### **8.1 Termination**

##### **8.1.1 Notice of Termination:**

This Agreement may be terminated on serving a thirty (30) days notice (Notice of Termination) by:

- i. The Government, in case of Company Event of Default pursuant to Article 7.1;
- ii. The Government, notwithstanding anything contained in Article VI, if Company is unable to perform any obligations required to be performed under this Agreement due to Force Majeure; and
- iii. The Company, in the event of enactment of any Law or regulation or any subsequent act of any Government authority, which makes the performance of this Agreement impossible for any party.

**8.1.2** On the expiry of the Notice of Termination, the Party, which served the Notice of Termination, shall be entitled to terminate this Agreement under intimation to the other Party, unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party, which issued the Notice of Termination.

**8.2** Termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the Parties, as on the date of the termination, unless waived in writing by the Parties.

**8.3** In the event of this Agreement being terminated prior to signing of the PPA, all rights of the Company in relation to the facilities and benefits extended by the Government to the Company shall revert back to the Government. Termination of this Agreement will cause withdrawal of all facilities provided to or availed by the Company. This shall also include recovery of all benefits gained by the Company by utilizing any or all those facilities.

## **Article IX**

### **RESOLUTION OF DISPUTES**

#### **9.1 Good Faith Negotiations**

In the event of a dispute, disagreement or differences, arising out of or relating to the Agreement between the Parties in respect of which a procedure for resolution of the Dispute is not otherwise provided for in the Agreement, the following provisions shall apply:

- a. Either Party shall give to the other a written notice setting out the material particulars of the Disputes and requiring an authorized senior executive officer, each from the Government and the Company, to meet personally at Bhopal, Madhya Pradesh, India or at any other mutually agreed place within twenty (20) working days of the date of receipt of such notice by the relevant Party to attempt, in good faith, negotiation and using their best endeavors at all time to resolve the Disputes; and
- b. If the Dispute is not resolved as evidenced by the terms of the settlement, agreed in writing and signed by authorised representatives of both the Parties within thirty (30) working days after the date of receipt of the Notice described in Article 9.1 (a), the provisions of Article 9.2 shall apply, unless the above period is mutually extended.

#### **9.2 Arbitration**

(a) Except as otherwise provided in this Agreement, all disputes arising out of or relating to this Agreement shall be referred to Arbitration if dispute is not resolved during the settlement period as per Article 9.1 above.

(b) The Arbitration shall be conducted in accordance with the provisions of "Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration" as amended from time to time.

**9.3** Notwithstanding the existence of any question, disputes and differences referred to Arbitration, the Parties hereto shall continue to perform their respective obligations under this Agreement.

**9.4** The Agreement shall be subject to the jurisdiction of competent court at Bhopal, Madhya Pradesh.

**Article X**

**ADDRESSES**

**10.1** Except as otherwise expressly provided in the Agreement, all correspondences / notices and other communications which are required or permitted hereunder shall be in writing and considered as adequately served if delivered personally (Under acknowledgement) or sent by registered letter with acknowledgement or Speed Post or certified mail, telefax, telex or telegram addressed as follows :

<b>(a) If to the Company</b>	<b>(b) If to the Government</b>

**10.2** Any party may by notice of at least fifteen (15) days to the other Party, change the addresses and / or addressees to which such notices and communications are to be delivered or mailed.

**10.3** The Party sending the notice shall also send a copy to the designated Officer, if any, of the Party specified in respect of that notice in the Agreement.

**Article XI**

**MISCELLANEOUS**

**11.1 Governing Law**

The rights and obligations of the Parties under or pursuant to the Agreement shall be governed by and construed in accordance with the Law of India.

## **11.2 Headings**

The Headings contained in the Agreement are used solely for convenience and shall not be construed to assign any meaning to the Agreement nor shall such headings be used in any manner or aid in construing the Agreement.

## **11.3 Language**

The language of this Agreement shall be English. 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 the Agreement, shall be in writing and in English language.

## **11.4 Amendments**

This Agreement cannot be amended except by written consent of the Parties.

## **11.5 Relationship of the Parties**

This Agreement shall not be interpreted or construed or create an association, Joint venture or partnership between the Parties or to impose partnership obligation or right upon either Party. 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.

## **11.6 Third Parties**

This Agreement is intended solely for the benefit of the parties hereto. 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.

## **11.7 No Waiver**

- (a) No waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under the Agreement:
  - (i) Shall operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under the Agreement;
  - (ii) Shall be effective unless it is in writing and executed by a duly authorized representative of the Party; and
  - (iii) Shall affect the validity or enforceability of the Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Agreement or any obligation there under nor 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.

## **11.8 Exclusion of Implied Warrantees**

The 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.

**11.9 Counterparts**

The Agreement may be executed in two (2) counterparts, each of which when executed and delivered, shall constitute an original of the Agreement.

**11.10 Assignment**

The Agreement shall not be assigned by either Party except by mutual consent of the parties in writing.

**11.11 Indemnity**

The Company shall be fully responsible for any damage or loss arising out of the construction, operation of maintenance of the Project to any property or persons and also undertakes to indemnify the Government on such account.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THESE PRESENT TO BE SIGNED, SEALED AND DELIVERED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THE DATE, MONTH AND YEAR FIRST ABOVE WRITTEN.**

**For and on behalf of  
The Governor of Madhya Pradesh**

**Witness:**  
1. Name: .....  
Designation: .....

.....  
Secretary, (Energy Department)  
Government of Madhya Pradesh

.....  
**(Signature)**  
2. Name: .....  
Designation: .....

.....  
**(Signature)**

**For and on behalf of the Developer**

Name of the Developer (Single Company / Lead member in case of a consortium / SPV)  
M/s .....  
Registered Address: .....

.....  
.....

**Authorised Signatory**

Name: .....

Designation: .....

Complete Address: .....

.....

**Witness:**

1. Name: .....

Designation: .....

**(Signature)**

2. Name: .....

Designation: .....

.....

**(Signature)**

**Annexure - B1:** Copy of the consortium agreement

*[Copy of the consortium agreement, submitted in case of the Developer being a consortium of companies, along with its expression of interest, to be attached here as Annexure - B1 to the Implementation Agreement]*

**Annexure – B2:** Achievement of milestones by the Company as required under Clause 27 of the MoU

The Company, M/s ..... has before the Effective Date has achieved the following requirements as per Clause 27 of the MoU:

- (a) Water Allocation: .....
- (b) Land Acquisition: .....
- (c) Environmental Impact Assessment: .....
- (d) .....
- (e) .....
- (f) .....