

**POWER PURCHASE AGREEMENT
BETWEEN**

M/S (Insert Name of the Company)

AND

**GOVERNMENT OF MADHYA PRADESH
FOR
PROCUREMENT OF POWER ON
VARIABLE CHARGE BASIS**

_____ 2012

Secretary (Energy)
GoMP

Designation of Signatory of IPP

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THIS AGREEMENT IS MADE ON THE [] day of [] 20[]

BETWEEN

The Government of Madhya Pradesh through its Secretary, Energy Department, Vallabh Bhawan, Bhopal (hereinafter referred to as '**GoMP**', which expression shall unless repugnant to the context or meaning thereof, include any person(s) nominated by GoMP for the purpose of this Agreement) as party of the **First Part**;

AND

M/s _____, a Company incorporated under the provisions of the Companies Act, 1956 and 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 assigns) as party of the **Second Part**.

The "**GoMP**" and "**the Company**" are individually referred to as "**Party**" and collectively to as the "**Parties**".

WHEREAS the Government of Madhya Pradesh is desirous of facilitating private sector participation and investments in power generation projects in the State of Madhya Pradesh by providing assistance and support and in terms of the Memorandum of Understanding and

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Implementation Agreements entered into with various developers for development of generation projects and in consideration being entitled to a certain share of power generated from such projects;

AND WHEREAS pursuant to the above, the Company and the GoMP have entered into a Memorandum of Understanding dated _____, as amended on _____ and further amended on _____ for setting up of _____ Thermal Power Station by the Company with a proposed capacity of _____ to be located at _____ District in the State of Madhya Pradesh;

AND WHEREAS pursuant to the terms of the MoU the Company and the GoMP had entered into an Implementation Agreement dated _____ (hereinafter referred to as “the I.A.”) for construction, ownership, operation and maintenance of the said Power Station by the Company subject to the terms and conditions contained in the I.A. and the MOU;

AND WHEREAS this Agreement is being entered into pursuant to the terms of the I.A;

AND WHEREAS in terms of the I.A., the GoMP has the right, inter alia, to purchase power from the Power Station at all times so long the Power Station exists including in any enhanced, expanded and /or renovated and/or modernized Plant equal to Ten percent (10 %) of the net power (the net power being the gross power generated minus the permitted auxiliary consumption) at a price equivalent to Variable Charge/Cost only (as defined herein below).

AND WHEREAS THE GoMP has nominated, for the present, the Madhya Pradesh Power Trading Company Limited a Government of Madhya Pradesh Undertaking (hereinafter referred to as MP Tradeco) to receive on behalf of GoMP the aforesaid Ten percent (10 %) net power at Variable Charge/Cost to be determined by the Appropriate Commission and has further directed that MP Tradeco shall deal with the said power purchased in such manner as may be directed by GoMP and in confirmation of the above MP Tradeco is signing this Agreement as a confirming party;

AND WHEREAS the Company has provided to the GoMP, Initial Contract Performance Guarantee as per the provisions of Article 3.4 as per format specified in Schedule-IA of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISE AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

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ARTICLE - 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), and as amended or re-enacted from time to time.

The words and expressions mentioned below shall have the same meanings as respectively assigned to them hereunder:

“Act” or “Electricity Act 2003” shall mean the Electricity Act, 2003 and any rules, amendments, regulations, notifications, guidelines or policies issued there under from time to time;

“Agreement” or “Power Purchase Agreement” or “PPA” shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;

“Aggregate Capacity” shall mean, in relation to a Unit the proposed nameplate capacity of the Unit and in relation to the Power Station the total proposed nameplate capacity of the Power Station. Such proposed capacity of the Power Station in mega watt shall be the sum total of proposed nameplate capacities of each of the Units as mentioned below:

Unit 1: ___MW, Unit 2: _____MW;

“Appropriate Commission” shall mean the Madhya Pradesh Electricity Regulatory Commission and wherever the context so admits the Central Commission constituted under the Electricity Act, 2003;

“Availability Based Tariff” or “ABT” shall mean the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;

“Bill Dispute Notice” shall mean the notice issued by a Party raising a Dispute regarding a Weekly Bill or a Supplementary Bill issued by the other Party;

“Business Day” shall mean with respect to the Company and GoMP, a day other than Sunday or a statutory holiday, on which the banks remain open for business at Jabalpur in the State of Madhya Pradesh;

“CERC” or “Central Commission” shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;

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“Change in Law” shall have the meaning ascribed thereto in Article 12 of this Agreement;

“Commercial Operation Date” or “COD” shall mean, in relation to a Unit the date on which the Unit is Commissioned and in relation to the Power Station the date on which all the Units of the Power Station are so Commissioned;

“Commissioning” or “Commissioned” with its grammatical variations shall mean, in relation to a Unit, a written notice by the Company to the GoMP confirming the commissioning of the relevant Unit in accordance with applicable Law or in relation to the Power Station, such commissioning of all the Units of the Power Station;

“Competent Court of Law” shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

“Conditions Subsequent” shall have the meaning set out in Article 3;

“Contract Performance Guarantee” shall mean the irrevocable unconditional bank guarantee submitted or to be submitted by the Company to the GoMP from a scheduled commercial bank and in the format provided in Schedule – 1B in accordance with the terms of this Agreement;

“Contract Year” shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that the financial year in which the Scheduled COD, as the case may be, of the first Unit would occur, the Contract Year shall end on the date immediately before the Scheduled COD as the case may be, of such Unit and a new Contract Year shall commence once again from the Scheduled COD, as the case may be and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31,

“Contracted Energy” shall mean energy equivalent to ten percent (10 %) of the Electrical Output of the Unit or the Power Station at all times contracted to be sold by the Company to the GoMP in accordance with the terms of this Agreement.

“Delivery Point” shall mean the ex-bus point of the Power Station at the Power Station switchyard;

“Despatch” shall mean to schedule and control the generation of 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 SLDC/ RLDC in conformity with the Grid Code, this Agreement and Prudent Utility Practices;

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“Despatch Instruction” shall mean any instruction for scheduling of power issued by the GoMP through the concerned SLDC and/or RLDC to the Company, in accordance with applicable Grid Code and this Agreement;

“Dispute” shall mean any dispute or difference of any kind between the Parties hereto in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement;

“Due Date” shall mean the thirtieth (30th) day after a Weekly Bill or a Supplementary Bill is delivered to and its receipt is acknowledged by the GoMP (or, if such day is not a Business Day, the immediately succeeding Business Day) by which date such Weekly Bill or Supplementary Bill is payable by the GoMP;

“Effective Date” shall have the meaning set out in Article 2.1 of this Agreement;

“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;

“Energy Account” or **“Regional Energy Account”** or **“REA”** shall mean the Regional Energy Account as defined in the Grid Code and issued by the Western Region RPC secretariat or other Competent Authority for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

“Event of Default” shall mean the events as defined in Article 13 of this Agreement;

“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;

“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;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed thereto in Article 11 of this Agreement;

“Fuel” means primary fuel (coal) used to generate electricity namely, domestic coal/imported coal/blended coal (as applicable);

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“Fuel Supply Agreement(s)” shall mean the agreement(s) entered into between the Company and the Fuel supplier and/or others for the purchase, transportation and handling of the Fuel **“GoI”** shall mean the Government of India;

“GoMP” shall mean the Energy Department, Government of Madhya Pradesh and shall include the nominee or assignee, as the case may be, of the GoMP nominated or assigned in terms of this Agreement

“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;

“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;

“IA” or “Implementation Agreement” shall have the meaning set out in the recitals above and as may be amended from time to time;

“Indian Governmental Instrumentality” shall mean the Government of India, Government of Madhya Pradesh and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Madhya Pradesh or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India; ;

“Initial Performance Guarantee” shall have the meaning ascribed thereto in Article 3.4;

“Insurance” shall mean the insurance cover to be obtained and maintained by the Company in accordance with Article 9 of this Agreement;

“Interconnection Facilities” shall mean the facilities beyond the Delivery Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 8, the Metering System required for the Power Station;

“Invoice” or “Bill” shall mean an Invoice and / or a Supplementary Invoice as per Article 10 or an invoice from the GoMP;

“Late Payment Surcharge” shall have the meaning as defined in Article 10.4.1;

“Law” shall mean in relation to this Agreement, all laws including electricity laws in force in India and any statute, ordinance, regulation, notification or code,

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rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission, and shall include for avoidance of doubt, any amendments thereto and replacements thereof;

“Lender(s)” shall mean the banks, other financial institutions, multilateral agencies, non banking financial companies registered with Reserve Bank of India, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before COD of the Power Station to provide the Company with the debt financing and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or securitized;

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

“Letter of Credit” or “L/C” shall have the meaning ascribed thereto in Article 10.5 of this Agreement;

“Meters” or “Metering System” shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;

“Month” shall mean a period of thirty (30) days from (and excluding) the date of the event where applicable, else a calendar Month;

“Power Station” shall mean the coal based _____ Thermal Power Station having the proposed capacity of ----- MW, to be established in District _____ in the State of Madhya Pradesh and shall also include any expansion, enhancement or increase in the above capacity as well as any renovation and modernization of the Power Station;

“Preliminary Default Notice” shall have the meaning ascribed thereto in Article 13.2 (i);

“Prudent Utility Practices” shall mean those practices, methods, techniques and standards, as prevalent from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safe, efficient and economic design, construction, commissioning, testing, operation and maintenance of the various components of the Power Station and which practices, methods and standards shall be adjusted as necessary to take into account:

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- i) Installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Power Station.
- ii) The requirement of Indian Law
- iii) Conditions affecting the Grid System and
- iv) Physical conditions at the Site;

"RLDC" shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;

"RPC" shall mean the Regional Power Committee established by the Government of India for the western region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

"Scheduled Commercial Operation Date" or **"Scheduled COD"** shall mean the scheduled date for achieving COD,

"Scheduled Connection Date" means the date on or before which the evacuation facilities for the Contracted Energy beyond the Delivery Point shall have to be established by GoMP, which shall be the date falling two hundred ten (210) days before the Scheduled COD or Revised Scheduled COD, as the case may be, for the first unit.

"Scheduled Energy" shall mean the Contracted Energy determined in relation to the available capacity of a Unit or the Power Station, to be scheduled by the GoMP in accordance with ABT as confirmed by RLDC;

"Settlement Period" shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;

"SLDC" shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003 for the State of Madhya Pradesh being at present the Madhya Pradesh Power Transmission Company Limited;

"SLDC Charges" shall mean the charges levied by SLDC for the supply of power by the Company to the GoMP;

"State Energy Accounts" or **"SEA"** shall mean as defined in the Grid Code and issued by the Madhya Pradesh SLDC for each calendar month or part thereof (as per their prescribed methodology), including the revisions and amendments thereof;

"State Transmission Utility" or **"STU"** shall mean the Government company notified by the Madhya Pradesh State Government under Sub-section (1) of Section 39 of the Act;

"Supplementary Bill" shall mean a Bill other than a Weekly Bill raised by any of the Parties;

"Tariff" shall mean the Variable Charge/Cost;

"Tariff Payment" shall mean the payments to be made by the GoMP under Weekly Bills and the relevant Supplementary Bills;

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“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;

“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.

“Weekly Bill” or “Weekly Invoice” shall mean a Weekly invoice to be raised by the Company for the Tariff, in accordance with Article 10;

“Wheeling Charges” or “Transmission Charges” shall mean the charges to be paid by the GoMP to the CTU or STU or any other transmission licensee or any other agency as applicable under Law, for the transfer of power corresponding to Contracted Energy from the Delivery Point onwards.

1.2. Interpretation

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

- 1.2.1. “Agreement” shall be construed as including a reference to its Schedules
- 1.2.2. An “Article”, a “Recital”, a “Schedule” and a “paragraph/clause” shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3. A “Crore” means a reference to ten million (10,000,000) and a “Lakh” means a reference to one tenth of a million (1,00,000);
- 1.2.4. An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5. “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

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- 1.2.6. A "person" shall be construed as a reference to any person, firm, company, limited liability partnership, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7. "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8. The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9. Words importing the singular shall include the plural and vice versa;
- 1.2.10. This Agreement itself or any other agreement; or deed, instrument, license or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12. A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13. 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;
- 1.2.14. Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.15. The words / expressions used in this Agreement shall have 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.
- 1.2.16. The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.17. All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.18. The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

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

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ARTICLE - 2: TERM OF AGREEMENT

2.1. Effective Date

- 2.1.1. This Agreement shall come into effect from the date it is executed by the Parties and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

2.2. Term of Agreement

- 2.2.1. This Agreement shall have a term commencing from the Effective Date and shall be co-terminus with the life of the Power Station without termination or determination by efflux of time or otherwise by any notice by either Party till the operation of the Power Station, including any expanded, or increased capacity or additional units that may be established from time to time and continues to be operated through Renovation or Modernization or otherwise or till the resumption of the facilities by the GoMP for default or reasons attributable to the Company as provided in this Agreement (hereinafter referred to as the "Term"). The Term of this Agreement shall expire on the day the Power Station is de-commissioned and ceases to operate forever.

2.3. Survival

- 2.3.1. The cessation of the operation of the Power Station shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the termination.

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ARTICLE - 3: CONDITIONS PRECEDENT AND SUBSEQUENT

3.1. IA to be part of this PPA

The IA will be deemed to be valid part of this Agreement. However in case of conflict between IA and this Agreement, the provision of this Agreement shall prevail.

3.2. Satisfaction of Conditions Subsequent by the Company

3.2.1. The Company agrees and undertakes to duly perform and complete the following activities at the Company's own cost and risk.

3.2.1.1. Within twenty four (24) Months from the Effective Date complete the following activities, unless such completion is affected by any Force Majeure Event or due to the GoMP's failure to comply with its obligations under this Agreement, or if any of the activities is specifically waived in writing by the GoMP.

- (i) The Company shall have taken the possession of land required, for the setting up of the Power Station and shall have submitted a letter to this effect to the GoMP;
- (ii) The Company shall have awarded the Engineering, Procurement and Construction contract ("EPC contract") or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable instruction to proceed and shall have submitted a letter to this effect to the GoMP;
- (iii) The Company shall have achieved Financial Closure and shall have provided a certificate from the lead banker to this effect to the GoMP;
- (iv) The Company shall have made available to the GoMP the data with respect to the Power Station for design of Interconnection Facilities;
- (v) The Company shall have submitted to the GoMP, the milestone schedule for setting up of the Power Station.
- (vi) The Company shall have obtained clearances from the Ministry of Environment and Forests, Government of India;
- (vii) In the event the Company exercises its right under Article 15.1.4, then the Company shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other Power Station Documents.

3.3. Consequences of non-fulfillment of Conditions Subsequent by the Company

3.3.1. If any of the conditions specified in Article 3.2 is not duly fulfilled by the Company even within three (3) Months after the time specified under Article 3.2 otherwise than for reasons attributable to GoMP or Force Majeure Event then on and from the expiry of such period and until the Company has satisfied all the conditions specified

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in Article 3.2, the Company shall be liable to furnish to the GoMP additional weekly performance guarantee (the “**Additional Weekly Performance Guarantee**”) of Rupees 0.375 Lakhs per MW of 10 % of the Aggregate Capacity within two (2) Business Days of expiry of every such week. Such Additional Weekly Performance Guarantee shall initially be valid for twelve (12) Months, and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the achievement of Conditions Subsequent. The GoMP shall be entitled to hold and/or invoke the Initial Contract Performance Guarantee, including such Additional Weekly Performance Guarantee, in accordance with the provisions of this Agreement.

For avoidance of doubt it is clarified that:

- (a) the Additional Performance Guarantee to be furnished by the Company to the GoMP, as may be required under this Agreement, shall be in addition to the Initial Contract Performance Guarantee; and
- (b) the GoMP shall have the right to encash the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee, individually or in combination, to compensate itself, without any obligation to issue any notice to the Company before doing so, according to the terms hereof;

3.3.2. If:

- (i) Fulfilment of any of the conditions specified in Article 3.2 is delayed beyond the period of three (3) Months after the date specified in Article 3.2.1.1 above and the Company fails to furnish any Additional Weekly Performance Guarantee to the GoMP in accordance with Article 3.3.1 hereof; or
- (ii) The Company furnishes Additional Weekly Performance Guarantee to the GoMP in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.2 for a period of eight (8) Months beyond the period specified therein,

the GoMP shall have the right (but not an obligation) to terminate this Agreement by giving a Termination Notice to the Company in writing of at least seven (7) days. The termination of the Agreement shall take effect upon expiry of the last date of the said notice period (“Termination Date”). On such termination becoming effective all rights conferred to the Company under and in terms of the I.A. shall revert back to the GoMP and the land and all facilities provided to or availed by the Company under the I.A. (collectively referred to as “the Benefits”) shall be withdrawn in addition to the Liquidated Damages provided in this Agreement.

3.3.3. If the GoMP elects to terminate this Agreement in the event specified in the preceding Article 3.3.2, the Company shall be liable to pay to the GoMP on the Termination Date an amount of Rupees @ Rs.10.00 Lakh/MW only (Rs) as pre-estimated liquidated damages.

The GoMP shall be entitled to recover this amount of liquidated damages by invoking the Initial Contract Performance Guarantee and Additional Weekly

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Performance Guarantee to the extent of Rupees Ten Lakh (Rs. 10 Lakh) per MW of 10 % of Aggregate Capacity and shall then return the balance Performance Guarantee, if any, to the Company. If the GoMP is unable to recover the said amount of Rupees Ten Lakh (Rs. 10 Lakh) per MW of 10 % of Aggregate Capacity or any part thereof from the Initial Contract Performance Guarantee and/or Additional Weekly Performance Guarantee, the amount not recovered from these performance guarantees, if any, shall be payable by the Company to the GoMP within ten (10) days from the date of Termination..

For the avoidance of doubt, it is clarified that:

- (a) The Company shall have no right to terminate this Agreement for non fulfilment of any Conditions Subsequent on the part of the Company as mentioned in this Article;
- (b) This Article shall survive the termination of this Agreement;
- (c) Notwithstanding the termination of the Agreement and recovery of the liquidated damages as mentioned above, in the event the Company establishes the Power Station or any Unit thereof at any time in future, then the GoMP shall, subject to re instatement of the Benefits that may have been withdrawn under Article 3.3.2 above, have an option and a right of first refusal to require the Company to sell electrical output equivalent to the Contracted Energy to it, on the same terms and conditions contained in this Agreement and accordingly this Agreement shall revive and bind the Parties for such Contracted Energy, without in any manner affecting the appropriation of the liquidated damages mentioned above.

3.3.4. In case of inability of the Company to fulfill any one or more of the conditions specified in Article 3.2 due to any Force Majeure Event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.2 shall be extended for the period equivalent to the period required to cure the effects of such Force Majeure Event.

3.3.5. Notwithstanding the above terms contained in clauses 3.2. and 3.3 the parties agree that in the event of the Company deciding to abandon the Project at any time within **12 months** from the Effective Date for non availability of Fuel and in consequence thereof the Company unconditionally and irrevocably surrenders all privileges, rights and interests under the IA to the GoMP, the Company shall be entitled to terminate this Agreement without any liability to pay liquidated damages. In such an event the Company shall have no right to develop the project and no claim against GoMP for cost and expenses incurred by the Company in the development of the Project

3.4. Initial Contract Performance Guarantee and Contract Performance Guarantee

3.4.1. Prior to or simultaneously with the execution of this Agreement, the Company has provided to the GoMP, an unconditional and irrevocable performance guarantee (the “**Initial Contract Performance Guarantee**”) as per proforma given in Schedule – 1A from any scheduled bank, of an aggregate amount of Rupees Three Lakhs (Rs. 3

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Lakhs) per MW of 10 % of Aggregate Capacity. Subject to Article 3.3 the Initial Contract Performance Guarantee shall be initially valid till fifteen (15) Months from the Effective Date and shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid till three (3) Months after the fulfillment of Conditions Subsequent by the Company. If such extended Initial Contract Performance Guarantee is not received as per the date specified above, even after giving atleast 7 days prior notice for extension of validity of Initial Contract Performance guarantee, GoMP shall have the right to encash the then existing Initial Contract Performance Guarantee without giving any notice to the Company.

- 3.4.2. Upon fulfillment of Conditions Subsequent by the Company, the Company shall provide to the GoMP an unconditional and irrevocable contract performance guarantee (the “**Contract Performance Guarantee**”) as per proforma given in Schedule - 1B from any scheduled commercial bank, of an aggregate amount of Rupees 7.5 Lakhs per MW of 10 % of Aggregate Capacity. Subject to Article 3.3.2 the Contract Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time, at least fifteen (15) days prior to the expiry, to be valid up to three (3) Months after the COD of the Power Station. If such extended Contract Performance Guarantee is not received as per the date specified above, the GoMP shall have the right to encash the then existing Contract Performance Guarantee.
- 3.4.3. The Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, including the Additional Weekly Performance Guarantee furnished under this Agreement shall be for fulfillment of conditions subsequent within the period specified under this Agreement and for guaranteeing the due and timely completion of the Power Station, achievement of Scheduled COD of each Unit.
- 3.4.4. The failure on the part of the Company to furnish and maintain Initial Contract Performance Guarantee or the Contract Performance Guarantee, as the case may be, and/ or the Additional Weekly Performance Guarantee shall be a material breach of the term of this Agreement.
- 3.4.5. If the Company fails to achieve COD of any of the Units on their respective Scheduled COD subject to conditions mentioned in Article 4.3, the GoMP shall have the right (but not an obligation) to encash the Contract Performance Guarantee, without any notice to the Company, and appropriate in its favour as liquidated damages an amount specified in Article 4.4 without prejudice to the other rights of the GoMP under this Agreement.
- 3.4.6. Subject to the provisions of the Articles 3.3.4 and any increase in the time period for completion of Conditions Subsequent mentioned in Article 3.2, shall also lead to an equal increase in the time period for Scheduled COD.

3.5. Return of Performance Guarantee

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- 3.5.1. Upon satisfaction of the Conditions Subsequent by the Company the Initial Contract Performance Guarantee and/or the Additional Weekly Performance Guarantee shall be returned/ released by the GoMP to the Company within a reasonable time after the Company has duly furnished to the GoMP the Contract Performance Guarantee;
- 3.5.2. In the event of applicability of Article 3.3.2 the GoMP shall return / release the performance guarantee(s) to the extent the performance guarantee is valid for an amount in excess of Rupees @ 10.00 Lakh/MW only.
- 3.5.3. The GoMP shall return / release the Contract Performance Guarantee to the Company at the end of the third (3rd) Month of the actual COD of the Power Station.
- 3.5.4. The return/release of the Contract Performance Guarantee shall be without prejudice to other rights of the GoMP under this Agreement and subject to adjustment by the GoMP of any amount due to the GoMP from the Company at the relevant time.

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ARTICLE - 4: DEVELOPMENT OF PROJECT

4.1. Company's Obligations

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

- (i) Obtaining and maintaining in full force and effect all Consents, Clearances, and Permits during the Term of this Agreement required by it pursuant to this Agreement and Law;
- (ii) Setting up of the Power Station in a timely manner so as to enable each of the Units and the Power Station as a whole to be commissioned not later than its Scheduled COD or the Revised Scheduled COD, as the case may be and to make available the Contracted Energy reliably through the use of Prudent Utility Practices throughout the Term of this Agreement;
- (iii) Operation and maintenance of the Power Station in accordance with the provisions of this Agreement, Grid Code and Prudent Utility Practices;
- (iv) Procure the requirements of electricity at the Power Station (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;
- (v) Providing to the GoMP, on a timely basis, relevant technical information on Power Station specifications, which may be reasonably required by the GoMP to design the Interconnection Facilities;
- (vi) Performance and fulfillment of all other obligations of the Company 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 Company under this Agreement.

4.1.2. Submission of progress reports

The Company shall furnish to the GoMP, quarterly progress reports of actual progress of the Power Station and shall give all such other relevant information as may be required by the GoMP from time to time till COD of the Power Station.

4.1.3. To provide all information required under Consents, Clearances and Permits

The Company shall provide all information and supporting documentation required to be submitted under Law, to any Competent Authority.

4.1.4. Safety Measures

The Company shall ensure proper safety measures during implementation of the Power Station including, but not limited to, any geological study, construction and testing at the Site as per Law.

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4.1.5. Scheduled Commercial Operation Date

The Company shall achieve Commercial Operation Date for the first _____ from the date of signing of Implementation Agreement (i.e. _____) and second Unit of the Power Station within _____ Months thereafter.

4.1.6. Revised Scheduled Commercial Operation Date

The Parties may mutually agree to revise the Scheduled CoD for Commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised Scheduled COD) and such Revised Scheduled COD shall thereafter be the Scheduled COD.

[Provided that where the Company has separately entered into an agreement with the GoMP or its nominee for sale of energy at non-concessional tariffs from the project, then the Revised Scheduled COD under that agreement shall be the Revised Scheduled COD for this Agreement too.]

4.2 Supply of Energy

- 4.2.1 Subject to the terms and conditions of this Agreement, the Company undertakes to make available to the GoMP the Contracted Energy and the GoMP undertakes to purchase the Contracted Energy and pay the Tariff. The title and risk to the Contracted Energy as scheduled shall pass from the Company to the GoMP at the Delivery Point. The Company's obligation to supply Contracted Energy in terms of this Agreement shall stand discharged upon its offering the Contracted Energy to the GoMP at the Delivery Point and the GoMP shall be responsible for evacuation of the same beyond the Delivery Point. Failure by the GoMP for any reason whatsoever to evacuate such Contracted Energy when offered by the Company shall entitle the Company to deal with such energy in any manner that it deems appropriate.
- 4.2.2 Subject to the provisions of this Agreement, the entire Contracted Energy shall at all times be for the exclusive benefit of the GoMP who shall have the exclusive right to purchase the Contracted Energy. The Company shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Energy. Upon failure by the GoMP to pay the Tariff for the Contracted Energy in accordance with the provisions of this agreement, the Company shall be entitled to sell the Contracted Energy to any third party and shall not share any revenue arising out such sell. The GoMP shall ensure that it opens and maintains the Letter of Credit in accordance with Article 10.5.
- 4.2.3 If the GoMP does not avail of the Contracted Energy provided by the Company, the Company shall be entitled to sell such Contracted Energy not taken by the GoMP, to any other person. For any such third party sale, all open access charges including losses, as may be applicable, shall not be payable by the GoMP. The Company shall

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maintain accounts and provide all details regarding price of sale etc. to the GoMP in respect of such sales under this Article.

- 4.2.4 In the case referred in Article 4.2.3, the sale realization in excess of Energy Charges shall be equally shared by the Company and the GoMP. In the event, the Company sells such Contracted Energy to any direct or indirect Affiliate of the Company/ shareholders of the Company the same shall be on arms length basis without any preference being given.
- 4.2.5 Where the sale under Article 4.2.3 by the Company is consequent to a notice issued by the GoMP to the Company indicating its unwillingness to purchase the Contracted Energy or part thereof for a period specified in such notice, the GoMP shall be entitled to request the Company for the resumption of supply of the Contracted Energy at any time. However, the Company shall not be liable to resume such supply earlier than the period specified in the said notice, and subject to the provisions regarding scheduling as per the Grid Code.

4.3 Extensions of time

- 4.3.1 In the event that the Company is prevented from performing its obligations to Commission any Unit by its Scheduled COD or Revised Scheduled COD, as the case may be, due to reasons attributable to GoMP or any Force Majeure Event, then in such events, the Scheduled COD or Revised Scheduled COD, as the case may be, shall be deferred for a period required and to be determined on 'day to day' basis, to permit the Company through the use of due diligence to overcome the said aforementioned events, as the case may be affecting the Company.
- 4.3.2 In the event of any extension under this Article 4.3.1, the date newly determined shall be deemed to be the Scheduled COD for the purposes of this Agreement.

4.4 Liquidated damages for delay in providing Contracted Energy

- 4.4.1 If the Company is unable to Commission any Unit of the Power Station by the Scheduled COD other than for force majeure reasons, the Company shall pay to GoMP liquidated damages as per Article 4.4.2, for the delay in such Commissioning and making the Contracted Energy available for dispatch by the Scheduled COD, without in any manner affecting the other rights of the GoMP.
- 4.4.2 The liquidated damages payable by the Company to the GoMP shall be calculated considering for the purpose of this clause that GoMP has contracted for ten percent (10 %) of the Aggregate Capacity proposed to be established and as follows:

If $dn \leq 60$ days, then the liquidated damages shall be calculated as follows:

$$SLDb = [CCun \times dn \times DR1] \times \text{ten percent (10 \%)}$$

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If $dn > 60$ days, then the liquidated damages shall be calculated as follows:

$$SLDb = \{[CCun \times 60 \times DR1] + [CCun \times (dn - 60) \times DR2]\} \times \text{ten percent (10 \%)}$$

Where:

- (a) “SLDb” is the liquidated damages payable by the Company during the period beginning with the day from the Scheduled COD up to and including the day on which supply of power to the GoMP actually commences from the generation source as provided in this Agreement;
- (b) “CCun” is the Aggregate Capacity of the relevant Unit “n”;
- (c) “dn” is the number of days in the period beginning with the day after the Scheduled COD, of Unit “n” up to and including the day on which such Unit is actually Commissioned;
- (d) “DR1” is Rupees Ten Thousand (Rs. 10,000) of damages per MW per day of delay in case “d” is equal to or less than 60 days and “DR2” is Rs. Fifteen Thousand (Rs. 15,000) of damages per MW per day of delay in case “d” is more than 60 days. The amount so determined shall be paid by the Company without any demur and it agrees to pay the same unequivocally and unconditionally in the manner provided herein.

4.4.3 The Company shall pay the amount calculated pursuant to Article 4.4.2 to the GoMP within ten (10) days of the amount becoming due

4.4.4 If the Company fails to pay the amount of damages within the said period of ten (10) days, the GoMP shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Company to the GoMP under this Article 4.4 then the Company shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the GoMP.

4.4.5 The Parties agree that the formula specified in Article 4.4.2, for calculation of liquidated damages payable by the Company under this Article 4.4 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the GoMP in the event of the Company’s delay in starting supply of power by the Scheduled COD.

4.4.6 In addition to the liquidated damages payable by the Company to the GoMP for delay in Commissioning a Unit and commencement of supply of power, as specified in Article 4.4.2, the Company shall further pay to the GoMP liquidated damages as per this Article. Such additional liquidated damages payable by the Company to the GoMP shall be equivalent to the damages payable by the GoMP to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement entered into by the GoMP with CTU/STU for establishment of transmission system and/ or transmission services beyond the Delivery Point.

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- 4.4.7 It is clarified that the liquidated damages payable under this Article 4.4.7 shall be in addition to the liquidated damages determined in terms of Article 4.4.2.
- 4.4.8 Notwithstanding the receipt of liquidated damages as specified in this Article and even when the Agreement is terminated by GoMP because of the Schedule COD not being accomplished for any reason whatsoever in the event at any time the Company achieve COD of the Power Station or any of the units of the Power Station the GoMP shall have the option and right to revive this Agreement and require the Company to supply power to GoMP of the Contracted Energy on the same terms and conditions as contained in this Agreement and in such an event this Agreement shall revive and bind the parties for all intent and purposes.

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ARTICLE – 5: SYNCHRONISATION AND COMMERCIAL OPERATION

5.1. Synchronisation

- 5.1.1. The Company shall give GoMP, the SLDC and RLDC at least sixty (60) days advance written notice intimating the Scheduled Synchronization Date i.e. the date on which the Company intends to synchronize a Unit to the Grid System. Any final date proposed by the Company that is earlier than the Scheduled Synchronization Date, shall be subject to written consent of GoMP.
- 5.1.2. Subject to Article 5.1.1, a Unit may be synchronised by the Company to the Grid System when it meets all connection conditions prescribed in the Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System.

5.2. Commercial Operation Date

- 5.2.1. In the event that the actual COD of a Unit occurs prior to the Scheduled COD, of the said Unit, and the GoMP is:
- 5.2.1.1. able to cause off-take of the Scheduled Energy from such Unit commencing from the day on which the said Unit is Commissioned, such earlier date shall be taken as COD of the said Unit, or
- 5.2.1.2. able to cause off-take of Scheduled Energy from the said Unit commencing from the day falling between:
- (a) the day on which the Unit is Commissioned: and
 - (b) the Scheduled COD of the said Unit.
- such earlier date of off-take shall be taken as COD of the said Unit.

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ARTICLE - 6: AVAILABILITY, SCHEDULING AND DESPATCH

6.1. Availability, Scheduling and Despatch

- 6.1.1. The Company agrees that the entitlement of GoMP over the Contracted Energy for despatch over any Settlement Period is the exclusive right of GoMP and it cannot be offered to any third party other than for conditions under Article 4.2.3.
- 6.1.2. Subject to GoMP paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Energy, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.1. The Company agrees to and acknowledges the GoMP's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific performance of this Agreement, the GoMP may have under the Law with respect to such default of the Company. In such event, GoMP shall be obliged to schedule such power and pay the Tariff for the Scheduled Energy. It is clarified and re iterated that the remedy provided to GoMP under this Article shall not be available to GoMP if it fails to pay any amount due to the Company in terms of this Agreement.
- 6.1.3. The quantum of Contracted Energy will be computed on real time basis based on actual generation of the Power Station. The quality of such power shall be firm power and at no time the Company shall be supplying such power less than ninety (90) percent of the Contracted Energy. However, such percentage shall not be more than one hundred and ten (110) percent of the Contracted Energy during the off-peak period. The off-peak period shall be notified by the GoMP or its nominated agency from time to time. The Parties shall undertake a bi-annual reconciliation on June 30 and Dec 31 of each calendar year, to ascertain the aggregate Contracted Energy actually supplied against the Contracted Energy required to be supplied in terms hereof, and variations if any, between the two, over such reconciliation period, shall be settled/adjusted in the supplies of Contracted Energy to be made over the immediately succeeding 6 months period.

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ARTICLE - 7: OPERATION AND MAINTENANCE

7.1. Operation and Maintenance of the Power Station

7.1.1. The Company shall be responsible at its own expense for ensuring that the Power Station is operated and maintained in an efficient, coordinated and economical manner and in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the Grid Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.

7.2. Maintenance of Records

7.2.1. Each Party shall keep complete and accurate records of the meter records and other records needed to reflect power exchange between the Parties for each Settlement Period and Electrical Output of the Power Station on a continuous real time basis.

7.2.2. Each Party shall have the right, upon reasonable prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation and maintenance of the Power Station at any time during normal office hours on normal Business Days.

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ARTICLE - 8: METERING AND ENERGY ACCOUNTING

8.1. Meters

For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Company and the GoMP shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time or any other Law in force at the relevant point of time.

8.2. ENERGY ACCOUNTING

The Energy Account shall be binding on the Parties for billing and payment purposes.

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ARTICLE - 9: INSURANCES

9.1. Insurance

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

9.2. Application of Insurance Proceeds

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

If a Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the GoMP shall have no claim on such proceeds of such Insurance.

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ARTICLE - 10: TARIFF, BILLING AND PAYMENT

10.1. General

- 10.1.1. The Tariff for the Contracted Energy shall comprise only the Variable Charge/Cost. The Variable Charge/Cost shall be as determined by the Madhya Pradesh Electricity Regulatory Commission on a reference being made by the GoMP under the appropriate provisions of the Electricity Act 2003, requesting the said Commission for such determination of Variable Charge/Cost in terms of this Agreement.
- 10.1.2. From the COD of the first Unit, the GoMP shall pay the Company the Tariff Payment, on or before the Due Date, determined in accordance with this Article 10.
- 10.1.3. All Tariff Payments by the GoMP shall be in Indian Rupees (INR).
- 10.1.4. The Company shall issue to the GoMP a signed Weekly Bill for the Scheduled Energy supplied by it to GoMP during the immediately preceding week. In case the Weekly Bill for the immediately preceding week is delayed, the Due Date for payment of such Weekly Bill shall be extended by the same number of days by which the issue of such Weekly Bill has been delayed.

10.2. Weekly Billing

The Tariff under this Agreement shall be billed by the Company and shall be paid by the GoMP in accordance with the following provisions:

- (i) The Weekly Bill to be raised as per the billing cycle mentioned below:
- a. 1st Week: From 00:00 hrs of 1st day of month to 24:00 hrs of the 8th day of Month
 - b. 2nd Week: From 00:00 hrs of 9th day of month to 24:00 hrs of the 15th day of Month
 - c. 3rd Week: From 00:00 hrs of 16th day of month to 24:00 hrs of the 23rd day of Month
 - d. 4th Week: From 00:00 hrs of 24th day of month to 24:00 hrs of the last day of the Billing Month.
- (ii) The Company shall submit the Weekly Bill to the GoMP, which shall include:
- a. Availability and Energy Account for the relevant week as per scheduled energy as provided by concerned RLDC;
 - b. the Company's computation of the Weekly Tariff payment in accordance with Article 10.1; and
 - c. supporting data, documents and calculations in accordance with this Agreement.

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- (iii) The Weekly Bill for the energy supplied to GoMP shall be in accordance with the provisions of this Agreement. If for certain reasons some of the charges which otherwise are in accordance with this Agreement, cannot be included in the Weekly Bill, such charges shall be billed as soon as possible through Supplementary Bill(s). Furthermore, the Company shall reconcile the Weekly Bills with the monthly REA/SEA Accounts and in the event the aggregate of the Weekly Bills constituting the relevant calendar month are less than the amounts determined to be billed as per the REA/SEA Accounts, then the Company shall issue a Supplementary Bill. Conversely, in the event the aggregate of the Weekly Bills for the relevant calendar month are in excess of the amounts determined to be billed as per the REA/SEA Accounts, then the Company shall provide a credit to the GoMP for such excess amounts in its immediately subsequent Bill.
- (iv) The Bill(s) of the Company shall be paid in full subject to the condition that:
 - (a) There is no apparent arithmetical error in the Bill(s).
 - (b) The Bill(s) is / are claimed as per the Tariff determined by the Appropriate Commission.
 - (c) They are in accordance with the Energy Accounts.
- (v) If GoMP disputes any amount, it shall pay according to Article 10.6.6 and file a written objection with the Company within thirty (30) days of presentation of the Bill, giving following particulars:
 - (a) Item disputed, with full details / data and reasons of Dispute;
 - (b) Amount disputed against each item;

10.3. Payment of Weekly Bills

10.3.1. The GoMP shall pay the amount payable under Weekly Bill by the Due Date to such account of the Company, as shall have been previously notified by the Company to GoMP in accordance with Article 10.3.3 below.

All payments made by the GoMP shall be appropriated by the Company in the following order of priority:

- (i) towards Late Payment Surcharge, payable by the GoMP, if any;
- (ii) towards earlier unpaid Bill, if any; and
- (iii) towards then current Bill.

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

- (i) deductions required by Law; and
- (ii) amounts claimed by the GoMP from the Company, through an Invoice duly acknowledged by the Company, to be payable by the Company, and not disputed by the Company within thirty (30) days of receipt of the said

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Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the GoMP shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) day period.

10.3.3 The Company shall open a bank account at [Insert identified place or account designated by Lenders] (the "Designated Account") for all Tariff Payments to be made by GoMP to the Company, and notify the GoMP of the details of such account at least ninety (90) days before the despatch of the first Weekly Bill to GoMP. The GoMP shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Company of such instructions on the same day. The GoMP shall also designate a bank account at [Insert identified place] for payments to be made by the Company (including Supplementary Bills) to the GoMP and notify the Company of the details of such account ninety (90) days before the COD of the first Unit.

10.4 Billing and Payment of charges

10.4.1 Late Payment Surcharge

In case the payment of any Bill for charges payable under this Agreement is delayed by the GoMP beyond the Due Date thereof, a Late Payment Surcharge shall be payable by the GoMP to the Company at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests.

Similarly, if any amount outstanding against the Company and payable to GoMP is not paid beyond its Due Date a Late Payment Surcharge shall be payable by the Company to the GoMP at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests. Late Payment Surcharge shall be claimed by the Company or GoMP through Supplementary Bills.

10.4.2 The rate of Late Payment Surcharge shall be revised from time to time on the basis of rates notified by the Appropriate Commission.

10.5 Letter of Credit

10.5.1 The GoMP shall provide to the Company, in respect of payment of its Weekly Bills, an unconditional, revolving and irrevocable letter of credit (“**Letter of Credit**”), opened and maintained by the GoMP or by the nominee on behalf of the GoMP, which may be drawn upon by the Company in accordance with the provisions of this Agreement. The Letter of Credit shall be in the format annexed hereto as Schedule - 4.

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10.5.2 Not later than one (1) Month prior to the Scheduled COD of the first Unit, the GoMP shall through a scheduled bank at Jabalpur open the Letter of Credit in favour of the Company, to be made operative from a date prior to the Due Date of its first Weekly Bill under this Agreement. The Letter of Credit shall have an initial term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- (i) for the first Contract Year, equal to one point one (1.1) times the estimated average Weekly billing based on Normative Availability corresponding to the Contracted Energy;
- (ii) for each subsequent Contract Year, equal to one point one (1.1) times the average of the Weekly Tariff Payments of the previous Contract Year plus the estimated Weekly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

Provided that if at any time, such Letter of Credit amount falls short of the amounts specified above, GoMP shall restore such shortfall within seven (7) days.

Provided further, that the Company shall not draw upon such Letter of Credit prior to the Due Date of relevant Weekly Bill and/ or Supplementary Bill.

10.5.3 GoMP shall cause the scheduled bank issuing the Letter of Credit to intimate the Company, in writing regarding the establishment of such irrevocable Letter of Credit.

10.5.4 In case of drawal of the Letter of Credit by the Company in accordance with the terms of this Agreement, the amount of the Letter of credit shall be reinstated in the manner in Article 10.5.2;

10.5.5 If GoMP fails to pay a Weekly Bill or a Supplementary Bill or part thereof within and including the Due Date, then the Company may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the GoMP, an amount equal to such Weekly Bill or a Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- (i) a copy of the Weekly Bill or Supplementary Bill that has remained unpaid by the GoMP;
- (ii) a certificate from the Company to the effect that the Bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- (iii) calculations of applicable Late Payment Surcharge, if any.

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10.5.6 The Letter of Credit shall be renewed by the GoMP not later than forty five (45) days prior to its expiry.

10.5.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the GoMP; however, Letter of Credit negotiation charges shall be borne and paid by the Company.

10.6 Disputed Bill

10.6.1. If a Party does not dispute a Weekly Bill or a Supplementary Bill raised by the other Party within Seven (7) days of receiving it, such Bill shall be taken as conclusive for the purpose of making payment.

10.6.2. If a Party disputes the amount payable under a Weekly Bill or a Supplementary Bill, as the case may be, that Party shall, within Seven(7) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i. the details of the disputed amount;
- ii. its estimate of what the correct amount should be; and
- iii. all written material in support of its claim.

10.6.3. If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.6.4. If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to this Article shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

- (i) reasons for its disagreement;
- (ii) its estimate of what the correct amount should be; and
- (iii) all written material in support of its counter-claim.

Upon receipt of notice of disagreement to the Bill Dispute Notice one authorized representative(s) of the Company preferably a Director of the Board of Directors of each Party shall meet and make best endeavours to amicably resolve the Dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

10.6.5. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to this Article the

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matter shall be settled through Dispute Resolution according to the provisions of Article 13.3.

- 10.6.6. For the avoidance of doubt, it is clarified that despite a Dispute regarding a Bill, the GoMP shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Weekly Bills (being the undisputed portion of such three weeks invoices) and (b) the Bill which is being disputed, provided such disputed Bill, if it is a Weekly Bill, has been raised based on the Scheduling done by the GoMP and in accordance with this Agreement.
- 10.6.7 In case of Disputed Bills it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 13 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission including in regard to interest or delayed payment surcharge, if any directed to be paid by the Appropriate Commission.
- 10.6.8 If a Dispute regarding a Weekly Bill or a Supplementary Bill is settled pursuant to this in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount incorrectly charged by it from the disputing Party within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to this Article along with interest. Such interest shall accrue on day to day basis for the period between the date of payment of the disputed Bill and receipt of refund in the Designated Account of the relevant Party at a rate equal to the Late Payment Surcharge.

10.7. Quarterly and Annual Reconciliation

- 10.7.1. Parties acknowledge that all payments made against Weekly Bills, and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account Regional Energy Accounts / State Energy Accounts (as applicable), tariff adjustment payments, Rebates, Late Payment Surcharge, etc. or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Company and GoMP shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Company or GoMP, as the case may be, shall raise a Supplementary Bill for the tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the tariff adjustment payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with

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regarding to the above reconciliation shall be dealt in accordance of the provision of Article 13.3.

10.8. Payment of Supplementary Bill

10.8.1. Either Party may raise a Bill on the other Party ("Supplementary Bill") for payment on account of,

- (i) Adjustments required by the Regional Energy Account / State Energy Account, as applicable; or
- (ii) Tariff Payment for change in parameters, pursuant to provisions in Article 10.1.1;
- (iii) Change in Law as provided in Article 12;

and such Bill shall be paid by the other Party

10.8.2. GoMP shall remit all amounts due under a Supplementary Bill raised by the Company to the Company's Designated Account by the Due Date and notify the Company of such remittance on the same day. Similarly, the Company shall pay all amounts due under a Supplementary Bill raised by the GoMP by the Due Date to the GoMP's designated bank account and notify the GoMP of such payment on the same day.

In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Weekly Bills as per Article 10.4.1.

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ARTICLE - 11: FORCE MAJEURE

11.1. Definitions

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

11.2. Affected Party

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

11.2.2. Any event of Force Majeure affecting the performance of the Company or affecting the transmission facilities beyond the Delivery Point shall be deemed to be an event of Force Majeure affecting either Party.

11.2.3. Any event of Force Majeure affecting the performance of the Company's contractors shall be deemed to be an event of Force Majeure affecting Company only if the Force Majeure Event is affecting and resulting in:

- (a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or
- (b) a delay in the performance of any of the Company's contractors.

11.3. Force Majeure

11.3.1. 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

i. Natural Force Majeure Event(s)

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

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ii. Non-Natural Force Majeure Event(s)

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Company; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Company to perform its obligations under the Power Station Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Company to the GoMP, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.
- d) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or
- e) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.
- f) industry wide strikes and labor disturbances having a nationwide impact in India.

11.4. Force Majeure Exclusions

11.4.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;
- b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 11.2;

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- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or any other Power Station Documents.

11.5. Notification of Force Majeure Event

11.5.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.2. The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6. Duty to perform and duty to mitigate

11.6.1. To the extent not prevented by a Force Majeure Event the affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

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11.7. Available Relief for a Force Majeure Event

11.7.1. Subject to this Article 11:

- a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations under this Agreement, including but not limited to those specified under Article 4.3.
- c) The existence of Force majeure or its continuation shall not however give any right to any of the party to terminate this Agreement

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ARTICLE - 12: CHANGE IN LAW

12.1 Since the Variable charge is being determined by the Appropriate Commission based on actual cost components of Variable Charge at the relevant time and there being no aspect of capacity or fixed charges payment under this Agreement the provisions relating to change in law are not required. However, it is clarified that Appropriate Commission while determining the Tariff will take into consideration any change in taxes, duties, cess and any other such impositions that may have financial implications on such Tariff.

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ARTICLE - 13: EVENTS OF DEFAULT, DISPUTE RESOLUTION AND TERMINATION

13.1. Company Event of Default

13.1.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by GoMP of its obligations under this Agreement, shall constitute a Company Event of Default:

- (i) The failure to Commission any Unit by the date falling twelve (12) Months after its Scheduled COD or Revised Scheduled COD; or
- (ii) the Company fails to make any payment (a) of an amount exceeding Rupees one (1) crore in aggregate required to be made to GoMP under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) / demand raised by the said GoMP on the Company or (b) of an amount up to Rupees fifty (50) Lakhs required to be made to GoMP under this Agreement within six (6) Months after the Due Date of undisputed invoice(s) / demand; or
- (iii) if
 - (a) the Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or
 - (b) the Company transfers or novates any of its rights and / or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer:
 - 1. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - 2. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee; or
 - 3. is to another company in which _____ holds not less than 51% of the equity shareholding and shall continue to hold equity shares in accordance with Article 16.1.
- (iv) if (a) any winding up or bankruptcy or insolvency order is passed against the Company, or (b) the Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

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

- (v) The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under or to be bound by this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the GoMP in this regard; or
- (vi) , the Company is in breach of any of its material obligations pursuant to this Agreement and such material breach is not rectified by the Company within thirty (30) days of receipt of first notice in this regard given by the GoMP; or
- (vii) The Company fails to renew or replace or provide the Performance Guarantee to the GoMP in accordance with Article 3.3 and Article 3.4 of this Agreement, or
- (viii) Failure to meet any of the Conditions Subsequent as mentioned in Article 3.2; or
- (ix) Any direct or indirect change in the shareholding of the Company in contravention of Article 16.1;
- (x) Any of the representations and warranties made by the Company in Schedule - 2 of this Agreement; being found to be untrue or inaccurate; or
- (xi) Any other event which have been specified as an event of default or breach by the Company under any of the other provisions in this Agreement.

13.2. Procedure for cases of Company Event of Default

- (i) Upon the occurrence and continuation of any Company Event of Default under Article 13.1 except under Articles 13.1.1 (ii), the GoMP shall have the right to deliver to the Company a notice of their intention to terminate this Agreement (GoMP Preliminary Default Notice), under intimation to the Lender(s), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- (ii) Following the issue of GoMP Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.
- (iii) During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

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- (iv) Upon the occurrence and continuation of Company Event of Default under this Article, the following consequences will apply—
- a. If the event of default occurs before the COD or Revised COD, the liquidated damages shall be payable as specified in Article 4.4 above;
- (v) Subject to GoMP paying the amounts due to the Company under the terms of this Agreement, within the time specified in this Agreement, without demur and notwithstanding any dispute, the Company shall not offer the Contracted Energy, in part or fully, to any third party in contravention to the conditions specified in Article 6.1.1. The Company unconditionally and irrevocably agrees to and acknowledges the GoMP's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party. The Company further agrees and waives any and all objections or claims in respect of such right or any other legal remedy including but not limited to seek specific performance of this Agreement, the GoMP may have under the Law with respect to such default of the Company. In such event, the GoMP shall be obliged to schedule such power and purchase and pay the Tariff for the Scheduled Energy. It is clarified and reiterated that the remedy provided to GoMP under this Article shall not be available to GoMP if it fails for any reason whatsoever, to pay any amount due to the Company in terms of this Agreement, notwithstanding any dispute relating to any such amount and the Company's demand for such amounts outstanding shall, for purposes only of this Article, be conclusive and binding on GoMP.

13.3. Resolution of Disputes

13.3.1. Governing Law and Jurisdiction of Courts

This Agreement shall be governed by and construed in accordance with the Laws of India. Subject to the dispute resolution provided herein, any legal proceedings in respect of any matters, claims or Disputes under this Agreement shall be under the jurisdiction of the Appropriate Commission and subject to such jurisdiction, appropriate courts in Bhopal, unless required otherwise under Law.

13.3.2. Amicable Settlement

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:
 - (i.) a description of the Dispute;
 - (ii.) the grounds for such Dispute; and
 - (iii.) all written material in support of its claim.
- (b) The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.3.2(a), furnish:

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- (i) counter-claim and defences, if any, regarding the Dispute; and
 - (ii) all written material in support of its defences and counter-claim.
- (c) Within thirty (30) days of issue of notice by any Party pursuant to Article 13.3.2(a), or Article 13.3.2(b) both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.3.3.

13.3.3. **Dispute Resolution**

All disputes and differences arising between the parties under or in respect of this Agreement including any interpretation or construction of the provisions shall be subject to adjudication under section 86 (1) (f) read with Section 158 of the Electricity Act, 2003.

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ARTICLE - 14: LIABILITY AND INDEMNIFICATION

14.1. Indemnity

14.1.1. The Company shall indemnify, defend and hold GoMP harmless against:

- (a) any and all third party claims, actions, suits or proceedings against the GoMP for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Company of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of GoMP, its contractors, servants or agents; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by GoMP from third party claims arising by reason of:
 - (i) breach by the Company of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the Company, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of GoMP, its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Company under this Agreement being found to be inaccurate or untrue.

14.1.2 Limitation on Liability:

The liability of the Company under this Article shall not exceed the liquidated damages payable by the Company under this Agreement.

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ARTICLE - 15: ASSIGNMENTS AND CHARGES

15.1. Assignments

- 15.1.1. The GoMP shall be entitled to nominate any entity owned and controlled by GoMP and for the present has nominated MP Tradeco as such entity to perform on its behalf and exercise all its rights under this Agreement and the reference to GoMP in this Agreement shall include such designated agencies. Accordingly, till further directions are given by the GoMP, the liability for payment of the amounts becoming due to the Company including arranging the Letter of Credit as envisaged in this Agreement, the raising and payment of bills for the electricity supplied shall by and in the name of MP Tradeco on behalf of GoMP. Notwithstanding such nomination, GoMP shall continue to be primarily responsible for fulfillment of its obligations under this Agreement.
- 15.1.2. The Company shall not assign any of its rights or obligations in this Agreement to any Party other than with the consent in writing of the GoMP:
- 15.1.3. The GoMP shall be free to deal with the Contracted Energy or any part thereof in any manner as the GoMP may in its discretion consider appropriate, including further sale of the Contracted Energy to any person subject to the condition that the GoMP shall continue to be liable to the Company in so far as the fulfillment of the obligations under this Agreement. The GoMP shall at all times be entitled to assign this Agreement to any other Government of Madhya Pradesh Undertaking or to any of the Discoms. Subject to the above the GoMP shall not assign the obligations of the GoMP under this Agreement to any Party other than with the consent in writing of the Company and such consent shall not be unreasonably withheld by the Company if the GoMP seeks to transfer to any transferee all of its rights and obligations under this Agreement.
- 15.1.4. The Company shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule – 6 of this Agreement.

15.2. Permitted Charges

- 15.2.1. Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement. Provided that the Company shall be entitled to create such a charge in favour of the Lenders.
- 15.2.2. Notwithstanding anything contained herein the Company may create any encumbrance over all or part of the receivables, or any other assets of the Power Station in favour of the Lenders or the Lender's representative on their behalf, as security for:
- (a) amounts payable under the Financing Agreements; and
 - (b) any other amounts agreed by the Parties,

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Provided that:

- (a) the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements; and
- (b) any encumbrances granted by the Company in accordance with this Article shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Company acting for itself and as trustee of the GoMP to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the GoMP to claim its right of subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Company is entitled, whether actually or contingently, to receive from the GoMP as well as compensated by any person other than the GoMP for the same event; and
- (c) the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule – 6.

15.2.3. Article 15.1.5 does not apply to:

- (a) liens or encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of implementation of this Agreement by the Company;
- (b) hypothecation and pledge of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Company; or
- (c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Company.

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ARTICLE - 16: MISCELLANEOUS PROVISIONS

16.1. Minimum Equity holding / Equity Lock-In

- 16.1.1. The minimum shareholding requirements specified in this Article shall apply to all of the promoters which have made equity investment in the Company. The Company confirms that is one of the promoters of the Company.
- 16.1.2. The aggregate equity share holding of the promoters in the issued and paid up equity share capital of the Company shall not be less than fifty-one percent (51%) from the Effective Date up to a period of two (2) years after COD of the Power Station ;
- 16.1.3. All shareholders of the Company shall be allowed to divest their equity as long as the promoters hold the minimum aggregate equity specified in Article 16.1.1.

16.2. Amendment

- 16.2.1. This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

16.3. Waiver

- 16.3.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:
- 16.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Party shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

16.4. Severability

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

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16.5. Notices

- 16.5.1 All notices to be given under this Agreement shall be in writing and in the English Language and sent to the addresses designated for the purpose by the Parties.
- 16.5.2 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 16.5.3 Any Party may by notice of at least fifteen (15) days to the other Parties change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

16.6 Language

- 16.6.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 16.6.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

16.7 Breach of Obligations

- 16.7.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement

16.8 Fraudulent and Corrupt Practices

- 16.8.1 The Company and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the GoMP may terminate the Agreement without being liable in any manner whatsoever to the Company, if it determines that the Company has, directly or indirectly or through an

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agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the negotiation process. In such an event, the GoMP shall forfeit the Contract Performance Guarantee, without prejudice to any other right or remedy that may be available to the GoMP hereunder or subsistence otherwise.

16.8.2 Without prejudice to the rights of the GoMP under this Article and the rights and remedies which the GoMP may have under this Agreement, if a the Company is found by the GoMP 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 negotiation process, or after the execution of the PPA, the GoMP may terminate the Agreement without being liable in any manner whatsoever to the Company. Further, in such an event, the GoMP shall forfeit the Contract Performance Guarantee.

16.8.3 Further, the Company shall not be eligible to participate in any tender or RFP issued by the GoMP during a period of two (2) years from the date such the Company is found by the GoMP to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

16.8.4 For the purposes of this Article the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“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 negotiation process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the GoMP who is or has been associated or dealt in any manner, directly or indirectly with the negotiation process or has dealt with matters concerning the PPA or arising there from, 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 GoMP, shall be deemed to constitute influencing the actions of a person connected with the negotiation process); or (ii) engaging in any manner whatsoever, whether during the negotiation Process or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the PPA, who at any time has been or is a legal, financial or technical adviser of the GoMP in relation to any matter concerning the Power Station;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the negotiation process;
- (c) **“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 negotiation process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the GoMP with the objective of canvassing,

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lobbying or in any manner influencing or attempting to influence the negotiation process; or (ii) having a conflict of interest; and

- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among prospective Companies with the objective of restricting or manipulating a full and fair competition in the negotiation process

16.9 Restriction of Shareholders/Owners Liability

16.9.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Party for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956.

16.10 Representations and Warranties

16.10.1 The Company hereby provides the Representation and Warranties to the GoMP as contained in Schedule –2.

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IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Bhopal, Madhya Pradesh.

For and on behalf of: Government of Madhya Pradesh	For and on behalf of:
..... Signature with seal Signature with seal
Name	Name:;
Designation	Designation:
Address	Address:
.....	
Witness:	Witness:
1.	1.
2	2
For and on behalf of MP Power Trading Co. Ltd. as conforming party	
Name	Witness:
Designation	1.
Address	2.
.....	

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SCHEDULE – 1A: FORMAT OF THE INITIAL CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the[*Insert name of the Company*] agreeing to undertake the obligations under the PPA and the GoMP, agreeing to execute the Agreement with the Company for purchase of power on long term basis [*Insert name of the Bank*] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the GoMP at[*Insert address of GoMP*] forthwith on demand in writing from the GoMP or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) [*insert amount of BG computed on the basis of Rs. 3 lakhs /MW*] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until [*Insert the date of validity of the CPG*]. The GoMP shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the GoMP, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the GoMP .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the GoMP to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the GoMP in respect of any payment made hereunder.

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This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... shall have exclusive jurisdiction..

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the GoMP shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the GoMP or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the GoMP and may be assigned, in whole or in part, (whether absolutely or by way of security) by the GoMP to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the GoMP shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crore (Rs. crore only) and it shall remain in force until[Date to be inserted is twenty four (24) Months from the Effective Date and three (3) months thereafter], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

.....

Secretary (Energy)
GoMP

(Designation of Signatory)
Name of IPP

Signature:

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [*Insert Name of the Bank*]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address:

2.

Signature

Name and Address:

[Note: The Stamp Paper should be in the name of the Executing Bank.]

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SCHEDULE – 1B: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)

In consideration of the[*Insert name of the Company*] agreeing to undertake the obligations under the PPA and the GoMP, agreeing to execute the Agreement with the Company for purchase of power on long term basis [*Insert name of the Bank*] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the GoMP at[*Insert address of GoMP*] forthwith on demand in writing from the GoMP or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) [*insert amount of BG computed on the basis of Rs. 7.5 lakhs /MW*] only (with the respect to proposed Contracted Capacity as per the terms of PPA on behalf of the Company).

This guarantee shall be valid and binding on the Guarantor Bank up to and including[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until [*Insert the date of validity of the CPG*]. The GoMP shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the GoMP, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the GoMP .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, [*Insert name of the Company*] and/ or any other person. The Guarantor Bank shall not require the GoMP to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the GoMP in respect of any payment made hereunder.

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This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... shall have exclusive jurisdiction..

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the GoMP shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Company, to make any claim against or any demand on the Company or to give any notice to the Company or to enforce any security held by the GoMP or to exercise, levy or enforce any distress, diligence or other process against the Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the GoMP and may be assigned, in whole or in part, (whether absolutely or by way of security) by the GoMP to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the GoMP shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crore (Rs. crore only) and it shall remain in force until[Date to be inserted is three (3) months after the Scheduled COD], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

.....

Secretary (Energy)
GoMP

(Designation of Signatory)
Name of IPP

Signature:

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [*Insert Name of the Bank*]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address:

2.

Signature

Name and Address:

[Note: The Stamp Paper should be in the name of the Executing Bank.]

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SCHEDULE - 2: REPRESENTATION AND WARRANTIES OF THE COMPANY

- 1.1.1. The Company hereby represents and warrants to and agrees with the GoMP as follows and acknowledges and confirms that the GoMP is relying on such representations and warranties in connection with the transactions described in this Agreement:
- (i) The Company has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
 - (ii) This Agreement is enforceable against the Company in accordance with its terms;
 - (iii) The consummation of the transactions contemplated by this Agreement on the part of the Company will not violate any provision of, nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Company is a party or to which the Company is bound which violation, default or power has not been waived;
 - (iv) The Company is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Company;
 - (v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Company's knowledge, threatened in writing against the Company at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the project or supply power or to comply with its obligations under this Agreement.
 - (vi) The Company has neither made any statement nor provided any information, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made are true and accurate and there is no breach of the same.

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

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**SCHEDULE - 3: TECHNICAL LIMIT AND CONTRACTED PERFORMANCE
PARAMETERS**

(This schedule describes only a sample for technical limits and specifications. It has to be filled up jointly by the parties on or before the Effective Date according to their requirements)

S No.	Description	Unit	Particulars
1.1. Grid Conditions at Delivery Point:			
(i) Voltage:	Nominal	kV	[400]
	Variation	%	[(±) 3% to (-) 5%]
(ii) Frequency :	Nominal	Hz.	[50]
	Variation	%	[(+) 3% to (-) 5%]
(iii) Combined Voltage and Frequency variation for Contracted Capacity		%	[5]
(iv) Power Factor:	Nominal		[0.85] lag
	Variation		[0.85] to [0.95] lag lead
(v) Basic Impulse Level (Peak)		kVp	[1425]

1.2. Fault Levels:

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(i) 3 Phase	Maximum	kA	[50]
(ii) Clearance time	Maximum	ms	[100]

1.3. Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than one percent (1%) per minute. Such capability shall be demonstrated during the Unit load of more than 60%.

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SCHEDULE - 4: FORMAT OF LETTER OF CREDIT

**[To be finalized between the Parties atleast six (6) months before Scheduled CoD or
Revised Scheduled CoD, as the case may be]**

SCHEDULE - 5: INDEPENDENT ENGINEERS

NOT REQUIRED

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SCHEDULE – 6: SUBSTITUTION RIGHTS OF THE LENDERS

1. Substitution of the Company

- 1.1. Subject to the terms of the PPA, upon occurrence of a Company Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Company by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Company and performing the obligations of the Company, in accordance with the provisions of this Schedule.
- 1.2. The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other Power Station Documents executed between GoMP and the Company in favour of the Selectee, the GoMP and the Company shall cooperate with the Lenders to carry out such substitution.

2. GoMP Notice of Default

- 2.1. The GoMP, upon serving the Preliminary Default Notice on the Company as per this PPA, shall simultaneously also issue a copy of the same to the Lenders.

3. Substitution Notice

- 3.1. In the event of failure of the Company to rectify the Company Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the GoMP, the Lenders, either on their own or through its representative (the “”) shall be entitled to notify the GoMP and the Company of the **Lenders’ Representative** intention of the Lenders to substitute the Company by the Selectee for the residual period of the PPA (the “**Substitution Notice**”).

4. Interim operation of Power Station

- 4.1. On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule of this PPA.
- 4.2. On issue of a Substitution Notice, the Lenders shall have the right to request the GoMP to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Company shall completely cooperate in any such takeover of the Power Station by the GoMP. If the GoMP, at its sole and exclusive

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discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this PPA, then the GoMP shall be compensated for rendering such services in accordance with Clause 9.4 of this Schedule.

- 4.3. If the GoMP refuses to takeover the Power Station on request by the Lenders in accordance with Clause 4.2 above, the Company shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.
- 4.4. The Lenders and the GoMP shall, simultaneously have the right to commence the process of substitution of the Company by the Selectee in accordance with these terms and the Company hereby irrevocably consents to the same.

5. Process of Substitution of Company

- 5.1. The Lenders' Representative may, on delivery of a Substitution Notice notify the GoMP and the Company on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the GoMP, such Selectee shall be entitled to receive all the rights of the Company and shall undertake all the obligations of the Company under the PPA and other Power Station Documents executed between the Company and the GoMP, in accordance with these terms of substitution.
- 5.2. The Lenders and the Company shall ensure that, upon the GoMP approving the Selectee, the Company shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other Power Station Documents executed between the Company and the GoMP in favour of the Selectee as mentioned in Clause 1.2 of this Schedule.

6. Modality for Substitution

Criteria for selection of the Selectee

- 6.1. The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:
 - (a) if the Company is proposed to be substituted prior to the Scheduled COD or the Selectee shall possess the financial capability used to qualify bidders in the MoU stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Company under the PPA. If the Company is proposed to be substituted during the Operation Period, these criteria shall not be applicable.

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- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Company to the GoMP under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;
- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the GoMP, involving sums greater than Rupees (Rs) [Insert amount] at any time in the last two (2) years as on the date of the Substitution Notice to the Company.
- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

7. Modalities

- 7.1. The following modalities shall be applicable to any substitution of the Company by the Selectee pursuant to this PPA:
- 7.2. The Lenders' Representative shall on behalf of the Lenders propose to the GoMP (the "Proposal") pursuant to Clause 7.3 below, the name of the Selectee for acceptance, seeking:
 - (a) grant of all the rights and obligations under the PPA and the other Power Station Documents executed between the GoMP and the Company, to the Selectee (as substitute for the Company);
 - (b) amendment of the PPA and the other Power Station Documents executed between the GoMP and the Company, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Company under the original PPA and the other Power Station Documents executed between the GoMP and the Company; and
 - (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this PPA.
- 7.3. The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as the GoMP may reasonably require. The GoMP may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

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- 7.4. The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the GoMP of the Proposal:
- (a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other Power Station Documents executed between Company and the GoMP or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Company, as if such Selectee was the Company originally named under the PPA; or the respective RFP Document; and
 - (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the GoMP as if such Selectee was the Company originally named under such Financing Agreements.
- 7.5. At any time prior to taking a decision in respect of the Proposal received under Clause 7.2, the GoMP may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the GoMP as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.
- 7.6. The GoMP shall convey their approval or disapproval of such Proposal to the Selectee. Such decision shall be made by the GoMP at their reasonably exercised discretion within twenty one (21) days of:
- (b) the date of receipt of the Proposal by the GoMP; or
 - (a) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the GoMP under Clause 7.3 above is received;
- whichever is later.

Notwithstanding anything to the contrary mentioned in this PPA, the approval of the GoMP for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 6.1.

- 7.7. Upon approval of the Proposal and the Selectee by the GoMP, the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 7.8. Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection

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of the Selectee previously proposed. The provisions of this article shall apply mutatis mutandis to such fresh Proposal.

- 7.9. The substitution of the Company by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Company, the GoMP and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the GoMP and upon transfer of ownership and complete possession of the Power Station by the GoMP or the Company, as the case may be, to the Selectee. The GoMP shall novate all the Power Station Documents, which they had entered in to with the Company in order to make the substitution of the Company by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Company towards purchase of the Power Station and assumption of all the rights and obligations of the Company under the PPA and other Power Station Documents as mentioned in this PPA shall be entirely between the Company, Selectee and the Lenders and the GoMP shall in no way be responsible to bear the same.
- 7.10. Upon the substitution becoming effective pursuant to Clause 7.9 above, all the rights of the Company under the PPA shall cease to exist:
Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Company against the GoMP or any claim of the GoMP against the erstwhile Company or the Selectee.
- 7.11. The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Company subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Company.
- 7.12. The decision of the Lenders and the GoMP in the selection of the Selectee shall be final and binding on the Company and shall be deemed to have been made with the concurrence of the Company. The Company expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.
- 7.13. The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Company under this PPA and the GoMP shall not be liable for the same.
- 7.14. All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

8. Company's Waiver

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- 8.1. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender’s Representative and the GoMP or exercise of their rights under and in accordance with these terms.
- 8.2. The Company irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.
- 8.3. The Company warrants and covenants that any agreement entered into by the Company, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the GoMP. The Company further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Company shall procure an amendment in the concluded agreement to incorporate such clause.

9. Interim Protection Of Service And Preservation Of Security

Appointment of a Receiver

- 9.1. In every case of the Lenders issuing a Substitution Notice and the GoMP refusing to takeover the Power Station and the Company failing to operate the Power Station in accordance with Clause 4.3 and the GoMP not electing to act as Receiver as per Clause 9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the “Receiver”) to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 9.2. If the assets of the Power Station are, in the opinion of the GoMP, necessary and required for the operation and maintenance of the Power Station, the GoMP shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Company hereby consent and agree to the same. Upon the GoMP so intimating the Company and the Lender’s representative their desire to act as Receiver, the Company and the Lender’s representative shall co-operate with the GoMP to facilitate the same.
- 9.3. Upon appointment of the Court appointed Receiver or the GoMP acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the GoMP and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.
- 9.4. When acting as a Receiver or operator in accordance with Clauses 9 or 4.2, the GoMP shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the GoMP

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shall not be liable to the Lenders, the Lenders' Representative, Company or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the GoMP.

10. Substitution Consideration

- 10.1. The Lenders and GoMP shall be entitled to appropriate any consideration received for the substitution of the Company as hereinabove provided, from the Selectee towards the payment of Lenders' and the GoMP' respective dues, to the exclusion of the Company.
- 10.2. The Company shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Company by the Selectee pursuant to these terms.

11. Change in the Lenders

- 11.1. The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Lender ceasing to be a party to the PPA or Financing Agreements respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Lender. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Company under the Financing Agreements and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

Secretary (Energy)
GoMP

(Designation of Signatory)
Name of IPP