

ARTICLE 30
SUSPENSION OF SUPPLIER'S RIGHTS

30.1 Suspension upon Supplier Default

- 30.1.1 Upon occurrence of a Supplier Default, the Utility shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to suspend all rights of the Supplier under the Fuel Supply Agreement relating to the Supplier's right to receive Allocated Coal, produce electricity therefrom and collect revenues from sale of such electricity (the "**Suspension**"), save and except as provided in Clause 31.3.3.
- 30.1.2 During the period of Suspension, the Utility shall pay to the Supplier 20% (twenty per cent) of the Fixed Charge due and payable to the Supplier for and in respect of the Contracted Capacity.
- 30.1.3 During the period of Suspension hereunder, all rights and liabilities vested in the Supplier in accordance with the provisions of this Agreement shall continue to vest therein and the Supplier undertakes to indemnify the Utility for all costs incurred during such period.

30.2 Revocation of Suspension

Upon the Supplier having cured the Supplier Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Utility shall revoke the Suspension forthwith and restore all rights of the Supplier under this Agreement.

30.3 Substitution of Supplier

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Supplier under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Utility shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.4 Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Utility upon occurrence of a Supplier Default.

ARTICLE 31
TERMINATION

31.1 Termination for Supplier Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Supplier does not achieve the latest outstanding Project Milestone or the Scheduled Completion Date, as the case may be, due in accordance with the provisions of Schedule-E and continues to be in default for 180 (one hundred and eighty) days;
- (d) the Supplier is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (e) the Supplier has failed to make any payment to the Utility within the period specified in this Agreement;
- (f) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;
- (g) the Supplier uses the Allocated Coal in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 22.6.2;
- (h) the Supplier creates any Encumbrance in breach of this Agreement;
- (i) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of Clause 22.6.2;
- (j) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 24.1.4;

- (k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (l) the Supplier fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the Supplier or (iii) shortfall in the Minimum Fuel Stock occurring for reasons not attributable to the Supplier;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;
- (o) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;
- (q) a resolution for winding up of the Supplier is passed;
- (r) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;
 - (iii) each of the Project Agreements remains in full force and effect; and

- (iv) such amalgamation or reconstruction is approved by the Commission.
- (s) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;
- (t) the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;
- (u) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (v) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
- (w) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

31.1.2 Without prejudice to any other rights or remedies which the Utility may have under this Agreement, upon occurrence of a Supplier Default, the Utility shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier; provided that before issuing the Termination Notice, the Utility shall by a notice inform the Supplier of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Supplier to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.1.3.

31.1.3 The Utility shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Supplier in accordance with the Substitution Agreement. In the event the Utility receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Utility shall withdraw its notice referred to above and restore all the rights of the Supplier:

Provided further that upon written request from the Lenders' Representative and the Supplier, the Utility shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Utility may deem appropriate.

31.2 Termination for Utility Default

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

- (a) The Utility commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;
- (b) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or
- (c) the Utility repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

31.3 Termination Payment

31.3.1 Upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 1 (one) year as if the Power Station had operated for such 1 (one) year from the date of Termination.

31.3.2 Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 6 (six) months as if the Power Station had operated for such 6 (six) months from the date of Termination.

- 31.3.3 Upon Termination or expiry of the Contract Period by efflux of time, the Fuel Supply Agreement or any other arrangement for production and supply of Allocated Coal shall cease to be effective and the Supplier shall have no right whatsoever to use such Allocated Coal for the Power Station without the express permission or authorisation by the Central Government in this behalf. Provided, however, that the Parties may mutually agree to a further extension of the Contract Period on the terms specified in this Agreement.
- 31.3.4 Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Utility of its payment obligations in respect thereof hereunder.
- 31.3.5 The Supplier expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Extension of Contract Period

Notwithstanding anything to the contrary contained in this Agreement, the Utility may, at any time no earlier than 3 (three) years but no later than 2 (two) year prior to completion of the Contract period, by a notice issued to the Supplier in accordance with the Proviso of Clause 3.1.1, require an extension of the Contract Period as specified therein, and in the event of such extension, the Contract Period shall be deemed to be extended accordingly. Provided, however, that in the event an extension is not sought hereunder, the Utility shall pay to the Supplier the Termination Payment computed in accordance with the provisions of Clauses 31.3.2. For the avoidance of doubt, the Parties agree that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.1.1, shall apply *mutatis mutandis* to the extended Contract Period.

31.5 Restriction on use of Allocated Coal

- 31.5.1 Upon Termination, the Supplier shall not in any manner utilise the Allocated Coal, which is required for and linked to the Contracted Capacity and shall relinquish all rights and title to such Allocated Coal, as the case may be, in favour of the Utility for use or transfer thereof in such manner as it may determine. The Supplier further agrees and undertakes that it shall not despatch or schedule any electricity produced from such Allocated Coal or save and except in accordance with the instructions of the Utility. For avoidance of doubt, the Supplier agrees and confirms that its rights and obligations under the Fuel Supply Agreement shall be read as modified to the extent of the provisions of this Clause 31.5, save and except as provided in Clause 31.3.3.

- 31.5.2 Pursuant to the provisions of Clause 31.5.1, the Supplier agrees and undertakes to give irrevocable instructions and authority to the RLDC and SLDC not to entertain any instructions for despatch and scheduling that the Supplier may give after Termination for and in respect of the Contracted Capacity, save and except to the extent such instructions are expressly confirmed by the Utility.
- 31.5.3 Upon Termination, the Allocated Coal, if any, which is linked to or allocated for the Contracted Capacity shall, save and except as provided in Clause 31.3.3, be utilised solely in accordance with the instructions of the Utility and the Utility may, subject to Applicable Laws, allocate, transfer or divert such Allocated Coal in such manner as it may deem fit.

31.6 Instructions to RLDC and SLDC

- 31.6.1 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing such copy hereunder, the Supplier shall be deemed to have given irrevocable instructions and authority to the RLDC and SLDC to follow the instructions of the Utility in accordance with the provisions of this Article 31. The Supplier agrees and undertakes that it shall not in any manner challenge or revoke the provisions of this Article 31 or in any manner prevent the Utility, RLDC or SLDC from giving effect thereto.
- 31.6.2 The Utility agrees and undertakes to exercise its rights hereunder only to the extent of the Contracted Capacity and the use of Allocated Coal therefor, and the Supplier may supply electricity to other Distribution Licensees and Buyers in accordance with the provisions of this Agreement.

31.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

31.8 Substitution upon Termination

- 31.8.1 Notwithstanding anything to the contrary contained in Article 31, the Supplier shall, upon Termination on account of Utility Default, be entitled to offer and transfer, in whole or in part, its Contracted Capacity to any Distribution Licensee which has contracted any part of the Committed Capacity on the terms specified in this Agreement, and in the event no such Distribution Licensee agrees to accept such capacity, then any other Distribution Licensee, on the express condition that such transfer shall be subject to and in accordance with the provisions of this Clause 31.8. Provided, however, that the Supplier shall not at any time transfer its Contracted Capacity to more than 3 (three) Distribution Licensees.

- 31.8.2 In the event the Supplier proposes to offer and transfer its Contracted Capacity in accordance with the provisions of Clause 31.8.1, it shall give to each of the other Distribution Licensees who have an agreement for and in respect of the Committed Capacity, an offer of the proposed transfer setting out therein the principal terms of the offer along with a copy of this Agreement and such offer may not be revoked and shall remain effective for a period of 60 (sixty) days from the date of its receipt by the Distribution Licensee.
- 31.8.3 If any of the Distribution Licensees specified in Clause 31.8.2 notifies to the Supplier that it intends to acquire the whole or part of the Contracted Capacity, then the Supplier shall transfer, and such Distribution Licensee shall acquire, such whole or part of the Contracted Capacity in accordance with the provisions of this Agreement.
- 31.8.4 If the Distribution Licensees specified in Clause 31.8.2 do not notify their intention to acquire the whole or part of the Contracted Capacity within the offer period, the Supplier may transfer the Contracted Capacity to any Distribution Licensee within 90 (ninety) days from the expiry of the offer period and on the terms contained in this Agreement.
- 31.8.5 No transfer of the Contracted Capacity shall be effective unless the transferee shall have agreed in writing to be bound by all the provisions of this Agreement and shall have executed and delivered a Deed of Adherence, in the form acceptable to the Commission, and all other documents, necessary to validly effect the transfer under this Clause 31.8.
- 31.8.6 The Parties expressly agree that upon transfer of the Contracted Capacity in accordance with the provisions of this Clause 31.8, the obligation of the Utility to make a Termination payment shall be reduced to one half of the amount specified in Clause 31.3.
- 31.8.7 The Parties expressly agree that to the extent the Contracted Capacity is transferred to a Distribution Licensee in accordance with the provisions of this Clause 31.8, the Supplier shall be entitled to retain and utilise the Allocated Coal, proportionate to such Contracted Capacity, in accordance with the provisions of this Agreement. Until the use of Allocated Coal commences under the provisions of this Clause 31.8.7, the Supplier may use the whole or part of such Allocated Coal for production of electricity and supply thereof to the Distribution Licensees who have contracted any part of the Committed Capacity and on the terms specified in this Agreement.
- 31.8.8 In the event that the whole or part of the Allocated Coal cannot be utilised in accordance with the provisions of Clause 31.8.7, it may be used for supply of electricity to Buyers in accordance with the provisions of Clause 22.6 upon payment of Revenue Share, on a proportionate basis, to the Distribution Licensees who have contracted part of the Committed Capacity. Provided, however, that the provisions of this Clause 31.8.8 shall apply and remain in force for a period not exceeding 6 (six) months from the date of Termination.
- 31.8.9 In the event that the whole or part of the Allocated Coal cannot be utilised in accordance with the provisions of this Clause 31.8, the supply and utilisation of

such whole or part of the Allocated Coal shall remain suspended, and if its utilisation is not restored within a period of 8 (eight) months from the date of Termination, the provisions of Clause 31.5 shall apply.

ARTICLE 32

DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

32.1.1 Upon Termination, the Supplier shall, save and except as provided in Clause 31.3.3, comply with and conform to the following Divestment Requirements:

- (a) execute such deeds of conveyance, documents and other writings as the Utility may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Supplier in the Fuel Supply Agreement to the extent of Allocated Coal that was required for the Contracted Capacity; and
- (b) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Supplier in the Allocated Coal, free from all Encumbrances, absolutely unto the Utility or to its nominee.

32.1.2 Subject to the exercise by the Utility of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Supplier, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

32.2 Partial Divestment

Notwithstanding anything to the contrary contained in this Agreement, in the event the Contracted Capacity of the Power Station is less than 70% (seventy per cent of the Installed Capacity on the date of Termination, the Divestment hereunder shall be restricted to the same proportion that the Contracted Capacity bears to the Installed Capacity, but shall in no case be less than the volume of Allocated Coal allocated or attributable to the Contracted Capacity or the Utility, as the case may be, save and except as provided in Clause 31.3.3.

32.3 Inspection

Not earlier than 60 (sixty) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Utility's Engineer shall verify, after giving due notice to the Supplier specifying the time, date and place of such verification and/or inspection, compliance by the Supplier with the provisions of this Agreement.

32.4 Cooperation and assistance on transfer of Allocated Coal

The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the rights and possessions over the Allocated Coal, in accordance with the provision of this Agreement so as to

protect the safety of and avoid undue delay or inconvenience to the Utility and other members of the public.

32.5 Vesting Certificate

The divestment of all rights, title and interest over the Allocated Coal, if any, shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Utility shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-O (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Supplier of all of its rights, title and interest in the Allocated Coal, and their vesting in the Utility pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Utility or its nominee on, or in respect of, the Contracted Capacity on the footing that all Divestment Requirements have been complied with by the Supplier.

32.6 Divestment costs etc.

32.6.1 The Supplier shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Supplier in the with regard to Allocated Coal in favour of the Utility upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Supplier in connection with such divestment shall be borne by the Utility.

32.6.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

Part VI

Other Provisions

ARTICLE 33
ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

33.1.1 Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Supplier to any person, save and except with the prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.

33.1.2 Subject to the provisions of Clause 33.2, the Supplier shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Supplier is a party, except with prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

33.2.1 The restraints set forth in Clause 33.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Power Station;
- (c) assignment of rights, interest and obligations of the Supplier to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

33.2.2 The Supplier may mortgage, pledge, assign or hypothecate the Site and Project Assets to the Senior Lenders as security for their debt, save and except any allocation, linkage, entitlement, rights or title to the Allocated Coal required for the Contracted Capacity.

33.3 Substitution Agreement

33.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Supplier pursuant to the agreement for substitution of the Supplier (the "**Substitution Agreement**") to be entered into amongst the Supplier, the Utility and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-P.

33.3.2 Upon substitution of the Supplier under and in accordance with the Substitution Agreement, the Nominated Company substituting the Supplier shall be deemed to be the Supplier under this Agreement and shall enjoy all rights and be responsible for all obligations of the Supplier under this Agreement as if it were the Supplier; provided that where the Supplier is in breach of this Agreement on the date of such substitution, the Utility shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Supplier for curing such breach.

33.4 Assignment by the Utility

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

33.5 Approvals for assignment

Any assignment under this Article 33 shall be subject to the approvals and consents required therefor under Applicable Laws, including approval of the Commission. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Utility to grant its approval to such assignment, save and except as provided herein.

ARTICLE 34

CHANGE IN LAW

34.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden for and in respect of Contracted Capacity, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)⁴⁵ and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may by notice require the Utility to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Utility shall pay the amount specified therein; provided that if the Utility shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

34.2 Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains for and in respect of Contracted Capacity, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Utility, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Utility may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had

⁴⁵ This amount may, in the discretion of the Utility, be suitably increased, but in no case exceeding an amount of Rs. 50 lakh for every Rs.500 cr. of the estimated Total Project Cost. A similar modification should also be made in Clause 34.2.

there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Supplier shall pay the amount specified therein to the Utility; provided that if the Supplier shall dispute such claim of the Utility, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

34.3 Protection of NPV

Pursuant to the provisions of Clauses 34.1 and 34.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

34.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 34 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

34.5 No claim in the event of recovery from Buyers

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

ARTICLE 35

LIABILITY AND INDEMNITY

35.1 General indemnity

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

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

35.2 Indemnity by the Supplier

35.2.1 Without limiting the generality of Clause 35.1, the Supplier shall fully indemnify, hold harmless and defend the Utility and the Utility Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

35.2.2 Without limiting the generality of the provisions of this Article 35, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons

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

35.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 Defence of claims

35.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior

written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

ARTICLE 36

DISPUTE RESOLUTION

36.1 Dispute resolution

- 36.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2.
- 36.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

36.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Utility’s Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Utility’s Engineer or without the intervention of the Utility’s Engineer, either Party may require such Dispute to be referred to the Chairman of the Board of Directors of the Utility and the Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 36.3.

36.3 Arbitration

- 36.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 36.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be [Delhi/Mumbai/Chennai/Kolkata/Name of the place in the State]⁴⁶ and the language of arbitration proceedings shall be English.
- 36.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two

⁴⁶ Retain one and strike out the remaining places.

arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

36.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 36 shall be final and binding on the Parties as from the date it is made, and the Supplier and the Utility agree and undertake to carry out such Award without delay.

36.3.4 The Supplier and the Utility agree that an Award may be enforced against the Supplier and/or the Utility, as the case may be, and their respective assets wherever situated.

36.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

36.4 Adjudication by the Commission

36.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 36.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

36.4.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 36.3 shall be followed to the extent applicable.

36.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 36.3 and 36.4 respectively, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 37

DISCLOSURE

37.1 Disclosure of Specified Documents

The Supplier shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Supplier’s Registered Office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

37.2 Disclosure of Documents relating to safety

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

37.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 37.1 and 37.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 37.1 and 37.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 38

MISCELLANEOUS

38.1 Governing law and jurisdiction

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

38.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

38.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Supplier in the Project Assets shall be deemed to be acquired and owned by the Supplier. For the avoidance of doubt, the Utility shall not in any manner be liable in respect of any claims for depreciation to be made by the Supplier under Applicable Laws.

38.4 Delayed payments

- 38.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall

pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

38.5 Waiver

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

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

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

38.6 Liability for review of Documents and drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Utility or the Utility's Engineer of any Project Agreement, Document or drawing submitted by the Supplier nor any observation or inspection of the construction, operation or maintenance of the Power Station nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Supplier from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Utility shall not be liable to the Supplier by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

38.7 Exclusion of implied warranties etc.

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

38.8 Survival

38.8.1 Termination shall:

- (a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 35; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

38.9 Entire Agreement

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

38.10 Severability

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

38.11 No partnership

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

of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

38.12 Third parties

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

38.13 Successors and assigns

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

38.14 Notices

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

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

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

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

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

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

38.15 Language

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

38.16 Counterparts

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

ARTICLE 39

DEFINITIONS

39.1 Definitions

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

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

“**Act**” means the Electricity Act, 2003;

“**Additional Fuel Supply Arrangement**” or **AFSA**” shall have the meaning as set forth in Clause 22.9.1;

“**Affected Party**” shall have the meaning as set forth in Clause 28.1;

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

[“**Allocated Coal Linkage**” shall mean [Insert coal linkage arranged by Utility]]⁴⁷

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

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

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

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modification to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or

⁴⁷ To be retained only if coal is being sourced through Allocated Coal Linkage arranged by the Utility.

corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Availability**” shall have the meaning as set forth in Clause 5.1.4 and the term “**Available**” shall be construed accordingly;

“**Average Daily Availability**” means the Availability, in terms of percentage, determined for the month preceding the relevant Force Majeure Event;

“**Average Daily Fixed Charge**” means the amount arrived at by dividing the total Fixed Charge due and payable for the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Fixed Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fixed Charge due and payable with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fixed Charge payable for any segment of the Power Station has not been realised for any reason, an assessment thereof shall be made by the Utility’s Engineer to form part of the Average Daily Fixed Charge for such period;

“**Average GCV**” shall have the meaning as set forth in clause 22.3.1;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

“**Base Fixed Charge**” shall have the meaning as set forth in Clause 21.2.1;

“**Base Year**” means the Accounting Year in which the Bid Date occurred;

“**Bid**” means the documents in their entirety comprised in the Bid submitted by the selected Bidder in response to the Request for Proposal -DBFOO in accordance with the provisions thereof and “**Bids**” shall mean the Bids submitted by any and all pre-qualified Bidders;

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

“**Bid Security**” means the security provided by the Supplier to the Utility along with the Bid, in a sum of Rs. **** crore (Rupees **** crore)⁴⁸ in accordance with the Request for Proposal-DBFOO, and which is to remain in force until substituted by the Performance Security;

⁴⁸ This amount shall normally be equal to the amount specified in the Request for Proposal and may be calculated @ Rs. 5,00,000 (Rs. Five lakh) per MW of the likely Contracted Capacity. The Utility may, if deemed necessary, prescribe a higher Bid Security not exceeding 25% of the aforesaid amount. In case the likely Contracted Capacity is 500 MW or more, the Utility may reduce the Bid Security, but not less than 25% of the aforesaid amount in any case.

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

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

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 14.1.1;

“**Capacity Charge**” shall have the meaning as set forth in Clause 21.4.4;

“**Captive Mine**” means a mine owned or operated by the Supplier or an Associate and from where Fuel is extracted for use at the Power Station, and includes a mine which is owned by a third party that has entered into a long-term agreement with the Supplier for dedicated supply of Fuel for use at the Power Station for a period not less than the term of the PPA following COD or 10 (ten)⁴⁹ years following COD, whichever is earlier. It is clarified that Captive Mine shall not include Coal Mine/Blocks

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

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline below 26% (twenty six per cent) thereof during the term of the PPA or the period of 10 (ten) years following COD, whichever is earlier, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

“**Coal Mine/Blocks**” shall mean Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws;

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

“**Committed Capacity**” shall have the meaning as set forth in Clause 18.3;

⁴⁹ This period may be fixed between 10 (ten) years and the period specified in Clause 3.1.1.

“**Company**” means the company acting as the Supplier under this Agreement;

“**Completion Certificate**” shall have the as meaning set forth in Clause 13.2.1;

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

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

“**Construction Works**” means all works, equipment and things necessary to complete the Power Station in accordance with this Agreement and includes the Dedicated Transmission System, Sub-stations, conductors and other equipment;

“**Contract Period**” means the period starting on and from the Appointed Date and ending on the earlier of the [__ (___)] anniversary of the Appointed Date and the date of termination of the Agreement;

“**Contracted Capacity**” shall have the meaning as set forth in Clause 18.2;

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

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

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

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

“**DBFOO**” or “**Design, Build, Finance, Own and Operate**” shall have the meaning as set forth in Recital (A);

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

“**Debt Service**” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“**Dedicated Transmission System**” shall have the meaning as set forth in Clause 11.2.1;

“Deed of Hypothecation” shall have the meaning as set forth in Clause 23.1.2;

“Default Escrow Account” shall have the meaning as set forth in Clause 23.1.1;

“Default Escrow Agreement” shall have the meaning as set forth in Clause 23.1.1;

“Default Escrow Bank” shall have the meaning as set forth in Clause 23.1.1;

“Delivery Point” means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility;

“Despatch” shall have the meaning as set forth in Clause 24.1.1;

“Dispute” shall have the meaning as set forth in Clause 36.1.1;

“Disputed Amounts” shall have the meaning as set forth in Clause 21.10.3;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 36;

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

“Divestment Requirements” means the obligations of the Supplier for and in respect of Termination as set forth in Clause 32.1;

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

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Power Station, including Buyers thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Power Station, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Power Station, where applicable herein but excluding utilities referred to in Clause 11.1;

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

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Schedule-P;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Power Station and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“Financing Agreements” means the agreements executed by the Supplier in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“Fixed Charge” shall have the meaning as set forth in Clause 21.1.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1;

“Forced Outage” means an outage of the Power Station due to a fault or any other reason which was not anticipated and includes any trippings, breakdown or unscheduled shutdown and an Emergency;

“Fuel Charge” shall have the meaning as set forth in Clause 22.2.1;

“Fuel” means the coal⁵⁰ which is fit for use in generation of electricity at the Power Station;

“Fuel Shortage” shall have the meaning as set forth in Clause 22.8.1;

“Fuel Supply Agreement” or **“FSA”** shall have the meaning as set forth in Clause 22.4.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient

⁵⁰ Coal may be substituted by gas or lignite, as the case may be, in case the Power Station is to be set up as a gas-based or lignite-based facility. In that event, Clauses 3.1, 4.1, 5.1, Articles 18, 21, 22 and other relevant clauses, and the technical parameters, as specified in the relevant Schedules, may be modified suitably to reflect the parameters applicable to such gas-based or lignite-based power stations.

manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

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

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

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

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

“**Gross Calorific Value**” or “**GCV**” means the heat produced in kCal by complete combustion of one kilogram of coal expressed in kCal per Kg;

“**Incentive**” means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

“**Incomplete Works**” shall have the meaning as set forth in Clause 13.3.1;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 35;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 35;

“**Indexed Fixed Charge**” shall have the meaning as set forth in Clause 21.3;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 28.3;

“**Installed Capacity**” shall have the meaning as set forth in Clause 18.1;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 26, and includes all insurances required to be taken out by the Supplier under Clause 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Key Performance Indicators**” shall have the meaning as set forth in Clause 17.1;

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

“**Landed Fuel Cost**” shall have the meaning as set forth in Clause 22.2.2;

“**Lenders’ Representative**” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“**Letter of Credit**” shall have the meaning as set forth in Clause 23.2.1;

“**Line ROW**” shall have the meaning as set forth in Clause 10.1;

[“**Linkage Coal**” shall mean the coal linkage provided by Coal India Limited or Singareni Collieries Company Limited at notified price for regulated sector of thermal power;]⁵¹

“**Maintenance Manual**” shall have the meaning as set forth in Clause 15.3.1;

“**Maintenance Programme**” shall have the meaning as set forth in Clause 15.4.1;

“**Maintenance Requirements**” shall have the meaning as set forth in Clause 15.2;

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

“**Maximum Monthly Payment**” shall have the meaning as set forth in Clause 23.1.1;

“**Merchant Capacity**” shall have the meaning as set forth in Clause 18.7;

“**Minimum Fuel Stock**” shall have the meaning as set forth in Clause 22.7;

“**Minimum Monthly Payment**” shall have the meaning as set forth in Clause 23.1.3;

“**Mis-declaration**” shall have the meaning as set forth in Clause 21.5.5;

“**Monthly Invoice**” shall have the meaning as set forth in Clause 21.10.1;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Utility for substituting the Supplier in accordance with the provisions of the Substitution Agreement;

“**Non-Availability**” means any partial or total lack of Availability on account of Scheduled Maintenance or Unscheduled Maintenance or for any other reason, save and except to the extent arising out of an event described in Clause 15.8;

“**Non-Political Event**” shall have the meaning as set forth in Clause 28.2;

“**Normative Availability**” shall have the meaning as set forth in Clause 5.1.4;

“**O&M**” means the operation and maintenance of the Power Station and includes all matters connected with or incidental to such operation and maintenance, and provision of

⁵¹ To be retained only if the source of fuel is from Linkage Coal.

generating and transmission services and facilities in accordance with the provisions of this Agreement;

“O&M Contractor” means the person, if any, with whom the Supplier has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Supplier;

“O&M Expenses” means expenses incurred by or on behalf of the Supplier or by the Utility, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Clause 16.2;

“Open Capacity” shall have the meaning as set forth in clause 18.4.1;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 27.2.1;

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

“Payment Due Date” shall have the meaning as set forth in Clause 21.10.3;

“Performance Security” shall have the meaning as set forth in Clause 9.1.1;

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

“Political Event” shall have the meaning as set forth in Clause 28.4;

“Power Station” means the generating station as described in Schedules A and B or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities, [Coal Mine/Blocks, Captive Mines and the allocation of Allocated Coal which is linked to or attached with the Project] [and any port or berth thereof with all the equipment installed for import of Fuel for the Project];

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

“Project Agreements” means the documents and agreement relating to Fuel tie up for the period as specified by the power procurer;

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

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

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-E for completion of the Power Station on or before the Scheduled Completion Date;

“Project Milestones” means the project milestones as set forth in Schedule-E;

“Provisional Certificate” shall have the meaning as set forth in Clause 13.3.1;

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

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

“Request for Proposal-DBFOO” or “RFP-DBFOO” shall have the meaning as set forth in Recital (C);

“Request for Qualification-DBFOO” or “RFP-DBFOO” shall have the meaning as set forth in Recital (B);

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

“Revenue Share” means and refers to the share of revenue from Open Capacity to be paid by the Supplier to the Utility in accordance with the provisions of this Agreement;

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

“Safety Requirements” shall have the meaning as set forth in Clause 15.13;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 11.2.1;

“Scheduled Maintenance” shall have the meaning as set forth in Clause 15.4.2;

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

“Secured Obligations” means:

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

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Supplier under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Supplier;

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

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in Schedule-C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Power Station submitted by the Supplier to, and expressly approved by, the Utility;

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

“Station Heat Rate” shall have the meaning as set forth in Clause 22.1.1;

“Station Premises” shall have the meaning as set forth in Clause 10.1;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

“Sub-station” means a station for transforming or converting electricity for the transmission thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

“Substitution Agreement” shall have the meaning as set forth in Clause 33.3.1;

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

“Supplier Default” shall have the meaning as set forth in Clause 31.1.1;

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

“Suspension” shall have the meaning as set forth in Clause 30.1;

“Tariff” shall have the meaning as set forth in Clause 21.1.1;

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

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

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

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

“Tests” means the tests set forth in Schedule-F to determine the completion of Power Station in accordance with the provisions of this Agreement;

“Total Project Cost” means the capital cost incurred on construction and financing of the Contracted Capacity and shall be limited to the lower of:

- (a) the capital cost of the Contracted Capacity as set forth in the Financial Package; and
- (b) the actual capital cost of the Contracted Capacity upon completion of Construction;

“Transfer Date” means the date on which this Agreement and the Supply Contract hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“UI Regulations” means the CERC Unscheduled Interchange Regulations 2009 or any substitute thereof;

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

“Unscheduled Maintenance” shall have the meaning as set forth in Clause 15.8;

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

“Utility Default” shall have the meaning as set forth in Clause 31.2.1;

“Utility’s Engineer” shall have the meaning as set forth in Clause 19.1;

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

“Vesting Certificate” shall have the meaning as set forth in Clause 32.5; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 21.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year, which WPI may be substituted by such alternative index or indices as the Parties may by mutual consent determine.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE UTILITY by:

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

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

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

In the presence of:

1.

2.

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

Schedules

SCHEDULE – A
(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

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

Annex - I
(Schedule-A)

Site for the Power Station⁵²

[**Note:** Through suitable drawings and description in words, the land, corridors for pipeline, roads, conveyor, ash ponds, dedicated transmission lines, housing colony for emergency staff, utilities and rail lines comprising the Site shall be specified briefly but precisely in this Annex-I. Part A of this Annex-I shall specify the Power Station and Part B shall specify the Line ROW. Part C hereof shall specify the Coal Mines/Blocks.]

Part A

Power Station

[**Note:** Through suitable drawings and description in words, the land, buildings and structures comprising the Power Station shall be described briefly but precisely.]

Part B

Line ROW

[**Note:** Through suitable description in drawings and words, the Line ROW for the Dedicated Transmission System shall be described briefly but precisely.]

Part C

Coal Mines/ Blocks

[**Note:** Through suitable drawings and description in words, describe the site of Coal Mine/Blocks.]

⁵² In the event the Power Station of any Bidder is already under construction or has been constructed, the provisions of this Annex-I may be specified in more generic terms to conform with Applicable Laws.

SCHEDULE – B
(See Clause 2.1)

DEVELOPMENT OF THE POWER STATION

1 Development of the Power Station

Development of the Power Station shall include construction of the Power Station as described in this Schedule-B.

2 Power Station

2.1 Power Station shall include construction of the Power Station as described in Annex-I of this Schedule-B.

2.2 Power Station shall be completed by the Supplier in conformity with the Specifications and Standards set forth in Annex-I of Schedule-C.

3 Dedicated Transmission System

3.1 Dedicated Transmission System shall include construction of the Dedicated Transmission System as described in Annex-II of this Schedule-B.

3.2 Dedicated Transmission System shall be completed by the Supplier in conformity with the Specifications and Standards set forth in Annex-II of Schedule-C.

Annex - I
(Schedule-B)

Description of Power Station⁵³

1 Capacity of the Power Station

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

1.2 The configuration of Units is given below:

(a) The number of Units shall not exceed

(b) The nameplate capacity of each Unit shall not be less than MW.

1.3 The Station Heat Rate of the Power Station shall conform with the provisions of Schedule-C.

2 Dedicated communication

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

3 Specifications and Standards

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

4 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 3% (three per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.

5 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of 8 (eight) hours from the time of each start.

6 Description of the Power Station[£]

The Power Station shall be constructed as briefly described below:

[Provide details of the proposed Power Station, including the boiler, steam turbine, turbo generator and other major equipments in each Unit. In particular, include the following:

A. Boiler

(i) Type

⁵³ In the event the Power Station of any Bidder is already under construction or has been constructed, the provisions of this Annex-I may be specified in more generic terms to conform with Applicable laws and the details may be filled up after the Bidder has been selected.

[£] The particulars in respect of blank spaces and Paragraph 6 shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between the Parties.

- (ii) Number of steam generators with auxiliaries
 - (iii) Steaming capacity (BMCR) T/hr
 - (iv) Pressure at SH outlet kg/cm²(abs)
 - (v) Temperature at SH outlet °C
 - (vi) Temperature at RH outlet °C
- B. Seam Turbine**
- (i) Type
 - (ii) Number
 - (iii) TMCR output MW
 - (iv) VWO output MW
 - (v) Turbine inlet pressure at TMCR kg/cm²
 - (vi) MS temperature at turbine inlet °C
 - (vii) RH temperature at turbine inlet °C
 - (viii) HP/LP by pass %
 - (ix) Boiler feed pump
 - (a) TDBFP No. Capacity(m³/hr)
 - (b) MDBFP No. Capacity(m³/hr)
- C. Condenser**
- (i) Type
 - (ii) Design cooling water temperature °C
 - (iii) Tube material
 - (iv) Type of cooling water
 - (v) Condensate polishing plant No. Capacity
- D. Generator**
- (i) Number No
 - (ii) Capacity MVA
 - (iii) Power factor
 - (iv) Cooling
 - (a) Rotor
 - (b) Stator
- E. Specify the requirements of the Ministry of Environment and Forests]**

Annex - II
(Schedule-B)

Description of the Dedicated Transmission System⁵⁴

1. Dedicated Transmission System

- 1.1 The Dedicated Transmission System shall have a capacity to transmit MW.
- 1.2 The Dedicated Transmission System shall connect the Power Station to the Grid at the Point of Grid Connection located at in district of the State where the Power Station is situated.
- 1.3 The Dedicated Transmission System shall be constructed as briefly described below:^ε

1. Electrical System

(i)	Generator Transformer	No.	MVA
(ii)	Interconnecting transformer	No.	MVA
(iii)	Station transformer	No.	MVA
(iv)	Unit/ Auxiliary Transformer	No.	MVA

2. Switchyard

- (i) KV switchyard
- (a) Transformer Bays (No.)
 - (b) Line Bays (No.)
 - (c) Bus Section + Bus coupler (No.)
 - (d) ICT bay (No.)
 - (e) Transfer bay + Switchable shunt reactor (No.)

2 Specifications and Standards

The Dedicated Transmission System shall be constructed in conformity with the Specifications and Standards specified in Annex-II of Schedule-C.

⁵⁴ In the event a Dedicated Transmission System is required, this may be suitably reflected in this Annex-II. Where the Point of Delivery is at the Bus-bar of the Power Station, the contents of this Annex-II may be modified suitably.

^ε The particulars of Paragraph 1 shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between the Parties.

SCHEDULE- C
(See Clause 2.1 and 24.4)

SPECIFICATIONS AND STANDARDS

1 Power Station

The Supplier shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-C for construction of the Power Station.

2 Station Heat Rate

2.1 The Station Heat Rate, reckoned at the Point of Grid Connection shall, after accounting for auxiliary consumption and transmission losses, not exceed [2,300 (two thousand three hundred)⁵⁵ kCal per kWh] at 100% (hundred per cent) maximum continuous rating (MCR).

2.2 The Station Heat Rate of the Power Station shall be deemed to be higher in the event of reduction in generation below 85% (eighty five per cent) of the Committed Capacity. Such increase, as a proportion of the Station Heat Rate shall be deemed to be in accordance with the standard increase specified in Annex-III of this Schedule.

3 Dedicated Transmission System

The Supplier shall comply with the Specifications and Standards set forth in Annex-II of this Schedule-C for construction of the Dedicated Transmission System.

⁵⁵ This figure may be substituted by 2,350 for all bids received on or before December 31, 2016 or where a Power Station shall have achieved COD prior to that date.

Annex - I
(Schedule-C)

Specifications and Standards for the Power Station

1 Specifications and Standards

Subject to the provisions of Paragraph 2 of this Annex-I, the Power Station shall conform with the provisions of Central Electricity Authority Technical Standards for construction of Electrical Plants and Electrical Lines) Regulations 2010 which shall be deemed to be the Specifications and Standards (An authenticated copy of the same has been provided to the Supplier as part of the Bid documents.)

2 Additional Specifications and Standards

2.1 Notwithstanding anything to the contrary contained in this Agreement, the following additional Specifications and Standards shall apply to the Power Station, and for purposes of this Agreement, the aforesaid Specifications and Standards shall be deemed to be amended to the extent set forth below:

[**Note:** Additions to the provisions in the applicable Regulations shall be listed out here. Such additions shall be specified only if they are considered essential in view of project-specific requirements.]

2.2 The Power Station shall have the capacity to use the following mix of Fuel at the level of full Availability:

(a) Upto% (.... per cent) of the Fuel having an ash content of...% (..... per cent); and

(b) upto% (..... per cent) of the Fuel having an ash content of% (.... per cent).⁵⁶

⁵⁶ The proportion between (a) and (b) may be determined keeping in view the extent of imported Fuel likely to be utilised for the Power Station. The proportion of imported Fuel may be higher for Power Stations located near coastal areas while it may be negligible for Power Stations located at a pithead.

Annex - II
(Schedule-C)

Specifications and Standards for the Dedicated Transmission System

1 Specifications and Standards

The Dedicated Transmission System shall conform with the Central Electricity Authority Technical Standards for construction of Electrical Plants and Electrical Lines) Regulations 2010 (An authenticated copy of the same has been provided to the Supplier as part of the Bid Documents.) and the following shall apply:

1.1 Grid Conditions at the Point of Grid Connection

- | | | | |
|---------------------------------|-----------|----------------------|----------|
| (i) Voltage: | Nominal | kV | [] |
| | Variation | % | [] |
| (ii) Frequency: | Nominal | Hz. | [50] |
| | Variation | As specified by CERC | |
| (iii) Power Factor: | Nominal | [] | lag |
| (iv) Basic Impulse Level (Peak) | kV | [] | |

1.2 Fault Levels:

- | | | | |
|---------------------|---------|----|---------|
| (i) 3 Phase | Maximum | kA | [] |
| (ii) Clearance time | Maximum | ms | [] |

Annex - III
(Schedule-C)

Station Heat Rate

1 Increase in Station Heat Rate

Subject to the provisions of Paragraph 2 of this Annex-III, in the event the Utility Dispatches the Power Station at a level lower than 85% (eighty five per cent) of its entitlement in the Contracted Capacity, the SHR shall be deemed to be increased as specified below.

Station Heat Rate at different levels of Despatch⁵⁷

(in %)

S. No.	Despatch as proportion of Utility's entitlement in Contracted Capacity	Increase in SHR (for super-critical turbine)	Increase in SHR (for sub-critical turbine)
1	85-100	Nil	Nil
2	75-84.99	1.25	2.25
3	65-74.99	2	4
4	55-64.99	3	6
5	45-54.99	4.5	9
6	35-44.99	7	13.5
7	25-34.99	10.5	21
8	15-24.99	14	30
9	5-14.99	19	40
10	Below 5	25	50

2 Notwithstanding anything to the contrary contained in this Annex-III, the benefit of an increase in SHR shall at all times be subject to an actual reduction in generation of electricity and in the event any reduction in Dispatch by the Utility is off-set by Dispatch to any other buyer, the benefit of an increase in SHR shall be computed only in respect of the remaining shortfall, if any.

3 Optimisation of SHR

The Supplier shall, following a reduction in Dispatches, back down individual Units or reduce generation therefrom in a manner that will optimise the SHR and reduce the Fuel charge. For this purpose, it shall comply with such instructions as the Utility may give from time to time.

⁵⁷ The table above may be suitably modified to reflect project-specific standards.

SCHEDULE –D

(See Clause 9.1)

PERFORMANCE SECURITY

The,
Distribution Company
[State of ...]

WHEREAS:

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

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

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

pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.
5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Security and such substitution shall be repeated until the Vesting Certificate has been issued, and provided the Supplier is not in breach of this Agreement. Upon request made by the Supplier for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Supplier, the Utility shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

Signed and sealed thisday of ..., 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

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

NOTES:

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

SCHEDULE –E
(See Clause 11.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule⁵⁸

During Construction Period, the Supplier shall comply with the requirements set forth in this Schedule-E for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Supplier shall notify the Utility of such compliance alongwith necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Supplier shall have commenced construction of the Power Station and expended not less than 10% (ten per cent) of the Total Project Cost.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [550th (five hundred and fiftieth)] day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Supplier shall have expended not less than 40% (forty per cent) of the Total Project Cost.

4 Scheduled Completion Date

The Scheduled Completion Date for completion of the Contracted Capacity of the Power Station shall be the [1,050th (one thousand and fiftieth)] day from the Appointed Date.

5 Extension of period

Upon extension of any or all of the Project Milestones or the Scheduled Completion Date, as the case may be, in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

⁵⁸ The dates for each milestone and the level of expenditure for each milestone may be determined as per project-specific requirements.

SCHEDULE-F
(See Clause 13.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Supplier shall, no later than 60 (sixty) days prior to the likely completion of the Power Station, notify the Utility's Engineer and the Utility of its intent to subject the Power Station to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Utility's Engineer and to the Utility particulars of all works and equipment forming part of the Power Station.
- 1.2 The Supplier shall, in consultation with the Utility's Engineer, determine the date and time for each Test and notify the same to the Utility who may designate its representative to witness the Tests.

2 Tests

In pursuance of the provisions of Clause 13.1.2 of this Agreement, the Supplier shall carry out Tests for determining the compliance of the Power Station and Dedicated Transmission System with Specifications and Standards as specified in Paragraphs 3, 4 and 5 of this Schedule-F.

3 Power Station

3.1 Installed Capacity Test

The Supplier shall carry out or cause to be carried out, Tests specified in the Performance Test Code - 6 (PTC – 6) of American Society of Mechanical Engineers Standards (the “ASME Standards”) to determine the capacity of turbo-generators, which capacity shall be deemed as the Installed capacity of the Power Station and specified as such in the Provisional Certificate or Completion Certificate, as the case may be.

Provided that the Installed Capacity Tests for and in respect of a Unit shall be deemed to be unsuccessful in the event that the generating capacity of such Unit is less than 95% (ninety five per cent) of its name plate capacity comprising the Maximum Continuous Rating.

3.2 SHR Test

The Utility's Engineer shall carry out, or cause to be carried out, Tests specified in the Performance Testing Code - 4 (PTC – 4) and Performance Test Code - 6 (PTC – 6) of ASME Standards for boilers and turbines respectively, and Tests specified in other applicable codes in respect of associated equipment, to determine the Station Heat Rate at 100% (hundred per cent) maximum continuous rating (MCR) of the Power Station, after accounting for auxiliary consumption and losses on the Dedicated Transmission System, if any, and the Station Heat Rate shall be lower of SHR so determined after including [2% (two per cent)]⁵⁹ increase to account for potential variations arising from temperature, humidity,

⁵⁹ This figure may be substituted by 5% (five per cent) for all bids received on or before December 31, 2016 or where a Power Station shall have achieved COD prior to that.

quality of coal and other unforeseen factors and 2,300⁶⁰ kCal per kWh, and the number so arrived at shall be specified as the Station Heat Rate in the Provisional Certificate or Completion Certificate, as the case may be.

4 Dedicated Transmission System

4.1 The Utility's Engineer shall carry out, or cause to be carried out, the tests specified in the Manual on Commissioning Procedure for Transmission Lines (Central Board of Irrigation and Power, Publication no. 292).

4.2 Structural Test for transmission towers and Sub-station structures:

All transmission towers and Sub-station structures shall be subjected to non-destructive testing of completed structures or part thereof, to be conducted or cause to be conducted by the Supplier in accordance with Good Industry Practice.

5 Common Tests

5.1 Visual and physical Test

The Utility's Engineer shall conduct a visual and physical check of the Power Station and Dedicated Transmission System to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

5.2 Tests for equipment:

Utility's Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of control equipment, signalling, telecommunication and metering equipment with Specification and Standards.

5.3 Trial run of Contracted Capacity:

A trial run of the Contracted Capacity shall be undertaken for a continuous period of 72 (seventy-two) hours for demonstrating the compliance of the Contracted Capacity with the provisions of this Agreement, including the design capacity of each circuit/facility. The trial run shall be conducted or caused to be conducted by the Supplier in consultation with the Utility's Engineer, the SLDC and the RLDC, as the case may be. In the event that testing of any circuit/facility cannot be carried out up to the design capacity, for any reason not attributable to the Supplier, the Supplier shall provide adequate data and justification of its design capacity such as design data, calculations, extrapolation and simulation, to enable the Utility's Engineer to determine the compliance thereof with the provisions of this Agreement. For the avoidance of doubt, if any tripping occurs on account of reasons attributable to the Supplier, the Utility's Engineer may require the Supplier to repeat the trial run at the risk and cost of the Supplier.

⁶⁰ This figure may be substituted by 2,350 for all bids received on or before December 31, 2016 or where a Power Station shall have achieved COD prior to that date.

6 Agency for conducting Tests

All Tests set forth in this Schedule-F shall be conducted by the Supplier or such other agency or person as it may specify in consultation with the Utility's Engineer.

7 Completion/Provisional Certificate

Upon successful completion of Tests, the Supplier shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 13.

8 Tests during construction

Without prejudice to the provision of this Schedule-F, tests during construction shall be conducted in accordance with the provisions of Clause 13.1.1.

SCHEDULE –G

(See Clauses 13.2 & 13.3)

COMPLETION CERTIFICATE

1. I/We,(Name and Designation of the Managing Director of the Supplier), acting as the Supplier, under and in accordance with the Power Supply Agreement dated (the “**Agreement**”), for construction and operation of the Power Station with a capacity of MW on design, build, finance, own and operate (the “**DBFOO**”) basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been successfully undertaken to determine compliance of the Power Station with the provisions of the Agreement, and I/We am/are satisfied that the Power Station can be safely and reliably placed in commercial service of the Utility and the Buyers thereof.
2. It is certified that the Power Station/Unit has an Installed Capacity of MW which includes the Contracted Capacity of MW.
3. It is further certified that the Station Heat Rate of the Power Station is
4. It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Power Station/Unit have been completed, and the Power Station / Unit is ready for entry into commercial operation on this the ...day of ...20...

SIGNED, SEALED AND DELIVERED

For and on behalf of
the SUPPLIER by:

(Signature)
(Name)
(Designation)
(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name and Designation of the Managing director of the Supplier), acting as the Supplier, under and in accordance with the Power Supply Agreement dated (the “**Agreement**”), for construction and operation of the Power Station with a capacity of MW on design, build, finance, own and operate (the “**DBFOO**”) basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been undertaken for the Power Station/Unit of the Power Station to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Power Station/Unit of the Power Station that were found to be incomplete and/or deficient have been specified in the list of Incomplete Works appended hereto, and we agree and undertake that we shall complete and/or rectify all such works in the time and manner set forth in the Agreement. I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Power Station/Unit of the Power Station, pending completion thereof.
- 3 It is certified that the Power Station/Unit of the Power Station has an Installed Capacity of which includes the Contracted Capacity of MW.
- 4 It is further certified that the Station Heat Rate of the Power Station is
5. In view of the foregoing, I/We am/are satisfied that the Power Station/Unit of the Power Station can safely and reliably enter into commercial operation on this the day of 20....

:

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

(Signature)
(Name)
(Designation)
(Address)

SCHEDULE – H
(See Clause 15.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Supplier shall, at all times, operate and maintain the Power Station in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Supplier shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-H (the “**Maintenance Requirements**”).
- 1.2 The Supplier shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-H within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Utility shall be entitled to recover Damages as set forth in Clause 15.9 of the Agreement, without prejudice to the rights of the Utility under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Supplier in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the manner and within the time limit expected of a prudent and diligent power producer in accordance with Good Industry Practice.

3 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-H, if any defect, deficiency or deterioration in the Power Station poses a hazard to safety or risk of damage to property, the Supplier shall promptly take all reasonable measures for eliminating or minimising such danger.

4 Periodic inspection by the Supplier

The Supplier shall, through its engineer, undertake a periodic visual inspection of the Power Station in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Utility’s Engineer may specify. Such record shall be kept in safe custody of the Supplier and shall be open to inspection by the Utility and the Utility’s Engineer at any time during office hours.

SCHEDULE –I
(See Clause 19.1)

APPOINTMENT OF UTILITY’S ENGINEER

1 Appointment of Utility’s Engineer

- 1.1 The provisions of the Standard Request for proposal-DBFOO for selection of Technical Consultants, issued by the Ministry of Finance vide O. M. No. 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of a Utility’s Engineer. Provided, however, that no entity which is owned or controlled by the Utility shall be eligible for appointment as the Utility’s Engineer hereunder.
- 1.2 In the event of termination of a Utility’s Engineer appointed in accordance with the provisions of Paragraph 1.1, the Utility shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-I.

2 Terms of Reference

The Terms of Reference for the Utility’s Engineer shall substantially conform with Annex-I of this Schedule-I.

3 Fee and expenses

The fees, costs and expenses of the Utility’s Engineer shall be borne by the Utility.

4 Substitution of Utility’s Engineer

No later than 3 (three) years from the date of this Agreement, and every 3 (three) years thereafter, the Utility shall engage a Utility’s Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-I.

5 Appointment of government entity as Utility’s Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Utility may in its discretion appoint a government-owned entity as the Utility’s Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Utility’s Engineer.

Annex - I
(Schedule-I)

Terms of Reference for Utility's Engineer

1 Scope

- 1.1 These Terms of Reference for the Utility's Engineer (the "TOR") are being specified pursuant to the Power Supply Agreement dated(the "Agreement"), which has been entered into between the Utility and (the "Supplier") for the Power Station with a capacity of MW in the State of on design, build, finance, own and operate (the "DBFOO") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Power Station.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Utility's Engineer

- 3.1 The role and functions of the Utility's Engineer shall include the following:
- (i) review of the Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - (iii) observe Tests as set forth in Paragraph 4;
 - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (viii) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
 - (ix) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Utility's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

- 4.1 The Utility's Engineer shall undertake a review of the Documents to be furnished by the Supplier for construction of the Power Station and send its comments/observations to the Utility and the Supplier within 15 (fifteen) days of receipt of such Documents. In particular, such comments shall specify the conformity or otherwise of such Documents with the Scope of the Project and Specifications and Standards. The Utility's Engineer shall review any modified Documents sent to it by the Supplier in pursuance thereof and furnish its comments within 7 (seven) days of receiving such Documents.
- 4.2 The Utility's Engineer shall review the monthly progress report furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 7 (seven) days of receipt of such report.
- 4.3 The Utility's Engineer shall inspect the Construction Works and equipment once every quarter, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Utility's Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Power Station or in the equipment. The Utility's Engineer shall send a copy of its Inspection Report to the Utility and the Supplier within 7 (seven) days of the inspection.
- 4.4 The Utility's Engineer may inspect the Power Station more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 4.5 The Utility's Engineer shall observe all the Tests specified in Schedule-F prior to issue of Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.5 and all matters incidental thereto, the Utility's Engineer shall act under and in accordance with the provisions of Article 13 and Schedule-F.

5 Operation Period

- 5.1 In respect of the Documents received by the Utility's Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

- 5.2 The Utility's Engineer shall review the annual Maintenance Programme furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Utility's Engineer shall review the monthly status report furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 7 (seven) days of receipt of such report.
- 5.4 The Utility's Engineer shall inspect the Power Station, once every six months, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators and Maintenance Requirements. The Utility's Engineer shall send a copy of its O&M Inspection Report to the Utility and the Supplier within 7 (seven) days of the inspection.
- 5.5 The Utility's Engineer may inspect the Power Station more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.6 The Utility's Engineer shall examine the request of the Supplier for closure of any section of the Power Station comprising Contracted Capacity for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in generation and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Supplier. Upon expiry of the permitted period of closure, the Utility's Engineer shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Supplier under Clause 15.9.
- 5.7 The Utility's Engineer shall monitor and review the curing of defects and deficiencies by the Supplier as set forth in Clause 16.3.

6 Termination

Upon Termination, the Utility's Engineer shall, in the presence of a representative of the Supplier, inspect the Power Station for determining compliance by the Supplier with the Divestment Requirements.

7 Determination of costs and time

- 7.1 The Utility's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Utility's Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Utility's Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the

Agreement, the Utility's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9 Other duties and functions

The Utility's Engineer shall perform all other duties and functions specified in the Agreement.

10 Miscellaneous

- 10.1 The Utility's Engineer shall notify its programme of inspection to the Utility and to the Supplier, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 10.2 A copy of all communications, comments, instructions, Documents sent by the Utility's Engineer to the Supplier pursuant to this TOR, and a copy of all the test results with comments of the Utility's Engineer thereon shall be furnished by the Utility's Engineer to the Utility forthwith.
- 10.3 The Utility's Engineer shall obtain, and the Supplier shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Supplier to the Utility's Engineer, whereupon the Utility's Engineer shall send 1 (one) of the copies to the Utility along with its comments thereon and retain the other copy to be kept in its safe custody.
- 10.4 Upon completion of its assignment hereunder, the Utility's Engineer shall duly classify and list all Documents, results of tests and other relevant records, and hand them over to the Utility or such other person as the Utility may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Utility.
- 10.5 Wherever no period has been specified for delivery of services by the Utility's Engineer, it shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE – J
(See Clause 23.1.1)

DEFAULT ESCROW AGREEMENT

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

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956 / 2013 and having its registered office at (hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2. (insert name and particulars of the Default Escrow Bank), through its branch, and having its registered office at (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The Distribution Company represented by and having its principal offices at (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

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

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Utility, and shall

commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

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

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

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

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

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

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

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

1.2 Interpretation

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

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

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

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

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

2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this

Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

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

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the ... (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

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

2.5 Default Escrow Bank's fee

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

2.6 Rights of the Parties

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

2.7 Substitution of the Supplier

The Parties acknowledge and agree that upon substitution of the Supplier with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Supplier under this Agreement with effect from the date of substitution of the Supplier with the Nominated Company.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

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

3.2 Transfer to Default Escrow Account

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

3.3 Statement of accounts

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

3.4 Protection of Supplier’s interest

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

3.5 Monies to be held in trust

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

3.6 Communications and notices

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

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

3.7 No set off

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

3.8 Regulatory approvals

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

4 OBLIGATIONS OF THE UTILITY

4.1 General

- 4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Power Supply Agreement and this Agreement.
- 4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.
- 4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

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

4.3 Changes in revenue collection

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

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

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

5.2 Deposits by the Utility

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

5.3 Irrevocable instructions

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

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Operation Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Minimum Monthly Payment is retained in the Default Escrow Account for

payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 Drawal against Letter of Credit

- 5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Power Supply Agreement, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.
- 5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

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

the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

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

- (a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or
 - (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;

- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

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

- (a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at and its branch among others, at ... and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

- (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favour of any other person other than the Supplier, save and except those created in favour of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

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

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

7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;

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

8 UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

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

- (a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Utility Account as provided herein and fails to cure

such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;

- (b) the Utility does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;
- (d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;
- (g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Power Supply Agreement; and
- (i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

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

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default

Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

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

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

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon

completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

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

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

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

11 INDEMNITY

11.1 General indemnity

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

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

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

11.2 Notice and contest of claims

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

12 DISPUTE RESOLUTION

12.1 Dispute resolution

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

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Delhi/Mumbai/Chennai/Kolkata/Name of the place in the State]⁶¹ and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

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

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

⁶¹ Retain one and strike out the remaining places.

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

13.3 Priority of agreements

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

13.4 Alteration of terms

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

13.5 Waiver

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

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

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

13.6 No third party beneficiaries

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

13.7 Survival

13.7.1 Termination of this Agreement:

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

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

13.8 Severability

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

13.9 Successors and assigns

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

13.10 Continuation of Agreement

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

13.11 Notices

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

13.12 Specimen signatures

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

13.13 Language

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

13.14 Authorised representatives

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

13.15 Original Document

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

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

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

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

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

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

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

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

In the presence of:

- 1.
- 2.

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

Annex- I
(Schedule-J)
Utility's Lenders

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

SCHEDULE – K
(See Clause 23.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this theday of 20.....

BETWEEN

1. Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at ... (hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The Distribution Company represented by and having its principal offices at ... (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

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

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Power Supply Agreement or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Supply Agreement or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

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

2 SECURITY INTEREST

2.1 Covenant to pay

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

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Power Supply Agreement, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the “**Hypothecated Interest**”).

2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

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

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

2.3 Release of Charge

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

3 FURTHER ENCUMBRANCES

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

- 3.2 The Utility shall be entitled to create a subordinate/second charge in favour of the Utility's Lenders or any other entity over the Hypothecated Interest, provided, however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

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

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

through the Default Escrow Account after the date hereof, except as permitted under this Deed;

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

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

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

5. UTILITY'S COVENANTS

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

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;

- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:
 - (i) the execution, delivery, performance and observance by the Utility of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;
- (i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

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

7 INDEMNITY

7.1 General indemnity

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

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

7.2 Notice and contest of claims

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

8. CONTINUING SECURITY

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

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

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

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

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

9 DISPUTE RESOLUTION

9.1 Dispute resolution

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

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Delhi/Mumbai/Chennai/Kolkata/Name of the place in the State]⁶² and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

⁶² Retain one and strike out the remaining places.

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

10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

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

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

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

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

10.6 No third party beneficiaries

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

10.7 Survival

10.7.1 Termination of this Deed:

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

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

10.8 Severability

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

10.9 Successors and assigns

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

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or

association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

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

10.12 Specimen signatures

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

10.13 Language

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

10.14 Authorised representatives

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

10.15 Original Document

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

10.16 Effectiveness

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

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE UTILITY by:

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

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

SCHEDULE –L
(See Clause 23.2.1)

LETTER OF CREDIT

DATE:

TO: Limited (the “**Supplier**”)

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

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

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

^{\$} As provided in Article 27 of the Power Supply Agreement, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement.

^{\$\$} As provided in the Power Supply Agreement, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the Supplier. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Fixed Charge in accordance with the provisions of the Agreement.

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

14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

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

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

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

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

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

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

NOTES:

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

SCHEDULE –M
(See Clause 22.6)

REVENUE SHARE FROM SALE TO BUYER

Power Station:

Month:

Date	Sale under Clause 22.6		
	No. of units sold	Revenues realised (in '000 Rs.)	Revenue Share Due (in'000 Rs)
(1)	(2)	(3)	(4)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
Total			

Total Revenue Share:

Remarks, if any:

SCHEDULE –N
(See Clause 27.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Utility and the Supplier shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-N.

2 Invitation for empanelment

2.1 The Utility shall invite offers from all reputable firms of Chartered Accountants who have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956/2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings; and neither the firm nor any of its partners should have been disqualified or black-listed by the Comptroller and Auditor General of India or the Utility.

2.2 Interested and eligible firms shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

The information furnished by each firm shall be scrutinised and evaluated by the Utility and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. 5 (five) firms scoring the highest points shall be included in the draft Panel of Chartered Accountants, which shall be conveyed to the Supplier for scrutiny and comments, if any. The Supplier shall be entitled to scrutinise the relevant records of the Utility to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Utility within 15 (fifteen) days of receiving the panel.

4 Mutually agreed panel

The Utility shall, after considering all relevant factors including the comments, if any, of the Supplier, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants. A fresh panel shall be prepared, in accordance with the provisions of this Schedule-N, after completion of every 5 (five) years or such earlier period as may be agreed between the Utility and the Supplier.

SCHEDULE –O
(See Clause 32.5)

VESTING CERTIFICATE

- 1 [The Distribution Company] represented by and having its principal offices at (the “**Utility**”) refers to the Power Supply Agreement dated (the “**Agreement**”) entered into between the Utility and (the “**Supplier**”) for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of
- 2 The Supplier has transferred to the Utility all the Allocated Coal in its possession and has also assigned and transferred to the Utility all rights and title in the Allocated Coal and the Fuel Supply Agreement.
- 3 The Utility hereby acknowledges compliance and fulfilment by the Supplier of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Utility shall be deemed to have acquired, and all title and interest of the Supplier in or about the Allocated Coal shall be deemed to have vested unto the Utility, free from any encumbrances, charges and liens whatsoever.
- 4 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Supplier to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Supplier in any manner of the same.

Signed this ... day of 20 ... at

AGREED, ACCEPTED AND
SIGNED

For and on behalf
Supplier by:

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

In the presence of:

1.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Utility by:

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

2.

SCHEDULE –P
(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

- 1 The Distribution Company represented by and having its principal offices at (hereinafter referred to as the “**Utility**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at ..., (hereinafter referred to as the “**Supplier**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and
- 3 (insert name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Utility has entered into a power supply agreement dated with the Supplier (the “**Power Supply Agreement**”) for supply of MW of electricity from the Power Station at in the State of, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Utility to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Supply Contract to a Nominated Company in accordance with the provisions of this Agreement and the Power Supply Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Utility has agreed and undertaken to transfer and assign the Supply Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Power Supply Agreement.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Supplier for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Utility for assignment/transfer of the Supply Contract as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

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

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

2 ASSIGNMENT

2.1 Assignment of rights and title

The Supplier hereby agrees to assign the rights, title and interest in the Supply Contract to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Power Supply Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE SUPPLIER

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Supplier by a Nominated Company under and in accordance with the provisions of this Agreement and the Power Supply Agreement.

3.1.2 The Utility hereby agrees to substitute the Supplier by endorsement on the Power Supply Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Power Station as Supplier either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Supplier (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Utility for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Supplier for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Supplier by a Nominated Company in accordance with the provisions of this Agreement.

3.3 Substitution upon occurrence of Supplier Default

3.3.1 Upon occurrence of a Supplier Default, the Utility shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Supplier by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Utility within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Supplier by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Supplier by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Utility shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the

Supplier, the Utility shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Utility may terminate this Agreement in accordance with the provisions hereof; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Utility may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Utility and the Supplier hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Utility under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Power Station including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Supplier towards the Utility under the Power Supply Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Supplier, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Utility for shortlisting the Bidders for award of the Supply Contract; provided that the Lenders' Representative may represent to the Utility that all or any of such criteria may be waived in the interest of the Project, and if the Utility determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Utility to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Power Station in accordance with the provisions of the Power Supply Agreement;
 - (b) endorse and transfer the Supply Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Utility has any objection to the transfer of Supply Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Utility, the Nominated Company shall be deemed to have been accepted. The Utility shall thereupon transfer and endorse the Supply Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Utility,

the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Supplier.

3.4.5 The transfer of Contract hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Power Supply Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Supplier to the Nominated Company, and upon such transfer hereunder, the Supplier shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Power Supply Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Utility in selection of the Nominated Company shall be final and binding on the Supplier. The Supplier irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Utility taken pursuant to this Agreement including the transfer/assignment of the Supply Contract in favour of the Nominated Company. The Supplier agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Supplier's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Utility and the Supplier shall have no right or remedy to prevent, obstruct or restrain the Utility or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Supply Contract as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Supplier shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Supplier in the event of such Nominated Company's assumption of the liabilities and obligations of the Supplier under the Power Supply Agreement.

5 TERMINATION OF POWER SUPPLY AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Utility to terminate the Power Supply Agreement forthwith, and upon receipt of such notice, the Utility shall undertake Termination under and in accordance with the provisions of Article 31 of the Power Supply Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Utility is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Utility may terminate the Power Supply Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Outstanding Debt

The Utility and the Supplier hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Supplier, without any further reference to or consent of the Supplier, the debt outstanding and due to the Senior Lenders upon Termination of the Power Supply Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earlier of Termination of the Power Supply Agreement or when no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

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

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

7.1.3 The Lenders' Representative will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Supplier's obligations under the Power Supply Agreement, other than any loss, damage, cost and expense, arising out of

acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Utility, Supplier and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Delhi/Mumbai/Chennai/Kolkata/Name of the place in the State]⁶³ and the language of arbitration shall be English.

8.2 Adjudication by the Commission

8.2.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 8.1, be submitted for adjudication by the Commission. For the avoidance of doubt, the Parties agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

8.2.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 8.1 shall be followed to the extent applicable.

⁶³ Retain one and strike out the remaining places.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the Lenders' Representative:

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

In the presence of:

1.

2.

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

Appendices

APPENDIX-I
LIST OF BID-SPECIFIC PROVISIONS[£]

A. Provisions with currency-based footnotes

Footnotes with “£” sign

1. Clause 5.5: Obligations relating to transmission charges.
2. Article 11: Construction of the Power Station: Also address all provisions mentioned in the footnote.
3. Clause 21.2.1: Base Fixed Charge.
4. Clause 22.2.1: Fuel Charge.
5. Power Supply Agreement: Signature page.
6. Schedule-B: Development of the Power Station: Annex-I: Paragraph 6 and Annex-II: Paragraph 1.3.
7. Schedule-J: Default Escrow Agreement: Signature page.
8. Schedule-K: Deed of Hypothecation: Signature page.
9. Schedule-P: Substitution Agreement: Signature page.
10. Appendix-I: List of Bid-specific provisions.

Note: The above footnotes marked “£” shall be removed prior to execution of the PSA-DBFOO.

Footnotes with “\$” or “\$\$” signs

1. Heading of the Power Supply Agreement.
2. Schedule-L: Letter of Credit: From; and Paragraph 1.

Note: Non-numerical footnotes marked “\$” or “\$\$” shall not be deleted. They shall remain in the PSA-DBFOO to be executed between the Parties.

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 38.14 (a) and (b): Notices

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.5: Obligations relating to transmission charges.
3. Clause 18.1: Installed Capacity.
4. Clause 21.2.1: Base Fixed Charge.
5. Clause 22.2: Fuel Charge.
6. Power Supply Agreement: Signature page.

Note: All blank spaces in Schedules shall be retained in the Power Supply Agreement to be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

[£] This Appendix-I contains a list of provisions that would need to be suitably modified for reflecting bid-specific provisions after the Supplier has been selected. This Appendix-I may be included in the draft Power Supply Agreement forming part of the Bid Documents. It may however, be deleted when the Power Supply Agreement is to be executed.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

APPENDIX-II

LIST OF PROJECT-SPECIFIC PROVISIONS⁶⁴

A. Provisions with serially numbered Footnotes (Fn)

1. First line of the Power Supply Agreement (Fn. 1).
2. Clause 3.1.1: The Supply Contract (Fn. 2)*: Also address definition of Contract Period and other timelines.
3. Clause 4.1.2: Conditions Precedent (Fn. 3)*.
4. Clause 4.1.3 (i) and (j): Conditions Precedent (Fn. 4 and 5)*.
5. Clause 5.2.3: Obligations relating to Project Agreements (Fn. 6).
6. Clause 9.1.1: Performance Security (Fn. 7)*.
7. Clause 11.2.1: Construction of the Power Station (Fn. 8)*: Also address Schedule-E.
8. Clause 13.2.2: Completion Certificate (Fn. 9): Also address paragraph 3.2 of Schedule-F.
9. Clause 13.4.1: Synchronisation (Fn. 10)*: Also address Clause 15.11.
10. Clause 14.3: Sale of electricity prior to COD (Fn. 11).
11. Clause 17.1: Key Performance Indicators (Fn. 12).
12. Clause 18.1: Installed Capacity (Fn. 13).
13. Clause 20.1.1: Financial Close (Fn. 14)*.
14. Clause 21.2.4: Base Fixed Charge (Fn. 15)*.
15. Clause 21.4.4: Computation of Fixed Charge (Fn. 16)*: Also address Clause 21.4.5.
16. Clause 22.1.1: Station Heat Rate (Fn. 17)*: Also address paragraph 2.1 of Schedule-C.
17. Clause 22.2.3: Fuel Charge (Fn. 18, 19*, 20*, 21*, 22*, 23*, 24*, 25* and 26*): Also address Clauses 22.1.1, 22.2.1, Explanation to Clause 22.2.2 and Clause 22.3.8 (refer Fn. 18).
18. Clause 22.2.4: Fuel Charge (Fn. 27 and 28)*.
19. Clause 22.5: Terms of FSA (Fn. 29)*: Also address Clause 22.4.1.
20. Clause 23.1.1: Default Escrow Account (Fn. 30).
21. Clause 34.1: Increase in costs (Fn. 32): Also address Clause 34.2.
22. Clause 39.1: Definitions of Captive Mine (Fn. 33), Fuel (Fn. 34), Project Agreements (Fn. 35) : Also address Clauses 3.1, 4.1, 5.1, Articles 18, 21 and 22 and other relevant clauses, and the technical parameters, as specified in the relevant Schedules (refer Fn. 34).
23. Appendix-II: List of Project-specific provisions (Fn. 44).

***Note:** The provisions to which these Footnotes relate also include square parenthesis or asterisks, which may be addressed simultaneously. Such square parenthesis or asterisks have not been listed in (B) or (C) below.

B. Provisions with square parenthesis

1. Clause 2.1 (a): Scope of the Project.
2. Clause 5.1.4 (Explanation): Obligations of the Supplier.
3. Clause 13.6: Phased completion of Power Station.

⁶⁴ This Appendix-II contains a list of provisions that would need to be suitably modified prior to issue of bid documents for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft Power Supply Agreement, forming part of the Bid Documents.

4. Clause 14.1.2: Commercial Operation Date.
5. Clause 22.2.5: Fuel Charge.
6. Clause 22.3.2 and 22.3.8: Determination of GCV.
7. Clause 22.8.2: Fuel Shortage.
8. Clause 39.1: Definitions of Contract Period and Power Station.

C. Provisions with asterisks

1. Recitals: Recitals 1, A and B.
2. Clause 13.6: Phased completion of Power Station.
3. Clause 18.2: Contracted Capacity.

D. Schedules with Footnotes and square parenthesis

1. Schedules A, B and C relate to the physical and technical aspects of the Project and contain several Notes, Footnotes and square parenthesis. These Schedules require a comprehensive and integrated scrutiny for Project-specific customisation.
2. Schedule-D: Performance Security: Address; Recitals A and B.
3. Schedule-E: Project Completion Schedule: Paragraphs 2, 3 and 4; and Fn. 42.
4. Schedule-F: Tests: Paragraph 3.2 and Fn. 43.
5. Schedule-J: Default Escrow Agreement: Signature page.
6. Schedule-K: Deed of Hypothecation: Signature page.
7. Schedule-O: Vesting Certificate: Paragraph 1.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Project-specific provisions.