

REQUEST FOR PROPOSAL
FOR
PROCUREMENT OF BAGASSE BASED POWER
FOR LONG TERM

Through Competitive Bidding Procedure

FOR MEETING THE RENEWABLE PURCHASE OBLIGATIONS
OF

Paschimanchal Vidyut Vitran Nigam Ltd.
Purvanchal Vidyut Vitran Nigam Ltd.
Madhyanchal Vidyut Vitran Nigam Ltd.
Dakshinanchal Vidyut Vitran Nigam Ltd.
&
Kanpur Electricity Supply Company Ltd.

Issued by
U.P. Power Corporation Limited
Shakti Bhawan, Ashok Marg, Lucknow - 226001

**U.P. Power Corporation Limited
Shakti Bhawan, Ashok Marg,
Lucknow - 226001**

Request for Proposal (hereinafter referred to as RFP) for long term procurement of Bagasse based power through competitive bidding procedure for meeting the Renewable Purchase Obligations of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. & Kanpur Electricity Supply Company Ltd. in the state of Uttar Pradesh.

Issued by:

Chief Engineer (PPA-II)

U.P. Power Corporation Limited

**14th Floor, Shakti Bhawan Extension, 14-Ashok Marg,
Lucknow – 226001**

Uttar Pradesh, India

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Date:

REQUEST FOR PROPOSAL NOTIFICATION FOR SUPPLY OF POWER

U.P. Power Corporation Limited
Shakti Bhawan, Ashok Marg,
Lucknow - 226001

1. The U.P. Power Corporation Limited (UPPCL) hereinafter referred to as “Authorized Representative”, on behalf of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. & Kanpur Electricity Supply Company Ltd. hereinafter referred to as “Procurers” hereby invites interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of Bagasse based power for long term through competitive bidding process for meeting the Renewable Purchase Obligation of the Procurers. The responsibility of the Successful Bidder(s) would be to supply power to the Procurer as per the terms and conditions of the RFP Documents.
2. **Bidding Process:**
The Authorized Representative seeks to qualify and select Successful Bidder(s) for supply of power as aforesaid through this bidding process. For the purpose of selection of the Successful Bidder(s), Bidders shall be required to submit both Non-Financial Bid and Financial Bid simultaneously in a single stage bidding process as per the timelines mentioned in para 10 of this notification. Bidders who meet the Qualification Requirement as specified in Clause 2.1 of the RFP will be Qualified Bidders and the Financial Bids of all such Qualified Bidders shall be opened and evaluated as per provisions of Clause 3.4 of the RFP for the purpose of selection of Successful Bidder(s).
3. **Procurement of power**
Procurer(s) intend to procure 20 MW power ($\pm 25\%$) at the Delivery Point for a period of 10 years from the Scheduled Delivery Date in accordance with the terms of the Power Purchase Agreement (PPA).
4. **Technology:** The project shall be an installation of new plant or existing plant or expansion of existing plant for Bagasse based power generation or upgradation of existing power generation/cogeneration plant. A cogeneration project shall qualify to be termed as a Bagasse based co-generation project, only if it meets the requirements prescribed by the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 ("CRE Regulations, 2019-24").
5. **Fuel:** The fuel used in the project should only be Bagasse. No other Biomass/fossil fuel shall be used.
6. **Not Used.**
7. **Commencement of supply of power:**

The Successful Bidder(s) shall have to commence the supply of power on the Scheduled Delivery Date in accordance with the provisions of the PPA.

8. Tariff:

The tariff shall be payable by the Procurer(s) in Indian Rupees, as per provisions of the PPA. Bidders shall quote the tariff as per the pre-specified structure mentioned in the RFP.

9. Issue of RFP:

The detailed terms and conditions for qualification of the Bidders and for Bid submission are indicated in the RFP. The RFP can be downloaded from <https://etender.up.nic.in>. The Bids have to be accompanied with a proof of submission of tender fee of Rs. 1,18,000/- (Rupees One Lakh Eighteen Thousand only) which is inclusive of GST @ 18% in favour of Account namely A.O. KEND. BHU. PRA. UPPCL, LKO, having account No. 10101987510 payable at SBI, Ashok Marg, Lucknow through RTGS.

Bid must be submitted electronically on or before 03:00 PM (IST) on 16.04.2020 (last date of submission of Bid). The time schedule for the bidding process is available on the tender portal <https://etender.up.nic.in>. Bidders are advised to visit the website on regular basis in order to keep themselves update. Non- Financial Bid will be opened in the presence of Bidder's representatives who wish to attend. If it is a public holiday on the last date for submission of the Bid, the submission and the receipt of the Bid shall be on the next working day at the place of submission of Bid, on which day the Non-Financial Bid received shall be opened. The Financial Bid shall be opened as per the time schedule given in Clause 2.8 of the RFP.

10. Nodal Person for enquiries and clarifications

All correspondence, clarifications in respect of the RFP and submission of the Bid shall be addressed to:

Chief Engineer (PPA-II)
Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan Extension, 14-Ashok
Marg, Lucknow – 226001
Uttar Pradesh, India
Phone: 0522 - 2218805
Rax No: 8805
Email: ppareuppcl@gmail.com
Date:

11. All capitalized words and expressions used in this notification but not defined herein shall have the same meaning as ascribed to them in the RFP.

DISCLAIMER

1. This Request for Proposal (RFP) document is not an agreement or offer by the Authorised Representative to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information to assist the formulation of their Bid. This RFP is based on material and information available in public domain.
2. This RFP, along with its Formats, is not transferable. The RFP and the information contained therein is to be used only by the person to whom it is issued. Save and except as provided in Clause 2.18 of the RFP, it shall not be copied or distributed by the recipient to third parties. In the event that the recipient does not continue with its involvement in the bidding process in accordance with this RFP, this RFP must be kept confidential.
3. While this RFP has been prepared in good faith, neither the Procurer/ Authorized Representative nor its employees or advisors/consultants make any representation or warranty express or implied as to the accuracy, reliability or completeness of the information contained in this RFP.
4. Neither the Procurer/ Authorized Representative, its employees nor its advisors / consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award for supply of power, the information supplied by or on behalf of Procurer/ Authorized Representative or its employees, any advisors/consultants or otherwise arising in any way from the selection process for the said supply of power.

INDEX

SECTION	CONTENTS	PAGE NO.
<hr/>		
	DEFINITIONS	7
1.	INTRODUCTION	13
2.	INFORMATION AND INSTRUCTIONS FOR BIDDERS	17
3.	EVALUATION CRITERIA	40
4.	FORMATS FOR BID SUBMISSION	45
5.	FORMATS FOR BIDDER'S INFORMATION AND REFERENCE	99

DEFINITIONS

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Documents. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, and the rules or regulations framed there under, including those issued/framed by the Commission (as defined hereunder), as amended or re-enacted from time to time.

The following terms are defined for use in this RFP:

“Affiliate” shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with

a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **“control”** means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company. As an illustration a chart is annexed hereto as Format 5.12;

“Authorized Representative” shall mean the body corporate authorized by the Procurer(s) to carry out the bidding process for the selection of the Successful Bidder(s) on their behalf as defined in Clause 1.1 of this RFP;

“Bid” shall mean the Non-Financial Bid and the Financial Bid submitted by the Bidder, in response to this RFP, in accordance with the terms and conditions hereof.

“Bidder” shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require”;

“Bidding Company” shall refer to such single company that has submitted the Bid in accordance with the provisions of this RFP;

“Bidding Consortium” or “Consortium” shall refer to a group of companies that has collectively submitted the Bid in accordance with the provisions of this RFP;

“Bid Bond” shall mean the unconditional and irrevocable bank guarantee to be submitted along with the Bid by the Bidder under Clause 2.12 of this RFP, as per the prescribed Format 4.9;

“Bid Deadline” shall mean the last date and time for submission of Bid in response to this RFP as specified in Clause 2.8 of this RFP;

“COD” or “Commercial Operation Date” shall mean the date on which the generating plant is synchronized with the grid system;

“Commission” or “SERC” or “UPERC” shall mean the Uttar Pradesh Electricity Regulatory Commission;

“Conflict of Interest” A Bidder may be considered to be in a Conflict of Interest with one or more Bidders in the same bidding process under this RFP if they have a relationship with each other, directly or indirectly through a common company, that puts them in a position to have access to information about or influence the Bid of another Bidder;

“Consents, Clearances and Permits” shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/or supply of power;

“Contracted Capacity” shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer at the Interconnection Point as provided in the Selected Bid as per Format 4.10 of this RFP;

“Contract Performance Guarantee (CPG)” shall have the meaning as per Clause 2.13 of this RFP;

“Contract Year” shall mean the period beginning on the Scheduled Delivery Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the PPA;

“Delivery Point” shall mean the STU Interface(s), where power is delivered to the Procurer(s) after it is injected by the Seller at the Injection Point;

“Discom” or **“DISCOM”** shall refer to Dakshinanchal Vidyut Vitran Nigam Limited, Kanpur Electricity Supply Company Limited, Madhyanchal Vidyut Vitran Nigam Limited, Paschimanchal Vidyut Vitran Nigam Limited and Purvanchal Vidyut Vitran Nigam Limited;

“Effective Date” shall mean the date from which the PPA becomes effective;

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

“Financial Bid” shall mean the Bid, containing the Bidder’s Quoted Tariff as per the Format 4.10 of this RFP;

“Financially Evaluated Entity” shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth in Clause 2.1.2.1 hereof;

“Grid Code” / “IEGC” or “State Grid Code” shall mean the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

“Injection Point” in relation to each Financial Bid by a Bidder, shall mean either the STU Interface or the Delivery Point as specified by the Bidder in Format 4.10 of this RFP;

“Interconnection Point” shall mean the point where the power from the power station switchyard bus of the Seller is injected into the STU transmission system (including the dedicated transmission line connecting the power station with the STU transmission system);

“Law” shall have the same meaning as ascribed thereto in the PPA;

“Lead Member of the Bidding Consortium” or “Lead Member” shall mean the Member which commits at least 51% equity stake in the Project Company and so designated by other Member(s) of the Bidding Consortium in accordance with the Consortium Agreement specified in Format 4.3 of this RFP;

“Letter of Intent” or “LOI” shall mean the letter to be issued by the Procurer/ Authorized Representative to the Successful Bidder(s) for supply of power pursuant to Clause 3.5 of the RFP;

“Levelized Tariff” shall mean the tariff calculated in accordance with the provisions of Clause 3.4.8 of the RFP;

“Member of a Bidding Consortium” or “Member” or “Consortium Member” shall mean each company in the Bidding Consortium which has executed the Consortium Agreement as provided in Format 4.3 of this RFP;

“Minimum Bid Capacity” shall mean the minimum capacity in MW specified by the Authorized Representative in Clause 1.3.1, for which the Bidder is required to submit its Bid;

“Non Financial Bid” shall mean the Bid containing the documents as specified in Clause 2.4.1.1 of the RFP;

“Parent Company” shall mean a company that holds at least twenty six percent (26%) of the paid - up equity capital directly or indirectly in the Bidding Company or in the Member of a Bidding Consortium, as the case may be;

“Plant Load factor” or “PLF” means the total sent out energy corresponding to generation during the period expressed as a percentage of sent out energy corresponding to contracted capacity in that period and shall have the same meaning as provided in UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 as amended from time to time;

“PPA”¹ shall mean the agreement to be entered into between the Procurer(s) and the Seller pursuant to which the Seller shall supply power to the Procurer(s) as per the terms and conditions specified therein and a draft of which is attached hereto and marked as Enclosure 1 of Format 5.5 of this RFP, including all its schedules, annexures, and all amendments or modifications;

“Procurers” shall mean the entity (ies) as specified in Clause 1.1 of this RFP;

“Project Company” shall mean the company, incorporated by the Bidder as per Indian laws, in accordance with Clause 2.2.8;

¹ In case the Successful Bidder is supplying power from more than one generation source, then separate PPAs need to be executed for each such generation source.

“Qualification Requirements” shall mean the qualification requirements as set forth in Clause 2.1 of this RFP;

“Qualified Bidder(s)” shall mean the Bidder(s) who, after evaluation of their Non Financial Bid as per Clauses 3.2 and 3.3, stand qualified for opening and evaluation of their Financial Bid;

“Quoted Escalable Energy Charges” shall mean the charges quoted by the Bidder in column no. 5 of its Financial Bid as per Format 4.10 of this RFP;

“Quoted Non Escalable Capacity Charges” shall mean the charges as quoted by the Bidder in column no. 4 of its Financial Bid as per Format 4.10 of this RFP;

“Quoted Tariff” shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Energy Charges, as applicable, quoted by the Bidder as per the prescribed Format 4.10 and shall be construed to be at the Interconnection Point as mentioned in its Bid;

“Requisitioned Capacity” means the total aggregate power of 20 MW proposed to be contracted by the Procurer(s) with the Successful Bidder(s) through this bidding process for supply at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

“RFP” shall mean this Request for Proposal dated along with all formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

“RFP Documents” shall mean the following documents to be entered into by the parties to the respective agreements in connection with the supply of power:

- a) PPA and
- b) any other agreements designated as such, from time to time by the Procurer/Authorized Representative;

“Scheduled Delivery Date” shall mean the date which is 365 days after the date of approval of Power Purchase Agreement and adoption of Tariff by the Uttar Pradesh Electricity Regulatory Commission;

“Seller” shall mean the Successful Bidder/or the Project Company, as the case may be who submits the Contract Performance Guarantee and executes the PPA and other RFP Documents with the Procurer(s) and who shall be responsible for supplying power to the Procurer(s) at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

“Statutory Auditor” shall mean the auditor of a Company appointed under the provisions of the Companies Act, 2013 or under the provisions of any other applicable governing law;

“STU” or “State Transmission Utility” shall mean the board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

“Successful Bidder(s)” shall mean the Bidder(s) selected by the Authorized Representative, pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

“Tariff” shall mean the tariff as computed in accordance with Article 10 of the PPA;

“Ultimate Parent Company” shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Bidding Company or Member of a Consortium, (as the case may be) and/or in the Financially Evaluated Entity and such Bidding Company or Member of a Consortium, (as the case may be) and/or the Financially Evaluated Entity shall be under the direct control or indirectly under the common control of such company;

SECTION - 1

INTRODUCTION

SECTION 1

1. INTRODUCTION

- 1.1 The Procurer(s) have authorized U.P. Power Corporation Ltd. (UPPCL) as its Authorized Representative to carry out the bidding process for the selection of Successful Bidder(s) for supply of Bagasse based power for long term through competitive bidding process for meeting the Renewable Purchase Obligation and have executed a Joint Deed Agreement as per Format 5.4. Accordingly the Authorized Representative, on behalf of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. & Kanpur Electricity Supply Company Ltd. acting through Chief Engineer (PPA-II), 14th Floor, Shakti Bhawan Extension, Lucknow, which expression shall also include the successors and permitted assigns of the Authorized Representative, hereby invites interested Bidders to purchase the RFP to participate in the bidding process for the selection of Successful Bidder(s) for procurement of Bagasse based power for long term through competitive bidding process for meeting the Renewable Purchase Obligation of the Procurers. The responsibility of the Successful Bidder(s) shall be to supply power to the Procurer(s) as per the terms and conditions of the RFP Documents.
- 1.2 The Authorized Representative proposes to select the Bidder(s) having the prescribed qualifications and whose Quoted Tariff is determined to be acceptable as per the provisions of Clause 3.5 to become Seller(s). The Seller(s) shall supply power to the Procurer(s) pursuant to and as per the terms and conditions of the PPA to be signed between the Procurer(s) and the Seller. The Procurer(s) shall pay to the Seller(s), the Quoted Tariff of the Successful Bidder(s) which has been adopted by the Uttar Pradesh Electricity Regulatory Commission (UPERC) as per the terms and conditions of the PPA.
- 1.3 **Power Procurement**
- 1.3.1 **Scope**

Brief scope of power procurement is given as under:

Sr. No	Scope	Details
1.	Contract Period (in years)	10 years
2.	Requisitioned Capacity (MW)	20 MW During the evaluation of Bids and based on the competitiveness of the bid process, the Procurer/Authorized Representative retains the right to increase or decrease the Requisitioned Capacity by a quantum of twenty five percent (25%) of the quantum indicated herein.
3.	Minimum Bid	2 MW

Sr. No	Scope	Details
	Capacity	
4.	Load Requirement	To meet the Renewable Purchase Obligations
5.	-Not used-	-Not used-
6.	Scheduled Delivery Date	Scheduled Delivery Date shall mean the date which is 365 days after the date of approval of Power Purchase Agreement and adoption of Tariff by the Uttar Pradesh Electricity Regulatory Commission. However, the Scheduled Delivery Date can be preponed on mutual consent of the Seller and the Procurer(s), subject to availability of transmission capacity, as per the provisions of the PPA.
7.	Interconnection Point	Bidders shall submit their Quoted Tariff at the Interconnection Point and specify the same in the Financial Bid as per Format 4.10 of this RFP; The PPA shall be signed between the Successful Bidder / Project Company and the Procurer(s) for the Contracted Capacity at the Interconnection Point.
8.	Injection Point	Bidders shall specify in their Financial Bid, the Injection Point nearest to their generation source which shall be used for evaluation purpose.
9.	Transmission Losses	The transmission losses from the Interconnection Point to the Delivery Point shall be borne by the Procurer(s).
10.	Arranging Transmission Access	The Seller shall have signed a Connection Agreement with UPPTCL confirming the evacuation and connectivity of Transmission system with their Power Project switchyard up to the Interconnection Point. The cost of the dedicated transmission line from the Generating Plant to the designated grid sub-station of STU and the cost of interfacing at both ends (the Generating Plant and grid substation) including work at the STU sub-station, cost of bay, tie-line, terminal equipment and associated synchronizing equipment, shall be borne by the Seller.
11.	-Not used-	-Not used-

1.3.2 Evacuation of Power

The responsibility for evacuation of power beyond the Delivery Point will be of the Procurer(s), who shall ensure the interconnectivity of STU Interface(s) for evacuation of power.

1.3.3 Allocation of Requisitioned Capacity

The tentative allocation of Requisitioned Capacity among the Procurers is as per the following table.

Name of the Procurer	Power procurement by Procurer (MW)	Percentage of Requisitioned Capacity (%)
1.Paschimanchal Vidyut Vitran Nigam Ltd	[●]	[●]
2.Purvanchal Vidyut Vitran Nigam Ltd	[●]	[●]
3.Madhyanchal Vidyut Vitran Nigam Ltd	[●]	[●]
4. Dakshinanchal Vidyut Vitran Nigam Ltd	[●]	[●]
5.Kanpur Electricity Supply Company Ltd.	[●]	[●]
Total	Requisitioned Capacity =20 MW	100%

The Authorized Representative reserves the right to modify the above allocation among the Procurers.

1.3.4 Not Used.

1.3.5 Not Used.

SECTION - 2

INFORMATION AND INSTRUCTIONS FOR BIDDERS

SECTION – 2

2. INFORMATION AND INSTRUCTIONS FOR

BIDDERS 2.1 Qualification Requirements

- 2.1.1 The Bidder should be a corporate entity duly incorporated under the relevant laws. Subject to Clauses 2.1.3 and 2.1.4, the Bidder must meet the Qualification Requirements independently as Bidding Company or as a Bidding Consortium with one of the Members acting as the Lead Member of the Bidding Consortium. Bidder will be declared as a Qualified Bidder based on meeting the Qualification Requirements specified below and as demonstrated based on the documentary evidence submitted by the Bidder in the Bid. Further, a Bidding Consortium can participate in the bidding process if any Member of the Consortium has purchased the RFP.

[Note: A bidding company can be a generation company, a transmission licensee (owning generation facilities), a distribution company, a Trading Licensee or any other corporate entity which is willing to participate in the bidding process for providing supply of power to the Procurer(s).]

- 2.1.2 The Bidder must fulfil the following Qualification Requirements specified in Clause 2.1.2.1 and 2.1.2.2:

2.1.2.1 Networth and Ceiling Tariff:

Networth: Networth should be equal to or greater than the value calculated at the rate of Rs. 1.00 Crore per MW of capacity offered by the Bidder in its Bid. The computation of networth shall be based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

In case of more than one Financial Bid being submitted by the Bidder, the Networth must be fulfilled by such Bidder for the sum total of the capacities being offered by it in its Financial Bids.

Networth shall be computed in the following manner by the Bidder:

Networth

=	Paid up share capital
Add:	Reserves
Subtract:	Revaluation Reserves
Subtract:	Intangible Assets
Subtract:	Miscellaneous Expenditures to the extent not written off and carry forward losses

For the purposes of meeting financial requirements, only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty six percent (26%) equity in each company whose

accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Bidders shall furnish documentary evidence as per the Format 4.6 (A), duly certified by Managing Director / Chief Executive Officer / Director/Manager, being a full time director on the Board of the Company and the Statutory Auditor in support of their financial capability.

Ceiling Tariff: The Bidder shall quote a Levelised tariff not more than the ceiling Levelised tariff of Rs.4.78/kWh. Any Bid with Levelised tariff above the ceiling Levelised tariff would be rejected by UPPCL.

2.1.2.2 **Consents, Clearances and Permits:** The Bidder shall submit documentary evidence with regards to the following:

a. Land: Requirement of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance.

- i) To the extent land is to be acquired under the Land Acquisition Act, 1894, the Bidder shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894.
- ii) For the part of land excluding that to be acquired under Land Acquisition Act 1894, the Bidder shall furnish documentary evidence for land in the form of certificate by concerned and competent revenue/ registration authority for the allotment/ lease (lease period to be more than the life of power plant)/ ownership/ vesting of at least one third of the area of such land.
(For the sake of clarity an illustration for meeting this requirement is attached at Format 5.13)
These evidences shall be supported by a duly notarized sworn affidavit from the developer listing the total land allotted/ under ownership/lease/vested/ acquired for the Power Project.
The affidavit shall certify that the documentary evidence provided by the Bidder in relation to land is true and correct copy of the originals.

b. Fuel:

- The Bidder shall submit a duly notarized sworn affidavit to the effect that the fuel used in the Project would only be Bagasse and no other Biomass/fossil fuel shall be used by it for supply of power under the Contracted Capacity.

c. Water: The Bidder shall have obtained in-principle approval from the concerned state irrigation department or any other relevant authority, as may be applicable, for the quantity of water required for the Power Project.

d. Environmental Clearance: The Bidder shall have submitted the requisite proposal, for the environmental clearance, to the concerned administrative

authority responsible for according final approval in the central / state govt. as the case may be.

- e. **Forest Clearance:** (if applicable for the land of Power Project) The Bidder shall have submitted the requisite proposal, for the forest clearance, to the concerned administrative authority responsible for according final approval in the central / state govt., as the case may be.
- f. If the identified generation source is an existing power station, the Bidder shall submit the documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in its Bid in lieu of the requirements specified above in this Clause 2.1.2.2 (a) to (e).
- g. Not Used.
- h. Detailed Project Report (DPR)/Feasibility Report of the Project
- i. Details of technology specifications deployed
- j. Grid feasibility letter obtained from the STU

The documentary evidence as per Format 4.6 (B) shall be duly certified by Managing Director / Chief Executive Officer / Director / Manager, being a full time director on the Board of the Company in support of the above Consents, Clearances and Permits and other requirements. In case of any of the above requirement not being fulfilled, the Bidder will submit on a notarized affidavit to meet the same before the Commercial Operation Date.

- 2.1.2.3 In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

In case the Bidder is a Bidding Consortium, all such Consents, Clearances and Permits shall be obtained in the name of the Lead Member and the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

- 2.1.2.4 The Bidder shall undertake (as per Format 4.7) not to submit any other bid, on the basis of the same generation source and quantum of power from such source as mentioned in its Bid, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier subject to a maximum period of one hundred and twenty (120) days from the Bid Deadline.

Bidders shall furnish the undertaking as per Format 4.7, duly certified by Managing Director / Chief Executive Officer /Director/ Manager, being a full time director on the Board of the Company.

- 2.1.3 If the Bid is submitted by a Bidding Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The financial requirement to be met by each Member of the Bidding Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company as per the Consortium Agreement (Format 4.3), forming part of its Non Financial Bid. Any Consortium, if selected as the Successful Bidder, shall, for the purpose of supply of power, incorporate a Project Company with equity participation by the Members as provided in the Consortium Agreement (Format 4.3) within fifteen (15) days of the issue of Letter of Intent.
- 2.1.4 Any Bidding Company may choose to incorporate a Project Company for the purpose of supply of power. If a Bidding Company desires to incorporate a Project Company, it shall indicate this in Format 4.5.
- 2.1.5 The Bidder may seek qualification on the basis of financial capability of its Parent Company and / or its Affiliate(s) for the purpose of meeting the Qualification Requirements. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Parent Company and / or its Affiliate(s). The financial capability of a particular Parent Company (ies) and / or Affiliates, shall not be used by more than one Bidder.

The determination of the relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in form of a certification from a practicing Company Secretary or Statutory Auditor to establish such relationship shall be furnished by the Bidder along with the Bid.

If the Financially Evaluated Entity is an entity other than the Bidding Company or a Member of a Bidding Consortium, the Bidding Company or Member relying on such Financially Evaluated Entity will have to submit a legally binding undertaking supported by a Board resolution as per Format 4.8, from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, that the obligation of the Bidding Company or the Member of the Consortium to submit a Contract Performance Guarantee, if selected, shall be deemed to be the obligations of the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee, the same shall be submitted by such Financially Evaluated Entity or by the Parent Company / Ultimate Parent Company, as the case may be.

- 2.1.6 A Bidder shall submit only one response in the same bidding process, individually as Bidding Company or as a Member of a Bidding Consortium (including the Lead Member). It is further clarified that any of the Parent Company / Affiliate / Ultimate

Parent Company of the Bidding Company or a Member of a Bidding Consortium shall not separately participate directly or indirectly in the same bidding process. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same bidding process, the Bid of all such Bidder(s) shall be rejected.

2.1.7 Notwithstanding anything stated above, the Procurer/ Authorized Representative reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information / documents. The Procurer/ Authorized Representative reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.

2.1.8 a) If at any stage of the bidding process, any order / ruling is found to have been passed in the last one (1) years preceding the Bid Deadline by the Commission or a competent court against any Bidder or its Affiliates for its material breach of any contract for supply of power having duration of contract in excess of one (1) year to any licensee in India, Bids from such Bidders shall be liable to be rejected. All Bidders shall confirm in accordance with Format 4.1 that no such order / ruling has been passed by the Commission or a competent court against it or its Affiliates.

(b) If the bid security submitted by the Bidder or its Affiliates has been forfeited either partly or wholly in any bid process in the last one (1) year preceding the Bid Deadline, the Bids of such Bidders shall be liable for rejection. The Bidder shall confirm in accordance with Format 4.1 that the bid security submitted by the Bidder or its Affiliates has not been forfeited.

Provided further that after Bid Deadline, if any such ruling is passed against any Bidder or its Affiliates for its material breach of any contract for supply of power having duration of contract in excess of one (1) year to any licensee in India or bid security mentioned at 2.1.8 (b) above is forfeited, at any time prior to issuance of LoI, the Bid of such Bidder shall be liable to be rejected and the consequences of clause 2.5 (b) shall apply.

It shall be the responsibility of the Bidder to inform the Procurers/ Authorized Representative regarding the passing of such order or forfeiture of bid security, failing which consequences of clause 2.5 (a) shall apply.

2.1.9 The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA. Where the Financially Evaluated Entity is not the Bidding Company or a Member of a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Financially Evaluated Entity till execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.

2.2 Submission of Bid by the Bidder

2.2.1 The information and/or documents shall be submitted by the Bidder as per the formats specified in Section 4 (Formats for RFP) of this document.

2.2.2 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures / pamphlets. Non-adherence to formats and / or submission of incomplete information may be a ground for declaring the Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of the Bidder.

2.2.3 The Bidder shall furnish documentary evidence in support of meeting Qualification Requirements to the satisfaction of the Procurer/ Authorized Representative and shall furnish unconsolidated / consolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditors report, etc., as the case may be, of Bidding Company or each Member of a Consortium or Financially Evaluated Entity for the last three (3) financial years immediately preceding the Bid Deadline for the purpose of calculation of Networth.

2.2.4 Bid submitted by a Bidding Consortium

2.2.4.1 The Bid shall contain a legally enforceable Consortium Agreement entered amongst the Members in the Bidding Consortium, designating one of the Members to be the Lead Member (as per Format 4.3). There shall be only one Lead Member which shall continue to hold fifty one percent (51%) equity in the Project Company up to a period of two (2) years after commencement of supply of power and twenty six (26%) for a period of three (3) years thereafter as per provisions of Clause 2.7 of this RFP and Article 18.1 of the PPA. Each Member of the Bidding Consortium shall duly sign the Consortium Agreement making it liable for raising the required funds for its respective equity investment commitment as specified in the Consortium Agreement. In the absence of a duly executed Consortium Agreement, the Bid will not be considered for evaluation and will be rejected.

Provided however that the Lead Member of the Bidding Consortium shall be liable to the extent of one hundred percent (100%) of the total proposed commitment of equity investment in the Project Company, i.e., for both its own liability as well as the liability of the other Members.

Provided further that the Consortium Agreement shall not be amended without the prior written approval of the Procurer/ Authorized Representative.

2.2.4.2 The Lead Member shall designate one person to represent the Consortium in its dealings with the Procurer/ Authorized Representative. The person designated by the Lead Member shall be authorized through a Power of Attorney (as per Format 4.2 (a)) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Consortium, etc. Additionally, the Bid shall also contain a Power of Attorney (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

2.2.4.3 The Bid shall also contain signed letter of consent as per Format 4.4 from each Member of the Consortium confirming that the Bid has been reviewed and each element of the Bid is agreed to by them including but not limited to the investment commitment in the Project Company.

2.2.4.4 Point of contact in case of Bidding Consortium

In case of Bid being submitted by a Consortium, the Lead Member of the Consortium shall be the single point of contact for the purposes of the Bid process, before the date of signing of last of the RFP Documents. Settlement of any dispute amongst the Consortium Members shall not be the responsibility of the Procurer/ Authorized Representative and the Procurer/ Authorized Representative shall not bear any liability whatsoever on this account.

2.2.5 Bid submitted by a Bidding Company

2.2.5.1 The Bidding Company should designate one person to represent the Bidding Company in its dealings with the Procurer / Authorized Representative. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney (as per Format 4.2 (a)), authorizing the signatory of the Bid.

2.2.6 Clarifications

2.2.6.1 The Procurer / Authorized Representative will not enter into any correspondence with the Bidders, except to furnish clarifications on the RFP and RFP Documents, if necessary. The Bidders may seek clarifications or suggest amendments to RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Procurer / Authorized Representative at the address, date and time mentioned in Clause 2.8. For any such clarifications or amendments, the Bidder should adhere to the Format 5.6 of the RFP.

2.2.6.2 Not Used.

2.2.6.3 Not Used.

2.2.6.4 Not Used.

2.2.6.5 The Procurer/ Authorized Representative is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.

2.2.7 The drafts of the following RFP Documents have been attached to this RFP;

- a. PPA as per Format 5.5 Enclosure -1;
- b. Not Used;
- c. Not Used;

The RFP Documents shall be signed in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

2.2.8 Incorporation of a Project Company

2.2.8.1 In case of the Successful Bidder being a Bidding Consortium, it shall, within fifteen (15) days of the issue of the Letter of Intent, incorporate a Project Company provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid as specified in the Consortium Agreement such Project Company shall be responsible to execute the RFP Documents. The investment in the Project Company shall be as per provisions of the Consortium Agreement and shall be subject to the provisions of Clause 2.7 of this RFP.

In case of the Successful Bidder being Bidding Company and choosing to incorporate a Project Company for supply of power, it shall incorporate the Project Company within fifteen (15) days of the issue of the Letter of Intent. In case the Project Company has already been formed by such Bidding Company prior to the submission of the Bid, the Bidding Company shall provide the details of such Project Company in its Bid. The investment in such Project Company incorporated by the Successful Bidder may be from any of the Affiliates and / or Ultimate Parent and shall be subject to the provisions of Clause 2.7 of this RFP.

2.2.8.2 The Project Company shall execute the RFP Documents and be responsible for supply of power to the Procurer(s) as per the provisions of the PPA.

2.2.9 Within fifteen (15) days of the issue of the Letter of Intent, the Successful Bidder/ Project Company, as the case may be, shall:

- a. Provide a valid Contract Performance Guarantee as per the provisions of Clause 2.13 of this RFP; and thereafter
- b. Execute the PPA and other RFP Documents in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

Provided that, if for any reason attributable to the Procurer(s), the above activities are not completed by the Successful Bidder(s)/ Project Company within the above period of fifteen (15) days of the issue of Letter of Intent as mentioned in this Clause, such period of fifteen (15) days shall be extended, on a day for day basis till the end of the Bid validity period.

2.2.10 All stamp duties payable for executing the RFP Documents shall be borne by the Successful Bidder.

2.2.11 If the Successful Bidder(s) / Project Company fails or refuses to comply with any of its obligations under Clauses 2.2.8 and 2.2.9, and provided that the Procurer (s) and / or other parties to the respective RFP Documents are willing to execute the said documents, such failure or refusal on the part of the Successful Bidder/ Project Company shall constitute sufficient grounds for cancellation of the Letter of Intent. In

such cases, the Procurer/ Authorized Representative shall be entitled to invoke the Bid Bond of the Successful Bidder(s) / Project Company.

2.3 Amendment of RFP

2.3.1 The Procurer/ Authorized Representative, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder may modify the RFP, including the timelines specified in Clause 2.8.2, by issuance of addendum / modification / errata and / or a revised document . Revisions or amendments in the Bidding Guidelines may cause the Procurer/ Authorized Representative to modify, amend or supplement this RFP, including the RFP Documents to be in conformance with the Bidding Guidelines. Such document shall be notified by publishing on <https://etender.up.nic.in> and would be binding on the Bidders. In order to provide reasonable time to the Bidders to take the modification into account in preparing their Bid, or for any other reasons, the Procurer/ Authorized Representative may, at its discretion, extend the Bid Deadline. Late receipt of any addendum / modification / errata and / or revised document will not relieve the Bidder from being bound by that modification or the Bid Deadline. All such amendments/modifications shall be issued at least seven (07) days prior to the Bid Deadline.

2.3.2 Not Used.

2.4 Bidding Process

2.4.1 Bid Formats

2.4.1.1 The Bid in response to this RFP shall be submitted electronically by the Bidders in the manner provided in Clause 2.10. The Bid shall comprise of the following:

(A) Non- Financial Bid comprising of:

- i. Covering Letter as per prescribed Format 4.1
- ii. Power of attorney issued by the Bidding Company or the Lead Member of the Consortium, as the case may be, in favor of the authorized person signing the Bid, in the form attached hereto as Format 4.2.(a). Additionally, in case of a Bidding Consortium, the Bid should also contain a Power of Attorney (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

Provided that in the event the Bidding Company or any Member of the Bidding Consortium, as the case may be, is a foreign entity, it may submit Board resolutions in place of Power of Attorney for the purpose of fulfilling the above requirements ;

Provided further that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid. In the case of a foreign entity,

in the event, any and/or all of the documents/resolutions are in any other language other than English, then a duly notarized copy of such translation shall also be required to be submitted.

- iii. Consortium Agreement as per prescribed Format 4.3;
- iv. Letter of Consent from the Consortium Members as per prescribed Format 4.4;
- v. Bidder's composition and ownership structure as per prescribed Format 4.5;
- vi. Details for meeting Qualification Requirement as per the prescribed Format 4.6 along with documentary evidence for the same as specified in Clause 2.1;
- vii. Bidders' Undertaking as per the prescribed Format 4.7 (A) and Undertakings from the Bidder and Financially Evaluated Entity or its Parent Company / Ultimate Parent Company pertaining to equity investment and/or submission of CPG as per Format 4.7 (B);
 Provided further, in case the Bidding Company or Member of a Consortium, (as the case may be) holds at least twenty-six percent (26%) equity in such Financially Evaluated Entity, whose credentials have been considered for the purpose of meeting the Qualification Requirements as per the RFP, undertaking as per Format 4.7 (B) shall not be required from the Financially Evaluated Entity for the equity investment;
- viii. Board Resolution of the Bidder and /or Financially Evaluated Entity of the Bidding Company or each Member of the Bidding Consortium as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director (or any full time Director on Board) for equity investment and/or submission of Contract Performance Guarantee; or

 Board Resolution of the Parent Company/Ultimate Parent Company of the Financially Evaluated Entity referred to above, as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director (or any full time Director on Board) for equity investment and/or submission of Contract Performance Guarantee.

 Provided that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.
- ix. Bid Bond, as per the prescribed format 4.9;
- x. Checklist for Bid submission requirements as prescribed in Format 4.11;
- xi. Disclosure as per Format 4.12 regarding participation of any related companies in this bidding process;

- xii. Details of generation source and fuel as prescribed in Format 4.13;
- xiii. Initialed RFP Documents as per Format 5.5.
- xiv. In case Bidder is offering capacity from more than one generation source, following formats shall be submitted separately for each generation source :
 - i) Format 4.6 B -Format of Qualification Requirement (As per clause 2.1.2.2)
 - ii) Board Resolution as per format 4.8
 - iii) Bid Bond as per Format 4.9
 - iv) Details of the generation source and fuel as per Format 4.13

(B) Financial Bid as per Format 4.10.

The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid as per the prescribed Format 4.10, duly signed by an authorized signatory.

- i. The Bidder shall submit their Quoted Tariff at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.10 of this RFP;
- ii. More than one Bid can be submitted by the Bidder for supply of power provided that not more than one Bid from a Bidder is from the same generation source and each Bid is separately submitted in accordance with this Clause 2.4.1.1.
- iii. The Qualification Requirements for the Bidder would be evaluated for the total quantum of power offered by a Bidder from various generation sources.
- iv. The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the entire term of the PPA, subject to the Minimum Bid Capacity.
- v. From each generation source, the Bidder may submit fractions of total capacity offered which it is willing to supply at the same quoted tariff as specified in Format 4.10.
- vi. The Bidder shall quote the Quoted Non Escalable Capacity Charges and Quoted Escalable Energy Charges. In case of Quoted Escalable Energy Charges, the Bidder shall quote charges only for the first Contract Year after commencement of supply of power as per the terms of the PPA.
- vii. The Bidder shall ensure that in any year, the Quoted Non Escalable Capacity Charges do not exceed 45% of the total charges.
- viii. Not Used.
- ix. Not Used.
- x. At the Bid evaluation stage, the ratio of minimum and maximum Quoted Non Escalable Capacity Charges during the Contract Years for which Tariff has been

quoted shall not be less **than zero point seven (0.7)** to avoid excessive front loading or back loading during the period of Contract.

- xi. The Quoted Tariff, as in Format 4.10, shall be an all inclusive Tariff up to the Interconnection Point and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, levies, duties while quoting such Tariff. It shall also include any applicable transmission costs and transmission losses from the generation source up to the Interconnection Point. Availability of the inputs necessary for supply of power shall be ensured by the Seller and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the plant location must be reflected in the Quoted Tariff.
- xii. The Bidders should factor in the cost of the secondary fuel into the Quoted Tariff and no separate reimbursement shall be allowed on this account.

2.4.1.2 Commencement of Supply of Power to Procurer(s)

The Seller shall at all times be responsible, at its own cost and risk for the commencement of supply power to the Procurer(s) as per the terms of the PPA.

- 2.4.1.3 Wherever information has been sought in specified formats, the Bidders shall furnish the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

2.5 The Bidder should note that:

- (a) If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of its Bid, the Procurer/ Authorized Representative reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the Effective Date, consequences specified in the PPA shall apply.
- (b) If for any reason the Bid of any Successful Bidder is rejected or Letter of Intent issued to such Successful Bidder is cancelled, the Authorized Representative may:
 - i. Consider the next lowest Financial Bid from other than the Successful Bidder(s) whose Bids are responsive and valid; or
 - ii. Annul the bid process; or
 - iii. Take any such measure as may be deemed fit in the sole discretion of the Procurer/ Authorized Representative , as applicable]
- (c) Not Used.
- (d) Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the Procurer/ Authorized Representative and shall not be returned to the Bidders;

- (e) Language of the Bid shall be English only;
- (f) Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per Format 4.1;
- (g) The Authorized Representative may, at its sole discretion, ask for additional information/ document and/ or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However, no change in the substance of the Quoted Tariff shall be sought or permitted by the Procurer/ Authorized Representative.
- (h) Non submission and / or submission of incomplete data / information required under the provisions of the RFP shall not be construed as waiver on the part of the Authorized Representative of the obligation of the Bidders to furnish the said data / information unless the waiver is in writing.
- (i) The Procurer/ Authorized Representative may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary.
- (j) Not Used.
- (k) This RFP document includes statements, which reflect the various assumptions arrived at by the Procurer/ Authorized Representative in order to give a reflection of the current status in the RFP. These assumptions may not be entirely relied upon by the Bidders in making their own assessments. This RFP does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources.

2.6 Bidder to inform itself fully

- 2.6.1 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, it shall not be relieved from any of its obligations under the RFP Documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever.
- 2.6.2 The technical requirements of integrated grid operation are specified in the Indian Electricity Grid Code (IEGC). The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in India. Information regarding grid

parameters such as voltage and frequency is readily available on the websites of Regional Load Dispatch Centres. The protection trip setting of the generation on under frequency df/dt and defense plan are coordinated at the RPC forum in consultation with all stakeholders duly taking into account the design parameters of the various machines.

In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, the Income Tax Act 1961, the Companies Act, 2013, the Customs Act, the Foreign Exchange Management Act 1999, IEGC, the Environment Protection Act 1986 and Forest (Conservation) Act 1980, the Land Acquisition Act 1984, the regulations framed by regulatory commissions and all other related acts, laws, rules and regulations prevalent in India, as amended from time to time. The Authorized Representative shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidder undertakes and agrees that, before submission of its Bid; all such factors as generally stated above, have been fully investigated and considered while submitting the Bid.

- 2.6.3 The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits required for the supply of power to Procurer(s). The Procurer(s) shall have no liability to obtain any of the Consents, Clearances and Permits required for setting up of the generation facilities and/ or supply of power.

2.7 Minimum Equity holding/Equity Lock-In

- 2.7.1 The aggregate equity share holding of the *Lead Member (in case the Successful Bidder is a Bidding Consortium) OR the Bidder (in case the Successful Bidder is a Bidding Company)* in the issued and paid up equity share capital of the Seller shall not be less than the following:
- a) Fifty One percent (51%) from Effective Date up to a period of (2) two years after commencement of supply of power; and
 - b) Twenty Six (26%) for a period of three (3) years thereafter.
- 2.7.2 Similarly, in case of the Successful Bidder being a Bidding Company, the minimum aggregate equity share holding of the investing entity(ies) in the issued and paid up equity share capital of the Project Company, if formed, shall be the same as specified in Clause 2.7.1.
- 2.7.3 In case of a Bidding Consortium, any Member, other than the Lead Member, shall be allowed to divest its equity as long as the other remaining Members (which shall always include the Lead Member) hold the minimum equity specified in Clause 2.7.1 (a) and (b) above. In case of a Bidding Company, any investing entity(ies) shall be allowed to divest its equity as long as the other remaining investing entity(ies) hold the minimum aggregate equity specified in Clause 2.7.1(a) and (b) above.
- 2.7.4 The Successful Bidder may invest in the equity share capital of the Project Company through its Affiliate(s) or Ultimate Parent Company or Parent Company (ies). If the Successful Bidder so invests through any Affiliate(s) or Ultimate Parent Company or

Parent Company (ies), the Successful Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained.

- 2.7.5 If equity is held by the Affiliates, Parent Company or Ultimate Parent Company, then such Affiliate, Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Project Company to another Affiliate or to the Parent Company / Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate/ Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate / Parent Company / Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate / Parent Company / Ultimate Parent Company.

All transfers of shareholding of the Project Company by any of the entities referred to above shall be after prior written permission from the Procurer(s).

- 2.7.6 For computation of effective equity holding, the equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity / equity lock- in requirements specified above, the effective equity holding of Successful Bidder A in the Seller shall be fifteen percent (15%), (i.e., $30\% * 50\%$);

- 2.7.7 The provisions as contained in this clause and Article 18.1 of PPA shall override the terms of the Consortium Agreement submitted as a part of Bid.
- 2.7.8 The provisions contained in Clause 2.7.1 to Clause 2.7.6 shall not be applicable in case of a Bidding Company, bidding on its own name, meeting all Qualification Requirements on its own and not forming a separate Project Company.

2.8 Due Dates

- 2.8.1 The Bidders should submit the Bids electronically and the Bids shall be accepted through the e-tender portal only.
- 2.8.2 The following shall be the time schedule for completion of the bidding process

Event	Schedule*
Publishing of NIT in newspaper	19.03.2020
Date of publication on the e-tender portal and issuance of RFP	19.03.2020 at 5:00 PM
Submission of written clarification/queries if any on RFP	26.03.2020 by 3:00 PM
Pre- Bid Meeting	31.03.2020 at 3:00 PM at Shakti Bhawan, Lucknow
Uploading of approved/revised documents (if required)	09.04.2020 by 4:00 PM
Due date for receipt of tenders on the E-portal	16.04.2020 at 3:00 PM
Due date for submission of hard copies (3sets) of Non-financial Bid	16.04.2020 at 3:30 PM
Opening of Non-Financial Bid	17.04.2020 at 4:00 PM
Opening of Financial Bid of Qualified Bidders	23.04.2020 at 4:00 PM
Shortlisting of successful Bidders & Issuance of LOI	30.04.2020

*tentative (Please refer E-tender Portal <https://etender.up.nic.in>)

- 2.8.3 The duration for a Bid process shall not exceed a maximum duration of 120 days, irrespective of any modification/ amendment to the RFP and/or RFP Documents. In the event that the Bid process has not been completed in such time limit, the Procurer/ Authorized Representative shall extend the validity of the Bid Process.

2.9 Validity of the Bid

- 2.9.1 The Bidder shall submit the Bid which shall remain valid up to one hundred and twenty (120) days after the Bid Deadline (“**Bid Validity**”). The Authorized Representative reserve the right to reject any Bid which does not meet the aforementioned validity requirement.
- 2.9.2 The Authorized Representative may solicit the Bidders’ consent for an extension of the period of validity of the Bid. The request and the response in this regard shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by the Authorized Representative, the Procurer/ Authorized Representative shall not be entitled to invoke the Bid Bond. A Bidder accepting the Authorized Representative request for validity extension shall not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of the Bid Bond as requested by the Authorized Representative and further undertake not to participate in any bid process as per Clause 2.1.2.4 within seven (7) days of such request, failing which the Bid shall not be considered as valid.

2.10 Method of Submission

- 2.10.1 The entire Bid Submission would be online on NIC Portal and the Bidder would be required to upload the necessary scanned Bid documents such as Bid Bond, Tender Fees, Non Financial Bid and Financial Bid electronically.

- 2.10.2 The Bidder would be required to submit the original Bid Bond, Tender Fees and the Non Financial Bid including the original copies of Power of Attorney, affidavits, undertaking, etc to the issuing authority at the date and time mentioned in this RFP in 1 original set (clearly marked as "ORIGINAL") and three (3) photocopied sets (clearly marked as "COPY OF BID"). It is clarified that the Financial Bid only needs to be submitted electronically.
- 2.10.3 It may be noted that Non-Financial Bid shall not contain any information/document relating to Financial Bid. If Non-Financial Bid contains any such information / documents, the Authorized Representative shall not be responsible for premature opening of the Financial Bid.
- 2.10.4 All pages of the Bid, except for the Bid Bond (format 4.9), and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the authorized signatory at least on the first and last page of such document.
- 2.10.5 No change or supplemental information to a Bid will be accepted after the Bid Deadline, unless the same is requested for by the Authorized Representative as per Clause 2.5 (g).

Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline. In cases where the Bid is withdrawn by the Bidder before the Bid Deadline, then such Bid shall be returned unopened.

- 2.10.6 Bidder must ensure that all documents uploaded on e-tender Portal as files or zipped folders, contain valid files and are not corrupt or damaged due to any processing at bidder PC system like zipping etc. It shall be the responsibility of Bidder himself for proper extractability of uploaded zipped files. Any error/ virus creeping into files/folder from client end PC system cannot be monitored by e-tender software/ server and will be Bidder's responsibility only. In case the files are non-extractable or illegible otherwise, then the Bidder's authorized representative shall be given one chance by Tender Opening Committee to open & demonstrate the contents of Bid data downloaded from the e-tender Portal in his presence. If, even after above chance, the Bidder is unable to open & demonstrate the contents of Bid data downloaded from the e- tender Portal in his presence then no fresh Bid in any form, soft or hard copies, shall be accepted by tendering authority and his Bid shall be summarily rejected and treated as non-responsive.
- 2.10.7 The Bidder is requested to go through the NIC Portal Link for "Bidders Manual Kit" (<https://etender.up.nic.in/nicgep/app?page=BiddersManualKit&service=page>) and go through the instructions carefully for online bid submission and familiarize themselves with the method and process of bidding.

2.11 Preparation Cost

- 2.11.1 The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions, and finalization and execution of the RFP Documents, etc., the Procurer/ Authorized Representative shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid process.
- 2.11.2 The Bids have to be accompanied with a proof of submission of tender fee of Rs. **1,18,000/-** (Rupees One Lakh Eighteen Thousand only) which is inclusive of GST @ 18% in favour of Account namely A.O.KEND.BHU.PRA.UPPCL,LKO, having account No. 10101987510 payable at SBI, Ashok Marg, Lucknow through RTGS

2.12 Bid Bond

- 2.12.1 Each Bidder shall submit the Bid accompanied by Bid Bond, as per Format 4.9 issued by any of the Banks listed in Format 5.8. In the case of a Consortium, the Lead Member shall furnish the Bid Bond as stipulated in the RFP, on behalf of the Consortium Members as per the Consortium Agreement. In case the Bidder is offering capacity from more than one generation source, the Bid Bond shall be submitted separately for each capacity. The Bid Bond shall be valid for a period of thirty (30) days beyond the validity of the Bid.
- 2.12.2 The Bid Bond, may be invoked by the Procurer/ Authorized Representative or its authorized representative, without any notice, demure, or any other legal process upon occurrence of any of the following:
- In case the Successful Bidder is a Bidding Company choosing to incorporate a Project Company and in case of a Bidding Consortium: “Failure to incorporate the Project Company as a legal entity within fifteen (15) days of issue of Letter of Intent, or,”
- Failure to furnish the Contract Performance Guarantee as per Clause 2.13; or
- Failure to execute the RFP Documents subject to the provisions of Clause 2.2.11;
- or
- Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 2.5.
- 2.12.3 The Bid Bonds of all Bidders, whose Bids are declared non-responsive, shall be returned and released by the Authorized Representative within thirty (30) days after the date on which the Financial Bids are opened.
- 2.12.4 The Bid Bonds of all unsuccessful Bidders shall be returned and released by the Procurer/ Authorized Representative within a period of thirty (30) days of the occurrence of the earlier of the following:
- a) submission of the Contract Performance Guarantee as per Clause 2.13 of the RFP and the execution of the RFP Documents (as applicable) by the Successful Bidder(s); or
 - b) Expiry of the Bid Validity/extended validity of Bid of unsuccessful Bidders; or

2.12.5 The Bid Bonds of all Bidders shall be returned and released by the Procurer/ Authorized Representative within a period of thirty (30) days of the occurrence of the termination/cancellation of Bid process by the Procurer/Authorised Representative.

2.12.6 The Bid Bond of the Successful Bidder(s) shall be returned on the submission of Contract Performance Guarantee as per Clause 2.13 of the RFP and the provisions of the PPA.

2.13 Contract Performance Guarantee (CPG)

2.13.1 Within fifteen (15) days of issue of Letter of Intent, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide to UPPCL/separately to each of the Procurers, the Contract Performance Guarantee calculated on the basis of Rs. 15 lakhs/MW of the total Contracted Capacity of the Successful Bidder and as prescribed in Format 5.7. The CPG provided to the Procurers shall be allocated in proportion to their respective Contracted Capacity. In case of the Successful Bidder being a Bidding Consortium, the Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members. The Contract Performance Guarantee shall be initially valid for a period of three (3) months after the Scheduled Delivery Date and thereafter shall be dealt with in accordance with the provisions of the PPA. The Contract Performance Guarantee shall be issued by any of the banks listed in Format 5.8.

2.13.2 In case the Successful Bidder is unable to obtain the Contract Performance Guarantee for the total amount from any one bank specified in Format 5.8, the Successful Bidder may obtain the same from not more than three (3) banks specified in Format 5.8.

2.13.3 Non submission of the CPG by the Successful Bidder(s) as per the provisions of Clause 2.13 may lead to the invocation of the Bid Bond, cancellation of the Letter of Intent of such Successful Bidder(s) by the Procurer/ Authorized Representative, and thereafter, the provisions of Clause 2.5 (b) shall be applicable.

2.13.4 Not Used.

2.13.5 Not Used.

2.13.6 Not Used.

2.14 Opening of Bids

2.14.1 The Non-Financial Bid and Financial Bid shall be opened as per the time schedule and at the venue where the hard copies of the Bids are required to be submitted, as specified in Clause 2.8, in the presence of one representative from each of such Bidders who wish to be present.

In the event of any of due dates falling on a day which is not a working day or which is a public holiday, the Bid shall be opened on the next working day at the same venue and time.

2.14.2 The following information from each Bid shall be read out to all the Bidders at the time of opening of Non-Financial Bid and Financial Bid:

- Name of the Bidder including Members of the Bidding Consortium, if applicable
- Details of the Bid Bond
- Quantum of power offered and its source
- Quoted Tariff

2.15 Right to withdraw the RFP and to reject any Bid

2.15.1 This RFP may be withdrawn or cancelled by the Procurer / Authorized Representative at any time without assigning any reasons thereof. The Procurer / Authorized Representative further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

2.16 Enquiries

2.16.1 Written clarifications on the RFP and RFP Documents as per Clause 2.2.6 may be sought from:

Chief Engineer (PPA-II)
Phone: 0522 - 2218805
Rax No: 8805
Email: ppareuppcl@gmail.com

Uttar Pradesh Power Corporation Ltd.
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow - 226001

2.17 The Authorized Representative reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of this RFP and make its own judgment regarding the interpretation of the same. In this regard the Procurer / Authorized Representative shall have no liability towards any Bidder and no Bidder shall have any recourse to the Procurer / Authorized Representative with respect to the selection process. The Authorized Representative shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The Authorized Representative's decision in this regard shall be final and binding on the Bidders.

2.18 Confidentiality

2.18.1 The parties undertake to hold in confidence this RFP and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their

- activities;
- c) disclosures required under applicable Law, without the prior written consent of the other parties of the concerned agreements.

Provided that the Successful Bidder(s) agrees and acknowledges that any of the Procurers may at any time, disclose the terms and conditions of the RFP and RFP Documents to any person, to the extent stipulated under the applicable Law or the Bidding Guidelines.

2.19 Fraudulent and Corrupt Practices

- 2.19.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid process and subsequent to the issue of the LOI. Notwithstanding anything to the contrary contained herein, or in the LOI, the Authorized Representative shall reject a Bid, withdraw the LOI, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer / Authorized Representative shall forfeit the Bid Bond, without prejudice to any other right or remedy that may be available to the Procurer / Authorized Representative hereunder or otherwise.
- 2.19.2 Without prejudice to the rights of the Procurer / Authorized Representative under Clause 2.19 hereinabove and the rights and remedies which the Procurer / Authorized Representative may have under the LOI, if a Bidder is found by the Procurer / Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of the LOI, such Bidder shall not be eligible to participate in any tender or RFP issued by the Procurer / Authorized Representative, during a period of two (2) years from the date such Bidder is found by the Procurer / Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 2.19.3 For the purposes of this Clause 2.19, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer / Authorized Representative who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer/Authorized Representative, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any

person in respect of any matter relating to the project or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer / Authorized Representative in relation to any matter concerning the Project;

(b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

(d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Procurer/Authorized Representative with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and

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

SECTION - 3

EVALUATION CRITERIA

SECTION 3

3. EVALUATION CRITERIA

3.1 Bid Evaluation

The evaluation process comprises the following four steps:

- | | |
|------------|--|
| Step I – | Responsiveness check of Non Financial Bid |
| Step II – | Evaluation of Bidder’s fulfillment of Qualification Requirements as per Clause 2.1 |
| Step III - | Evaluation of Financial Bid |
| Step IV – | Successful Bidder(s) selection |

3.2 STEP I – Responsiveness check of Non Financial Bid

The Non Financial Bid submitted by Bidders shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. Subject to Clause 2.5 (g), any of the following may cause the Bid to be considered “Non-responsive”, at the sole discretion of Authorized Representative:

- Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution as per Clause 2.4.1.1, applicable board resolutions, applicable undertakings, format for disclosure, valid Bid Bond, Consortium Agreement;
- Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP;
- Material inconsistencies in the information / documents submitted by the Bidder, affecting the Qualification Requirements;
- Information not submitted in the formats specified in this RFP;
- A Bidder submitting more than one Bid from the same generation source or participating in more than one Bid as a Member of Bidding Consortium;
- Bid validity being less than that required as per Clause 2.9 of this RFP;
- Bid being conditional in nature;
- Bid not received by the Bid Deadline;
- Bid having Conflict of Interest;
- More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent Company / Affiliate;
- Bidder delaying in submission of additional information or clarifications sought by Authorized Representative as applicable;
- Bidder makes any misrepresentation as specified in Clause 2.5.

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder’s fulfilment of Qualification Requirement is taken up. Format 4.11 shall be used to check whether each Bidder meets the stipulated requirements.

3.3 STEP II– Evaluation of Bidder’s fulfilment of Qualification Requirements

- 3.3.1 Evaluation of Bidder’s Qualification will be carried out based on the information furnished by the Bidder as per the prescribed Format 4.6 and related documentary evidence in support of meeting the Qualification Requirements as specified in Clause 2.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

3.4 Step III - Evaluation of Financial Bid

- 3.4.1 Financial Bids of the Qualified Bidders shall be opened in presence of the representatives of such Qualified Bidders, who wish to be present, as per the timelines indicated in Clause 2.14, or such other date as may be intimated by Authorized Representative to the Bidders. The evaluation of Financial Bid shall be carried out based on the information furnished in Financial Bid.

Provided however, in case Financial Bid of only one Qualified Bidder OR two Qualified Bidders having any affiliate company or companies of the Procurer(s) remain(s) after the responsiveness check (Step I), the Financial Bid of such Bidder(s) shall not be opened and the matter shall be referred to the Commission and the selection of the Successful Bidder shall then be at the sole discretion of the Commission.

- 3.4.2 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.4.1.1 (B) of this RFP. Any Bid not meeting any of the requirements as per Clause 2.4.1.1 (B) of this RFP may cause the Bid to be considered “Non-responsive” at the sole decision of the Procurer/ Authorized Representative. Financial Bid not in conformity with the requirement of Sl. No. (iv) and (x) of Clause 2.4.1.1 (B) of this RFP shall be rejected.
- 3.4.3 The Bidders shall quote the different components of Tariff as specified in Format 4.10. Based on the Quoted Tariff provided by the Bidders, the Levelized Tariff shall be calculated for the term of the PPA as per the methodology mentioned below.
- 3.4.4 For the purpose of comparison of Financial Bids, the Quoted Escalable Energy Charges of each Bidder shall be uniformly escalated as per the escalation rate mentioned in (1) below. For the actual Tariff payment, such factors shall be applied as per the provisions of the PPA.

Head	Value
General	
1. Annual escalation rate applicable to Quoted Escalable Energy Charges	As per CERC rate prevailing one week before bid submission date.
2. Discount Rate for computation of Levelized Tariff (both Capacity as well as Energy Charge)	As per CERC rate prevailing one week before bid submission date.
applicable to Quoted Escalable Energy Charges	

3.4.5 Not Used.

3.4.6 Not Used.

3.4.7 Not Used.

3.4.8 Computing Levelized Tariff

The Quoted Tariffs (Rs /kWh) as calculated in Clause 3.4.4 above for each Bidder for the term of PPA, shall then be discounted upto the Scheduled Delivery Date mentioned in Clause 1.3.1, by applying the discount factors (based on the Discount Rate as mentioned in Clause 3.4.4 above) and such aggregate discounted value for the term of the PPA shall be divided by the sum of such discount factors so as to calculate the Levelized Tariff of each Bidder.

The Levelized Tariff shall be calculated by assuming uniformly for all Bidders that power shall get delivered on the Scheduled Delivery Date.

3.4.9 Any Bid with Levelised tariff above the ceiling Levelised tariff prescribed in Clause 2.1.2.1 would be rejected by UPPCL. For ease of submission and clarity of Bidders, the model for computation of Levelized Tariff would be provided to the Bidders. Bidders are required to go through this model carefully and seek clarifications if required.

3.5 STEP IV – Successful Bidder(s) Selection

3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.

3.5.2 The Levelized Tariff calculated as per Clause 3.4.8 for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.

3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.

3.5.4 In the event that two or more Bidders quote the same amount of Levelised Tariff for (a) the full Capacity Required; (b) one full Capacity Required and other part of the Capacity Required; (c) Capacity totaling more than the Capacity Required and (d) Capacity totaling to the Capacity Required (the "Tie Bidders"), the Authorised Representative shall identify the Selected Bidder under (a) by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend; under (b) by declaring the Bidder who has offered full Capacity Required as the Selected Bidder; under (c) by declaring the Bidder with maximum Capacity as first Selected Bidder and other Bidder as second Selected Bidder with remaining Capacity and under (d) by declaring both the Bidders as the Selected Bidder with respective Capacity.

3.5.5 In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance or the capacity required is not met by the Lowest Bidder (the "first round of bidding"), the Authorized Representative may invite all the remaining Bidders to

revalidate or extend their respective Bid Bond, as necessary, and match the Bid of the aforesaid Lowest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder. It is hereby clarified that the Authorized Representative will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Requisitioned Capacity gets fulfilled by a part thereof.

- 3.5.6 In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding, the Authorized Representative may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Bond, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second lowest Bidder in the first round of bidding.
- 3.5.7 At any step during the selection of Successful Bidder(s), the Procurer / Authorized Representative reserves the right to increase / decrease the Requisitioned Capacity by up to twenty five percent (25%) of the quantum indicated in Clause 1.3.1.
- 3.5.8 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.
- 3.5.9 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, “Accepted Unconditionally”, under the signature of the authorized signatory of the Successful Bidder and return such copy to the Procurer/ Authorized Representative within seven (7) days of issue of LOI.
- 3.5.10 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Procurer / Authorized Representative reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 (b) shall apply.
- 3.5.11 The Procurer / Authorized Representative, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices.

SECTION - 4

FORMATS FOR BID SUBMISSION

SECTION – 4

4. FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section 2 and other Bid submission requirements specified in the RFP.

- i. Format of Covering Letter
- ii. Formats for Power of Attorney
- iii. Format for the Consortium Agreement
- iv. Format for Letter of Consent from Consortium Members
- v. Format for Bidder's composition and ownership structure
- vi. Format for Qualification Requirement
- vii. Format of Undertakings
- viii. Format for Board Resolutions
- ix. Format for Bid Bond
- x. Format for Financial Bid
- xi. Format of checklist for Bid submission requirements
- xii. Format for Disclosure
- xiii. Details of source of power and representative fuel
- xiv. Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member

A Bidder may use additional sheets to submit the information for its detailed response.

[The Procurer / Authorized Representative is authorized to modify any of these formats before the issue of RFP to facilitate seeking relevant project specific details for assessing Qualification Requirements specified in the RFP or for any other reasons.]

4.1 Format of Covering Letter

(The covering letter should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

Date: _____

From : _____ **(Insert name and address of Bidding Company/ Lead Member of the Bidding Consortium)**

Tel. #: _____

Fax #: _____

E-mail address# _____

To

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Sub: Bid for supply of Bagasse based power on long term basis through competitive bidding procedure in response to RFP dated

Dear Sir,

We, the undersigned [*insert name of the 'Bidder'*] having read, examined and understood in detail the RFP and RFP Documents for supply of Bagasse based power on long term basis through competitive bidding procedure for meeting the requirements of the Procurer(s) hereby submit our Bid comprising of Financial Bid and Non-Financial Bid. We confirm that neither we nor any of our Parent Company/ Affiliate/ Ultimate Parent Company has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

1. We give our unconditional acceptance to the RFP, datedand RFP Documents attached thereto, issued by the Authorized Representative, as amended. In token of our acceptance to the RFP Documents, the same have been initialled by us and enclosed to the Bid. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.

2. Bid Bond

We have enclosed a Bid Bond of Rs. (Insert Amount), in the form of bank guarantee no.....(Insert number of the bank guarantee) dated [Insert date of bank guarantee] as per Format 4.9 from (Insert name of bank providing Bid Bond) and valid up to.....in terms of Clause 2.12 of this RFP. The offered quantum of power by us is MW (Insert total capacity offered)

(Details of Bid bond to be given separately in case the Bidder is offering capacity from more than one generation source)

3. We have submitted our Financial Bid strictly as per Format 4.10 of this RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

4. Acceptance

We hereby unconditionally and irrevocably agree and accept that the decision made by the Authorized Representative in respect of any matter regarding or arising out of the RFP shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfil our obligations with regard to supply of power.

5. Familiarity with Relevant Indian Laws & Regulations

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of RFP have been fully examined and considered while submitting the Bid.

6. Contact Person

Details of the contact person are furnished as under:

Name:.....
 Designation :.....
 Company :.....
 Address:.....
 Phone Nos. :.....
 Fax Nos. :.....
 E-mail address:.....

7. We are submitting electronically the Non Financial Bid and Financial Bid containing duly signed formats, each one duly closed separately. Further, the Non Financial Bid is being submitted in hard copy in one (1) original + three (3) copies (duly attested) as desired by you in the RFP for your consideration.
8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Procurer/ Authorized Representative.
9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.
10. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and twenty (120) days from the Bid Deadline.
11. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1, of this RFP.

12. We confirm that no order / ruling has been passed by the Commission or a competent court against us or any of our Affiliates in the preceding one (1) year from the Bid Deadline for breach of any contract for supply of power having duration of contract in excess of one (1) year and that the bid security submitted by the us or any of our Affiliates has not been forfeited, either partly or wholly, in any bid process for procurement of power, in the preceding one (1) year from the Bid Deadline to any licensee in India as per the provisions of Clause 2.1.8.

Dated the _____ day of _____, 20...

Thanking you,
We remain,

Yours faithfully,

Name, Designation and Signature of Authorized Person in whose name Power of Attorney / Board Resolution as per Clause 2.4.1.1 is issued

4.2 Formats for Power of Attorney**POWER OF ATTORNEY**

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

a) Power of Attorney to be provided by the Bidding Company/ Lead Member in favor of its representative as evidence of authorized signatory's authority.

Know all men by these presents, We(name and address of the registered office of the Bidding Company or Lead Member of the Bidding Consortium, as applicable) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for supply of Bagasse based power on long term basis through competitive bidding procedure for meeting the requirements of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. and Kanpur Electricity Supply Company Ltd. in the country of India in response to the RFP datedissued by Authorised Representative, including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Authorized Representative may require us to submit. The aforesaid Attorney is further authorized for making representations to the Authorised Representative, and providing information / responses to Authorised Representative, representing us in all matters before Authorised Representative, and generally dealing with Authorised Representative in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.

We hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

Signed by the within named

.....[Insert the name of the executant company]

through the hand of

Mr.

duly authorized by the Board to issue such Power of

Attorney Dated this day of

Accepted

.....
 Signature of Attorney
 (Name, designation and address of the Attorney)

Attested

.....
 (Signature of the executant)
 (Name, designation and address of the executant)

.....
 Signature and stamp of Notary of the place of execution

Common seal of has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....

WITNESS

1.
 (Signature)

Name

Designation.....

2.
 (Signature)

Name

Designation.....

Notes:

- (1) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (2) The person authorized under this Power of Attorney, in the case of the Bidding Company/Lead Member being a public company, or a private company which is a subsidiary of a public company, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager. In all other cases

the person authorized should be a director duly authorized by a board resolution duly passed by the company.

- (3) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (4) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

b) Power of Attorney to be provided by each of the Members of the Consortium (other than the Lead Member) in favor of the Lead Member

WHEREAS Authorised Representative has issued Request For Proposal (RFP) on for inviting Bids in respect of supply of power to the Procurer(s) named in the RFP on the terms and contained in the RFP and the RFP Documents (as defined in RFP);

AND WHEREAS, and (Insert names of all Members of Consortium) the Members of the Consortium are desirous of submitting a Bid in response to the RFP, and if selected, undertaking the responsibility of supplying the contracted capacity of power to the Procurer(s) as per the terms of the RFP Documents;

AND WHEREAS all the Members of the Consortium have agreed under the Consortium Agreement dated entered into between all the Members and submitted along with the Bid to appoint (Insert the name and address of the Lead Member) as Lead Member to represent all the Members of the Consortium for all matters regarding the RFP and the RFP documents and the Bid;

AND WHEREAS pursuant to the terms of the RFP and the Consortium Agreement, we, the Members of the Consortium hereby designate M/s (Insert name of the Lead Member) as the Lead Member to represent us in all matters regarding the Bid and the RFP, in the manner stated below:-

Know all men by these presents, We (Insert name and address of the registered office of the Member 1), (Insert name and address of the registered office of the Member 2) (Insert name and address of the registered office of the Member n) do hereby constitute, appoint and authorise (name and registered office address of the Lead Member), which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium's Bid in response to the Request For Proposal dated issued by the Authorised Representative including signing and submission of the Bid and all documents related to the Bid as specified in the RFP, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document, which the Procurer/Authorized Representative may require us to submit. The aforesaid Attorney shall be further authorized for making representations to the Authorised Representative named in the RFP, and providing information / responses to the Authorised Representative named in the RFP, representing us and the Consortium in all matters before the Authorised Representative named in the RFP, and generally dealing with the Authorised Representative named in the RFP in all matters in connection with our Bid, till completion of the bidding process in accordance with the RFP.

We, as Members of the Consortium, hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

Signed by the within named

.....[Insert the name of the executant company]

through the hand of

Mr.

duly authorized by the Board to issue such Power of

Attorney Dated this **day of**

Accepted

.....

Signature of Attorney

(Name, designation and address of the Attorney)

Attested

.....

(Signature of the executant)

(Name, designation and address of the executant)

.....

Signature and stamp of Notary of the place of execution

Common seal of **has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....**

WITNESS:

1.
(Signature)

Name

Designation.....

2.
(Signature)

Name

Designation.....

Notes:

- (1) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (2) The person authorized under this Power of Attorney, in the case of the Member being a public company, or a private company which is a subsidiary of a public company, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager. In all other cases the person authorized should be a director duly authorized by a board resolution duly passed by the company.
- (3) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (4) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

4.3 Format for the Consortium Agreement

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country)

FORM OF CONSORTIUM AGREEMENT BETWEEN
M/S....., M/S.....,
M/S..... AND M/S.....
FOR (.....)
AS PER CLAUSE 2.2.4

THIS Consortium Agreement (hereinafter referred to as “Agreement”) executed on this..... day ofTwo thousand..... between M/s..... a company incorporated under the laws of and having its Registered Office at (hereinafter called the "**Party 1**", which expression shall include its successors, executors and permitted assigns), M/s a company incorporated under the laws of and having its Registered Office at (hereinafter called the "**Party 2**", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company incorporated under the laws of and having its Registered Office at (hereinafter called the "**Party n**", which expression shall include its successors, executors and permitted assigns) (The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members) for the purpose of submitting the Bid in response to the RFP and in the event of selection as Successful Bidder to comply with the requirements as specified in the RFP and ensure execution of the RFP Documents as may be required to be entered into with the Procurers.

Party 1, Party 2, and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS the Procurer(s) desired to procure Bagasse based power on long term basis through competitive bidding procedure.

WHEREAS, the Authorised Representative had invited Bids, vide RFP dated issued to..... *[Insert the name of purchaser of RFP]*

AND WHEREAS Clause 2.2.4 of the RFP stipulates that the Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment for the formation of a Project Company and undertake to submit the Contract Performance Guarantee as required as per the provisions of the RFP, as specified herein.

NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:

In consideration of the above premises and agreement all the parties in this Consortium do hereby mutually agree as follows:

1. In consideration of the selection of the Consortium as the Successful Bidder by the Authorised Representative, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... (Insert name of the Lead Member), shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of (the names of all the other Members of the Consortium to be filled in here).
2. The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members.
3. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective equity obligations. Each Consortium Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
4. (Insert as applicable) The Consortium shall be responsible to incorporate a Project Company as a legal entity as per the provisions of the RFP, within fifteen (15) days of issue of LOI provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid.

OR

The Consortium has incorporated a Project Company by the name(Insert name of the Project Company) to undertake the responsibilities and obligations for supply of power as per the provisions of the RFP Documents.

The percentage of equity holding of each Member of the Consortium in the Project Company shall be/is as follows:

Name	Percentage of equity holding in the Project Company
Party 1	....
....
Party n	....
Total	100%

[Note: The percentage equity holding for any Consortium Member cannot be zero in the above table. Lead Member's percentage equity holding cannot be less than 51% from the Effective Date up to a period of two (2) years after commencement of supply of power and twenty-six (26%) for a period of three (3) years thereafter.]

[If the Bidder is offering capacity from different sources, the above table has to be filled in separately for each generation source.]

5. In case of any breach of any of the equity investment commitment as specified under clause 4 above by any of the Consortium Members for the formation of the Project Company, the Lead Member shall be liable to meet the equity obligation.
6. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
7. It is further specifically agreed that the financial liability for equity contribution of Lead Member shall, not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of their scope of work or financial commitments.
8. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Lucknow alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
9. It is hereby agreed that the Lead Member shall furnish the Bid Bond, as stipulated in the RFP, on behalf of the Consortium.
10. It is hereby agreed that in case of selection of Bidding Consortium as the Successful Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Contract Performance Guarantee on behalf of the Seller in favor of the Procurer(s), as stipulated in the RFP and PPA. The Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members.
11. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, for the Successful Bidder, shall remain valid over the term of the PPA, unless expressly agreed to the contrary by the Procurer(s).
12. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid.
13. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated as annexed hereto as Annexure-I forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to the supply of power envisaged in the RFP Documents.
14. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.
15. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of the Procurer(s).

This Consortium Agreement

- (a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,
- (b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;
- (c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of Procurer(s):

IN WITNESS WHEREOF, the Parties to the Consortium Agreement have, through their authorized representatives, executed these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's resolution
dated

For and on behalf of
Consortium Member (party 1)
M/s.....

.....
(Signature)

Name:
Designation:.....

.....
(Signature of authorized
representative)
Name:
Designation:
Place:
Date:

Witness²:

1.
.....
(Signature)
Name
Designation.....

2.
.....
(Signature)
Name
Designation.....

Common Seal of
has been affixed in my/our
presence pursuant to the

For and on behalf of
Consortium Member (Party n)
M/s.....

² Separate witness for each Consortium Member should fill in the details.

Board of Director's
resolution dated

.....
(Signature)

Name:
Designation:

.....
(Signature of authorized
representative)

Name:
Designation:
Place:
Date:

WITNESS ¹

1.
(Signature)
Name
Designation.....

2.
(Signature)
Name
Designation.....

Attested:

.....
(Signature)
(Notary Public)

Place:
Date:

4.4 Format for Letter of Consent from Consortium Members

(On the letter head of each Member of the Consortium including Lead Member)

Date: _____

From : _____

Tel. #:

Fax #:

E-mail address#:

To,

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Sub: Request for Proposal, datedfor long term procurement of Bagasse based power through competitive bidding procedure.

We, the undersigned Member of (Insert name of the Bidding Consortium) have read, examined and understood the RFP and RFP Documents for the selection of Bidder(s) as prospective Seller(s) of power through competitive bidding procedure for meeting the Renewable Purchase Obligations of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. and Kanpur Electricity Supply Company Ltd. We hereby confirm our concurrence with the RFP including in particular the Consortium Agreement and the Bid submitted by (Insert name of the Lead Member) in response to the RFP. We confirm that the Bid has been reviewed and each element of the Bid is agreed to including but not limited to the investment commitment in the Project Company.

The details of contact person are furnished as under:

Name	:	.....
Designation	:	.....
Name of the Company	:	.....
Address	:	.....
Phone Nos.	:	.....
Fax Nos.	:	.....
E-mail address	:	.....

Dated the day of of 20...

Thanking you,
Yours faithfully,

.....

(Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal)

Business Address:

Name and address of principal officer.

4.5 Format for Bidder's composition and ownership structure

If the Bidder is a Consortium, please provide this information for each Member including Lead Member.

Corporate Details:

Please provide the following information for the Bidder.

- a. Company's Name, Address, Nationality and Director's details:

Name: _____

Registered/Principal Address: _____

Website Address: _____

Corporate Identification Number, if any: _____

Country of Origin: _____

Address for Correspondence:

.....

.....

- b. Year of Incorporation: _____

- c. Company's Business Activities:

- d. Name of the authorized representative:

- e. Telephone Number: _____

- f. Email Address: _____

- g. Telefax Number: _____

- h. Status as a Bidder:

(i) Bidding Company

(ii) Lead Member of the Bidding Consortium

(iii) Member of the Bidding Consortium

Note: (tick the applicable serial number)

- i. Company's Local Address in India (if incorporated outside India):

j. Please provide the following documents:

- (i) Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable in the case of a foreign company), including their amendments, certified by the company secretary of the Bidding Company/each Member of the Consortium (as Attachment 1)
- (ii) Authority letter in favor of Authorised Representative from the Bidding Company/each Member of the Consortium (as per format specified below) authorizing Authorised Representative to seek reference from their respective bankers, lenders, financing institutions and any other person as given below in the Format for Authorization, as per Clause 2.1.7 of the RFP.

k. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder wishes to form a Project Company for the supply of power? (Yes/No)

l. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder has already formed a Project Company:.....(Yes/No)

If Yes, the details of the Project Company as follows:

- i) Name of the Project Company
- ii) Name of the Equity Holder
- iii) Type and No. of Shares owned
- iv) % of equity holding
- v) Extent of voting control(%)
- vi) Date of incorporation

Details of Ownership Structure:

Details of persons owning 10% or more of the total paid up equity of the Bidding Company / each Member of the Consortium.

Name of the Bidding Company/ Member of the Consortium:

Status of equity holding as on

Name of Equity Holder	Type and Number of Shares owned	% of Equity Holding	Extent of Voting Control (%)
1.			
2.			
3.			

4.			
5.			
6.			
....			

Notes:

1. Status of equity holding should be provided not earlier than 30 (thirty) days prior to Bid Deadline.
2. The above table is to be filled in separately for each Consortium Member if applicable.

Documents submitted in support of establishing the relationship with the Parent

Company / Affiliate with the Bidding Company or with the Member of the Bidding Consortium (including Lead Member) in terms of the provisions of Clause 2.1.5 of this RFP:

1.
2.
3.
4.

For and on behalf of Bidding Company/ Member of the Consortium

M/s.....

.....

(Signature of authorized representative

Name:.....

Designation:.....

Stamp:.....

Date:.....

Place:

FORMAT FOR AUTHORISATION

(On Non – judicial stamp paper duly attested by Notary Public)

(In case of Bidding Consortium to be given separately by each Member)

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith as Annexure A hereto, including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by Authorised Representative to verify the authenticity of the documents / information submitted by us for meeting the Qualification Requirements in respect of our Bid for procurement of Bagasse based power on long term basis through competitive bidding procedure for meeting the requirements of Paschimanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Dakshinanchal Vidyut Vitran Nigam Ltd. and Kanpur Electricity Supply Company Ltd. and / or regarding our financial standing and general reputation.

For and on behalf of M/s..... (Insert Name of Bidding Company or Member of the Consortium)

.....
Signature and Name of the authorized representative of the Company

Company rubber stamp/seal

.....
(Signature of Notary Public)

(Name and Address of the Attorney)

Place:.....

Date:.....

Annexure A
List of Bankers

4.6 A : FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.1)

To,

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Dear Sir,

Sub: Bid for procurement of Bagasse based power on long term basis through competitive bidding procedure in response to the RFP dated

We submit our Bid / Bids for the total capacity of MW [Insert total offered capacity in MW; for Bids from multiple generation source, mention sum total of offered capacity across all offers] for which we submit details of our Qualification Requirements.

Generation Source	Offered Capacity in MW
1	..... MW
2	.....MW
...	
Total of all Generation Sources	.....MW

[Note: Applicable in case of Bidding Company]

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. Crore based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Financially Evaluated Entity**	Relationship with Bidding Company***	Networth (Rs. Crore)#	Financial Year
1			
2			
3			
....			
Total Networth			

** The Financially Evaluated Entity may be the Bidding Company itself

*** The column for “Relationship with Bidding Company” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.

In case a Bidder offers capacity from more than one generation source, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder..

[Note: Applicable in case of Bidding Consortium]

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. Crore and based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline. Generation Source: _____

Name of Consortium Member	Equity commitment in the Project Company (%)	Networth of Member (Rs.Crore) (As per table below)	Networth Requirement to be met by the Member in proportion to the equity commitment (Rs.Crore) (Total Networth requirement % at Column no. 2)	Whether the Member meets the Networth Requirement
(1)	(2)	(3)	(4)	(5)
1				Yes/No
2				Yes/No
..				Yes/No
Total Networth				

Note: The total Networth requirement will be calculated based on the offered capacity in MW x Rs. 1.0 crores

[If a Bidder is offering capacity from different sources, the above table has to be filled in separately for each generation source.]

Member – I (Lead Member)

(Note: Similar particulars for each Member of the Consortium is to be furnished, duly certified by the Member’s Statutory Auditors)

- Name of Member:
- Total Networth requirement: Rs _____crores
- Percentage of equity commitment for the Project Company by the Member____%

iv. Networth requirement for the Member***: Rs. _____crores.

Name of Financially Evaluated Entity**	Relationship with Members of Bidding Consortium ***	Networth (Rs. Crore) *****	Financial Year
1			
2			
3			
....			
Total Networth			

** The Financially Evaluated Entity may be a Member of the Bidding Consortium itself

*** The column for “Relationship with Bidding Consortium” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.

***** Networth requirement to be met by a Member shall be in proportion to the equity commitment of the Member for the Project Company and in case of more than one Financial Bid submitted by the Bidding Consortium, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder in its Financial Bids.

Yours faithfully

(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 3 and 4 below] of Bidding Company/ Member of Consortium)

Name:

Date:

Place:

(Signature and Stamp (on each page) of Statutory Auditors of Bidding Company/ Member of Consortium)

Name:

Date:

Place:

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of
has been affixed in my/our
presence pursuant to the

Board of Director's
resolution dated

.....

(Signature)

Name:

Designation:

WITNESS:

1.
(Signature)

Name

Designation.....

Date:

2.
(Signature)

Name

Designation.....

Date:

Notes:

1. Along with the above format, in a separate sheet, please provide details of computation of Networth duly certified by Statutory Auditor.
2. Audited consolidated annual accounts of the Bidder may also be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.
3. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.
4. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager, for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding

Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

4.6 B FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.2)

(This format should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

To,

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Dear Sir,

Sub: Bid for procurement of Bagasse based power on long term basis through competitive bidding procedure in response to the RFP dated

We hereby submit following details/documents in support of meeting the Qualification Requirements prescribed in Clause 2.1.2.2.

1 Land:

- (a) In case the total land, is being acquired under the Land Acquisition Act 1894: We declare that the total land, as indicated in the application filed with the competent authority for seeking environmental clearance, is being acquired under the Land Acquisition Act 1894 and copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894 is enclosed.
- (b) In case land is not being acquired under Land Acquisition Act 1894: We declare that the Area of land allotted/ or for which lease has been executed for a period of [indicate no. Of years]/ or taken under possession or/ which is under ownership/ vesting is: [Insert the area of land]

We declare that the aforesaid area is at least one third of the total area of the land as indicated in the application filed with the competent authority for seeking environmental clearance. The documentary evidence along with duly notarized sworn affidavit as mentioned in clause 2.1.2.2 (a) are enclosed.

- (c) In case the total land is proposed to be acquired under both the provision (a) & (b):

For Acres of land being acquired under Land Acquisition Act 1894, Section 4 notification is enclosed, and

For the part of land excluding that to be acquired under Land Acquisition Act 1894, area of land allotted/ on lease for a period of[indicate no. of years]/ in ownership/vesting isAcres, which is at least one-third of balance land as indicated in the application filed with the competent authority for seeking environmental clearance along with documentary evidence and a duly notarized sworn affidavit as mentioned in clause 2.1.2.2 (a) are enclosed.

2 Fuel:

- A duly notarized sworn affidavit to the effect that the fuel used in the Project would only be Bagasse and no other Biomass/fossil fuel shall be used by it for supply of power under the Contracted Capacity, is enclosed.

Particulars of documents enclosed in support of the above:

- 3 Water: In-principle approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the Power Project. (Enclose copy attested by the authorized signatory of the Bid)
- 4 Environmental Clearance: (Enclose copy attested by the authorized signatory of the Bid) Copy of the proposal for environmental clearance submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
- 5 Forest Clearance: (Enclose copy attested by the authorized signatory of the Bid) Copy of the proposal for forest clearance (only in case where forest land to be acquired for power station) submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
- 6 In case of existing power station: Documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in our Bid.
- 7 Detailed Project Report (DPR)/Feasibility Report of the Project: (Enclose copy attested by the authorized signatory of the Bid)
- 8 Details of technology specifications deployed: (Enclose copy attested by the authorized signatory of the Bid)
- 9 Grid feasibility letter obtained from Discom/STU: (Enclose copy attested by the authorized signatory of the Bid)

Yours faithfully

(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 1 and 2 below] of Bidding Company/ Member of Consortium)

Name:

Date:

Place:

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

.....
(Signature)
Name:
Designation:

WITNESS:

1.
(Signature)

Name

Designation.....

Date:

2.
(Signature)

Name

Designation.....

Date:

Notes:

1. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position

4.7 Format of Undertaking

(A) Bidder's Undertaking

[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]

To,

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Dear Sir,

**Sub: Bidders' Undertaking for Bid for supply of Bagasse based power to
Procurers in response to the RFP dated**

1. We give our unconditional acceptance to the RFP and RFP Documents issued by Procurer/Authorized Representative as a part of the RFP dated, and as amended. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP.
2. We have submitted our Financial Bid(s) strictly as per Format 4.10 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.
3. We have submitted the Bid on the terms and conditions contained in the RFP.
4. Our Bid (including Financial Bid) is valid up to the period required under Clause 2.9 of the RFP.
5. Our Bid (including Financial Bid) has been duly signed by authorised signatory and uploaded electronically in the manner and to the extent indicated in the RFP and the Power of Attorney/ Board Resolution as per Clause 2.4.1.1 in requisite format as per RFP has been submitted in original along with the Non Financial Bid.
6. "We undertake that we shall not submit any bid, on the basis of the same generation source and quantum of power from such source as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline."
7. Not Used.
8. (Insert in case of incorporation of Project Company by the Bidding Company/Bidding Consortium) We undertake that if we are selected as the Successful Bidder we shall transfer all Consents, Clearances and Permits in the name of the Project Company

within the period specified in the PPA, if such Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company prior to the submission of our Bid.

9. We have assumed that if we are selected as the Successful Bidder, the provisions of the Consortium Agreement submitted along with the Bid, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of clause 2.7 of the RFP and Article 18.1 of the PPA. (Applicable only in case of a Bidding Consortium)
10. We confirm that our Bid meets the following conditions:
 - a) The Scheduled Delivery Date is not later than the date specified in the RFP, subject to the provisions of the PPA.
 - b) The quantum of power offered in our Bid is equal to or greater than the Minimum Bid Capacity and is for the following offered capacity.

Generation Source	Offered Capacity in MW
1	..... MW
2	.....MW
...	
Total of all Generation Sources	.....MW

11. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP including:
 - a) Ratio of minimum and maximum Quoted Non Escalable Capacity Charges during the Contract Years for which Tariff has been quoted is not less than zero point seven (0.7) as provided in Clause 2.4.1.1(B)(x) of the RFP.
 - b) Financial Bid(s) is/are in the prescribed Format 4.10, and is submitted duly signed by the authorised signatory
 - c) Financial Bid(s) is/are unconditional
 - d) The Levelised Tariff over the term of the PPA is not more than the Ceiling Tariff as provided in Clause 2.1.2.1
12. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree that the same would be treated as a Seller's event of default under PPA, and consequent provisions of PPA shall apply.

.....

Signature and name of authorized signatory in whose name Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is issued

Original Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is enclosed.

Rubber stamp of the Bidder to be affixed.

(B) Undertaking from the Bidder and/or Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company

Name:
Full Address:
Telephone No.:
E-mail address:
Fax / No.:

To,

Chief Engineer (PPA-II)
14th Floor, Shakti Bhawan Extension, 14- Ashok Marg,
Lucknow-226001

Dear Sir,

We refer to the Request for Proposal datedissued by you for procurement of Bagasse based power for long term basis through competitive bidding procedure for meeting the requirements of Procurer(s).

I. In case of a Bidding Company

(To be submitted on the letterhead of the Bidding Company)

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7(B).

We have noted the amount of Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by us for the supply of power in the event of being selected as the Successful Bidder.

In view of the above, we hereby undertake to you and confirm that we shall submit the Contract Performance Guarantee for the entire amount as per the provisions of the RFP in the event of our selection as the Successful Bidder.”

Note 1: *In case of new project being developed by the Bidding Company on its own or Bidding Company opting to incorporate a Project Company, the Bidding Company is required to add further: “We have also noted the amount of equity investment required to be made in the (Insert name of the project or ‘Project Company’ as applicable) to undertake the obligations under the PPA for supply of power.*

In view of the above, we hereby undertake to you to invest one hundred percent (100%) of the equity investment required in the (Insert name of the project or ‘Project Company’ as applicable) on our own or through any of our Affiliates.”)

Note 2: **In case the Bidding Company is utilizing the financial capability of a Financially Evaluated Entity, the Bidding Company shall also be required to submit**

the following separately in addition to the undertaking mentioned above: *(To be submitted on the letterhead of the Financially Evaluated Entity/its Parent Company or Ultimate Parent Company)*

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7(B).

We confirm that M/s. (Insert name of Bidding Company) has been authorized by us to use our financial capability for meeting the Qualification Requirements as specified in Clause 2.1 of the RFP.

We have noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the (Insert the name of the Bidding Company) for the supply of power in the event of said Bidding Company being selected as the Successful Bidder.

In view of the above, we hereby undertake to you and confirm that in the event of failure of (Insert name of the Bidding Company) to submit the Contract Performance Guarantee on behalf of the Seller in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by (Insert name of the Bidding Company).

Note 3: *In case of new project being developed by the Bidding Company or Bidding Company opting to incorporate a Project Company, the Financially Evaluated Entity is required to add further:* “We have also noted the amount of equity investment required to be made by M/s. (Insert name of Bidding Company) in the (Insert name of the project or ‘Project Company’ as applicable) to undertake the obligations under the PPA for the supply of power.

In view of the above, we hereby undertake to you that in the event of failure of (Insert name of the Bidding Company) to invest in full or in part in the equity share capital for the (Insert name of the project or ‘Project Company’ as applicable), we shall invest the said amount not invested by the (Insert name of the Bidding Company) on our own or through any of our Affiliate(s).”

II. In case of a Bidding Consortium

To be provided by each Member on its letterhead

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7(B).

We have also noted the amount of equity investment required to be made in the Project Company to undertake the obligations under the PPA for the supply of power.

In view of the above, we hereby undertake to you to invest percent (.....%) (Member to insert the required percentage of equity as per the provisions of Consortium Agreement) of the equity investment required in the Project Company, as per the provisions of the RFP dated and our Bid, on our own or through any of our Affiliate(s).”

Note 4: In case the Member is utilizing the financial capability of a Financially Evaluated Entity, the Member shall also be required to submit the following separately in addition to the undertaking mentioned above (To be submitted on the letterhead of the Financially Evaluated Entity/its Parent Company or Ultimate Parent Company)

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7(B).

We confirm that M/s. (Insert name of Member) has been authorized by us to use our financial capability for meeting the Qualification Requirements as specified in Clause 2.1 of the RFP.

We have noted the amount of equity investment required to be made in the Project Company by the said Member to undertake the obligations under the PPA by the supply of power.

In view of the above, we hereby undertake to you that in the event of failure of (Insert name of the Member) to invest in full or in part in the equity share capital of the Project Company, we shall invest the said amount not invested by the (Insert name of the Member) on our own or through any of our Affiliate(s).”

Note 5: Insert further in case of Lead Member utilizing the financial capability of the Financially Evaluated Entity

“We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the (Insert the name of the Lead Member) for the supply of power in the event of said Bidding Consortium being selected as the Successful Bidder”.

In view of the above, we hereby undertake to you and confirm that in the event of failure of (Insert name of the Lead Member) to submit the Contract Performance Guarantee on behalf of the Seller in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by (Insert name of the Lead Member”).

We have attached hereto certified true copy of the Board Resolution whereby the Board of Directors of our Company has approved the issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

Signature of Chief Executive Officer / Managing Director/ Manager / Director [Refer Notes]

Common seal of has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....

WITNESS (for affixation of Common Seal as per Articles of Association of the company)

1.
(Signature)
Name
Designation.....

2.
(Signature)
Name
Designation.....

Notes:

1. Managing Director(or any full time Director on the Board) / Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Member of a Consortium or Financially Evaluated Entity/its Parent Company/Ultimate Parent Company or the Project Developer, as applicable.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

4.8 Format for Board Resolution

Format for the Board Resolution(s) to be passed by the Board of the Bidding Company/Member and/or Financially Evaluated Entity/its Parent Company or Ultimate Parent Company

I. In case of a Bidding Company

(To be submitted on the letterhead of the Bidding Company)

The Board, after discussion, at the duly convened Meeting on (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution:

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer, in the format specified in the RFP, draft of which is attached hereto and initialed by the Chairman, whereby the Company

i) Undertakes to provide one hundred percent (100%) of the Contract Performance Guarantee, as per the terms and conditions of the RFP in the event of (Insert name of the Bidding Company) being selected as the successful Bidder.

Note 1: *In case of new project being developed by the Bidding Company on its own or Bidding Company opting to incorporate a Project Company, the Bidding Company is required to add further:* ii) Undertakes to invest and/or arrange to invest on its own or through its Affiliates, one hundred percent (100%) of the equity investment in the (Insert name of the project or 'Project Company', as applicable).

Note 2: *In case the Bidding Company is utilizing the financial capability of a Financially Evaluated Entity, the Bidding Company shall also be required to submit the following separately in addition to the resolution mentioned above (To be submitted on the letterhead of the Financially Evaluated Entity/its Parent Company or Ultimate Parent Company)*

The Board, after discussion, at the duly convened Meeting on (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution:

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialed by the Chairman whereby the company undertakes to provide one hundred percent (100%) of the Contract Performance Guarantee, as per the terms and conditions of the RFP, representing the total amount of Contract Performance

Guarantee required to be provided by the (Insert the name of the Bidding Company), in case of failure of the (Insert the name of the Bidding Company) to provide such Contract Performance Guarantee.

Note 3: *In case of new project being developed by the Bidding Company or Bidding Company opting to incorporate a Project Company, the Financially Evaluated Entity is required to add further*

RESOLVED FURTHER THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to invest one hundred percent (100%) of the equity investment in the (Insert name of the project or 'Project Company' as applicable), as per the terms and conditions of the RFP, representing the total amount of equity required to be invested by the (Insert the name of the Bidding Company), in case of failure of the said Bidding Company to invest such equity in the (Insert name of the project or 'Project Company' as applicable).

II. In case of Bidding Consortium

To be provided by each Member on its letterhead

The Board, after discussion, at the duly convened Meeting on (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman, whereby the Company undertakes to invest and/or arrange to invest on its own or through its Affiliates, (.....%) [Insert percentage in proportion to the equity requirement to be invested by the Member in the Project Company as per the Consortium Agreement] of the equity investment in the Project Company.

Note 4: *In case the Member is utilizing the financial capability of a Financially Evaluated Entity, the Member shall also be required to submit the following separately in addition to the resolution mentioned above (To be submitted on the letterhead of the Financially Evaluated Entity/its Parent Company or Ultimate Parent Company)*

The Board, after discussion, at the duly convened Meeting on (Insert Date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution.

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to invest percent (.....%) (Insert percentage in proportion to the equity requirement to be invested by the Member in the Project Company as per the Consortium Agreement) of the equity investment in the project Company, as per the terms and conditions of the RFP, representing the total amount of equity required to be invested by the (Insert the name of the Member), in case of failure of the said Member to invest such equity.

Note 5: *Insert further in case of Lead Member utilizing the financial capability of the Financially Evaluated Entity*

The Board, after discussion, at the duly convened Meeting on (Insert Date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to ensure the submission of one hundred percent (100%) of the Contract Performance Guarantee, as per the terms and conditions of the RFP, representing the total amount of Contract Performance Guarantee required to be provided by the Consortium, in case of failure of the (Insert the name of the Lead Member) to ensure submission of such Contract Performance Guarantee.

In addition to the above, the following Board Resolution needs to be also provided by the Lead Member of the Consortium. (On the letterhead of the Lead Member)

FURTHER RESOLVED THAT approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated executed by the Consortium as per the provisions of the RFP.

Certified True Copy

Signature and stamp of Company Secretary / Managing Director /Director [Refer Notes]

Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary / Managing Director (or any full time Director on the Board) of the Bidding Company/Member or Financially Evaluated Entity/ its Parent Company or Ultimate Parent Company or the Project Developer, as applicable.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) In case of the Board resolution being provided by a company incorporated in India, the Board resolution needs to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same needs to be duly notarized in its jurisdiction.
- 4) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

4.9 Format for Bid Bond

FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR BID BOND

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

In consideration of the (Insert name of the Bidder) submitting the Bid *inter alia* for **supply of Bagasse based power on long term basis through competitive bidding procedure for meeting the requirements of Procurer(s)** in response to the RFP dated issued by Uttar Pradesh Power Corporation Ltd., (hereinafter referred to as Authorized Representative) and such Authorized Representative agreeing to consider the Bid of [*Insert the name of the Bidder*] as per the terms of the RFP, the (Insert name and address of the bank issuing the Bid Bond, and address of the head office) (here in after referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer/ Authorized Representative or its authorized representative at Lucknow forthwith on demand in writing from the Procurer/ Authorized Representative or any representative authorized by it in this behalf an amount not exceeding Rupees (Rs.....) only [Insert amount that derived on the basis of Rs. 1.50 lakhs per MW multiplied with the total quantum of power offered by the Bidder], on behalf of M/s.[Insert name of the Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and includingand shall not be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to Rupees (Rs... ..) only. Our Guarantee shall remain in force untilor its authorized representative shall be entitled to invoke this Guarantee until

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer/ Authorized Representative or its authorized representative, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer/ Authorized Representative or its authorized representative.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall not require UP Power Corporation Limited or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer/ Authorized Representative or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Lucknow shall have exclusive jurisdiction.

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

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

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

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

The Guarantor Bank hereby agrees and acknowledges that [Insert name of the Procurer(s)] shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs (Rs..... only) and it shall remain in force untilwith an additional claim period of thirty (30) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if Procurer or its authorized representative serves upon us a written claim or demand.

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

Witness:

1.
Signature
Name and address.
2.
Signature
Name and address

Signature

Name:
Designation with Bank Stamp

Attorney as per power of attorney No.

For:

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

Banker’s Stamp and Full Address:

Dated this day of 20.....

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

4.10 Format for Financial Bid

Total capacity of power (in MW) offered by the Bidder: MW (..... MW)
[To be inserted both in words and figures]

Fractions of the offered total capacity of power (in MW)* (insert as applicable) (Refer ‘b’ of instructions below):

.....MW (..... MW) [To be inserted both in words and figures],

..... MW (..... MW) [To be inserted both in words and figures],

..... MW (..... MW) [To be inserted both in words and figures].

Name of the Interconnection Point (To be inserted by the Bidder)

Name of the Injection Point (To be inserted by the Bidder)

Details of proposed Delivery Point(s).....

* The Procurer(s) can contract the total capacity of power offered by the Bidder or any combination of the fractions of the offered total capacity.

Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges (Rs./ kWh)	Quoted Escalable Energy Charges (Rs./ kWh)
(1)	(2)	(3)	(4)	(5)
1	Scheduled Delivery Date	March 31		
2	April 01	March 31		Same as above
3	April 01	March 31		Same as above
4	April 01	March 31		Same as above
5	April 01	March 31		Same as above
6	April 01	March 31		Same as above
7	April 01	March 31		Same as above
8	April 01	March 31		Same as above
9	April 01	March 31		Same as above
10	April 01	March 31		Same as above

Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued:

Name and designation of authorized signatory:

Place:

Date:

Instructions:

- The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the full contract period but not less than the Minimum Bid Capacity.
- The Bidder may submit options for fractional capacity (offered part quantum) which it is willing to supply at the same quoted tariff. The number of options for fractional capacity is left to the discretion of the Bidder.
- The Quoted Tariff in Rs./kWh shall be provided up to two (2) decimal points.
- All pages of this Format shall be signed by the authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.
- Ensure 10 values of Non Escalable tariff components and only 1 value for Escalable components.
- The Bidder shall not be allowed to submit different Quoted Tariffs for power proposed to be supplied from the same generation source. The Bidder shall submit different Financial Bids for power proposed to be supplied from different generation sources,

- g) The contents of this format shall be clearly typed.
- h) In case of additional capacity commissioned under supplementary PPA using existing transmission infrastructure, the tariff for payment purpose shall be reduced by 20 Paise/kWh.

4.11 Format of checklist for submission of Bid

Submission of Bid requirements (Yes/No) Covering Letter as per Format 4.1	Response
<p>Power of Attorney as per Format 4.2</p> <p>Consortium Agreement as per Format 4.3 (if Bid is submitted by a Bidding Consortium)</p> <p>Letter of consent from Consortium Members as per Format 4.4 (if Bid is submitted by a Bidding Consortium)</p> <p>Bidder's composition and ownership structure as per Format 4.5</p> <p>Details of meeting Qualification Requirement. as per Format 4.6 (A) and (B)</p> <p>Documentary evidence for meeting the Qualification Requirement as per Format 4.6 (A) and (B)</p> <p>Bidder's undertaking as per Format 4.7 (A)</p> <p>Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company as per Format 4.7 (B)</p> <p>Applicable Board Resolutions as per Format 4.8</p> <p>Bid Bond as per Format 4.9</p> <p>Financial Bid as per Format 4.10</p> <p>Checklist of submission of Bid as per this Format 4.11</p>	

Submission of Bid requirements	Response (Yes/No)
<p>Disclosure as per Format 4.12</p> <p>Details of source of power and primary fuel as per Format 4.13;</p> <p>Certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member as per Format 4.14;</p> <p>Calculation sheets detailing computation of Networth considered for meeting Qualifying Requirements.</p> <p>Last 3 financial years' unconsolidated/consolidated audited annual accounts of the Bidder/ each Member (or Financially Evaluated Entity, if different from the Bidder/ each Member) duly certified by the Statutory Auditor.</p> <p>Authority letter in favour of Authorised Representative from the Bidder authorising Authorised Representative to seek reference from their respective bankers & others.</p> <p>Initialling of all pages of Bid by authorized signatory.</p>	

Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.:

Name and designation of authorized signatory :

Place:

Date:

4.12 Format for Disclosure

(On the Letter Head of Bidding Company / Each Member in a Bidding Consortium)

Disclosure

To:

Chief Engineer (PPA-II)

**14th Floor, Shakti Bhawan Extension, 14-Ashok Marg,
Lucknow-226001**

Sub: Bidders' Disclosure for Bid for supply of Bagasse based power to Procurer(s) in response to the RFP dated

We hereby declare that the following companies with which we have direct or indirect relationship are also separately participating in this bidding process as per following details

Sl. No.	Name of the Company	Relationship
1.		
2.		
3.		

Further we confirm that we don't have any Conflict of Interest with any other Bidder participating in this bid process.

.....
Signature of Chief Executive Officer / Managing Director / Manager

Notes:

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Lead Member in case of a Consortium.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer.
3. In case there is no such company please fill in the column "Name of the Company" as Nil and under column of Relationship as "Not Applicable".

4.13 Details of the generation source and the fuel**(A) Details of generation source**

Sl. No	Particulars	Details (to be furnished by the Bidder)			
1.	Location of Power Project (Specify place, district and state)				
2.	No. of existing/ proposed units and installed capacity of each unit (in MW)	Existing			
		Sl. No.	No. of Units	Installed Capacity	COD
		1.			
		2.			
				
		Proposed			
		Sl. No.	No. of Units	Installed Capacity	Expected COD
		1.			
		2.			
				
3.	Fuel				
4.	Not Used	Not Used			
5.	Not Used	Not Used			
6.	Quantum of power contracted with other purchasers, if any (in MW)				
7.	Details of surplus capacity (in MW)				

(B) Details of fuel

S. No	Particulars	Details (to be furnished by the Bidder)			
1	Fuel				
2	Fuel source				
3	Not Used				
4	Not Used				
6	Not Used				

Signature:**Name:****Designation:****Date:****Place:**

.....
Signature of Chief Executive Officer / Managing Director / Manager

Notes:

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Lead Member in case of a Consortium.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.
3. In case there is no such company please fill in the column “Name of the Company” as Nil and under column of Relationship as “Not Applicable”.

4.14 Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member.

To,

Chief Engineer (PPA-II),
14th Floor, Shakti Bhawan Extension, 14-Ashok Marg,
Lucknow-226001

Dear Sir,

Sub: Bid for procurement of Bagasse based power on long term basis through competitive bidding procedure in response to the RFP dated

We hereby certify that M/s....., M/s....., M/s are the Affiliate(s) / Parent Company of the Bidding Company/Member of the Bidding Consortium as per the definition of Affiliate/Parent Company as provided in this RFP and based on details of equity holding as on seven (7) days prior to the Bid Deadline.

The details of equity holding of the Bidding Company/Member of the Consortium in the Affiliate/Parent Company or vice versa as on seven (7) days prior to the Bid Deadline are given as below:

Name of Bidding Company / Member of Bidding Consortium	Name of the Affiliate of the Bidding Company / Member of the Bidding Consortium*	Name of the Parent Company of the Bidding Company / Member of Bidding Consortium	Name of the company having common control on the Affiliate and the Bidding Company / Member of Bidding Consortium

* Bidding Company / Member of Bidding Consortium to hold at least twenty six percent (26%) in such Affiliate as on seven (7) days prior to Bid Deadline

.....

(Insert Name and Signature of Statutory Auditor of the Bidder or practising Company Secretary)

SECTION - 5

FORMATS FOR BIDDER'S INFORMATION AND REFERENCE

SECTION 5

5. FORMATS FOR BIDDER'S INFORMATION AND REFERENCE

The following formats and enclosures are provided for Bidder's information and reference and also to provide assistance in preparation of its Bid.

- i. List of Procurers
- ii. Not Used
- iii. Not Used
- iv. Format of the Joint Deed Agreement to be executed among the participating
Procurers
- v. RFP Documents
- vi. Format for clarifications/ amendments on the RFP/RFP Documents
- vii. Format for Contract Performance Guarantee
- viii. List of Banks
- ix. Illustration for Bid evaluation and computation of Levelized Tariff
- x. Not Used
- xi. Not Used
- xii. Format for illustration of Affiliates
- xiii. Illustration for meeting the requirement of land criteria under Clause 2.1.2.2 (a)

5.1 List of Procurers

Sl. No.	Name of Procurer(s)	Address of the Procurer(s)	Power Procurement by the Procurer (MW)
1	Paschimanchal Vidyut Vitran Nigam Ltd.	Urja Bhawan, Victoria Park, MD Camp Office. Meerut 250001. Phone : +91-0121- 2665734. Fax : +91-121-2666062	
2	Purvanchal Vidyut Vitran Nigam Ltd.	DLW Bhikharipur, Varanasi - 221004. Phone: (0542) 2318348, Fax: (0542) 2319439	
3	Madhyanchal Vidyut Vitran Nigam Ltd.	4A Gokhale Marg, Lucknow. Phone: +91-522- 2204044/ 2208737, Fax: +91-522- 2208769	
4	Dakshinanchal Vidyut Vitran Nigam Ltd.	Urja Bhawan, NH - 2 (Agra – Delhi Bypass Road), Sikandra, Agra - 282002. Phone & Fax : 0562- 2605465	
5	Kanpur Electricity Supply Company Ltd.	Kesa House, 14/71 Civil Lines, Kanpur Phone: 0512-2540505	

5.2 Not Used

- 1) Not Used
- 2) Not Used
- 3) Not Used
- 4) Not Used
- 5) Not Used

5.3 Not Used

5.4 Format of the Joint Deed Agreement among the participating Procurers

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

Form of Joint Deed Agreement between [Insert name of Procurer 1], [Insert name of Procurer 2], , ;[Insert name of Procurer n], for procurement of power on a [insert 'medium-term' or 'long-term' whichever is applicable] basis

THIS Joint Deed Agreement executed on this..... day of Two thousand..... between M/s a company/Board incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at (hereinafter called the "Procurer-1", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company/Board incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003. and having its Registered Office at (hereinafter called the "Procurer-2", which expression shall include its successors, executors and permitted assigns), M/s a Company/Board incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at (hereinafter called the "Procurer-3", which expression shall include its successors, executors and permitted assigns), M/s a Company/Board incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003. and having its Registered Office at (hereinafter called the "Procurer-4", which expression shall include its successors, executors and permitted assigns) and M/s a Company/Board incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003. and having its Registered Office at (hereinafter called the "Procurer-5", which expression shall include its successors, executors and permitted assigns) for the purpose of procurement of Bagasse based power on long term basis.

WHEREAS, each Procurer individually referred as the Procurer and all the Procurers collectively referred to as the Procurers in this agreement;

WHEREAS, the [Insert "Procurer" / "Authorized Representative" as applicable] is inviting Bids for procurement of power as per RFP dated
NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER :

In consideration of the above premises and agreements all the Procurers in this consortium do hereby mutually agree as follows:

Body of the Joint Deed Agreement shall incorporate clauses pertaining to following key principles:

1. Willingness to procure power through the combined Bid process.
2. The share of power to be procured by each Procurer.

3. Agreement on the Lead Procurer and the task to be performed by the Lead Procurer.
4. Responsibility of each Procurer.
5. Methodology of approval of the bid documents including the evaluation criteria, PPA provisions, payment security mechanism, amendment to the bid document and methodology for negotiation with the Successful Bidders by the Procurers.
6. Undertaking that the tariff of the Successful Bidder based on the accepted Bidding process shall be binding on each Procurer.
7. Undertaking to provide agreed Payment Security Mechanism as provided in the PPA by each individual Distribution Licensee corresponding to their share of power.
8. Undertaking that the Successful Bidder in the event of payment default by the defaulting procurer shall not be debarred from sale of power to a third party of its proportionate share as provided in the PPA.

This Joint Deed Agreement

- (d) has been duly executed and delivered on behalf of each Procurer hereto and constitutes the legal, valid, binding and enforceable obligation of each such Procurer,
- (e) sets forth the entire understanding of the Procurer hereto with respect to the subject matter hereof;

IN WITNESS WHEREOF, the parties to the joint Deed agreement have, through their authorized representatives, executed these presents and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

For M/s

(Procurer 1)

1. Common Seal of M/s.....

have.....been affixed in my/
our presence pursuant to
Board/Board of Directors Resolution
dated
Signature.....

(Signature of the authorized representative)

Name.....

Designation.....

For M/s

(Procurer 2)

2. Common Seal of M/s.....

.....
have been affixed in my/

(Signature of the authorized representative)

our presence pursuant to
Board/Board of Directors Resolution
dated
Signature.....

Name.....

Designation.....

For M/s

(Procurer 3)

3. Common Seal of M/s.....

have.....been affixed in my/
our presence pursuant to
Board/Board of Directors Resolution
dated
Signature.....

(Signature of the authorized representative)

Name.....

Designation.....

For M/s

(Procurer 4)

4. Common Seal of M/s.....

have.....been affixed in my/
our presence pursuant to
Board/Board of Directors Resolution
dated
Signature.....

(Signature of the authorized
representative)

Name.....

Designation.....

(Procurer 5)

5. Common Seal of M/s.....

have.....been affixed in my/
our presence pursuant to
Board/Board of Directors Resolution
dated
Signature.....

(Signature of the authorized
representative)

Name.....

Designation.....

5.5 Formats for RFP Documents

ENCLOSURE 1:- Power Purchase Agreement (PPA)

5.6 Format for Clarifications/ Amendments on the RFP/RFP Documents

Sl. No.	Name of the Document	Clause No. and Existing provision	Clarification required	Suggested text for the amendment	Rationale for the Clarification or Amendment

This format shall be used for submission of request for clarifications/amendments on the draft RFP Documents as per the provisions of Clause 2.2.6.1 of this RFP.

.....
(Signature and stamp of Chief Executive/Company Secretary of Bidder)

Name:

Date:

Place:

Signature of Authorized Signatory of the Bidder:

Date:

(Please also affix Bidder's stamp)

5.7 Format for Contract Performance Guarantee

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided separately in the name of each of the Procurer, in proportion to their Contracted Capacity)

In consideration of the[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and UP Power Corporation Limited (herein after referred to as Procurer(s)), agreeing to execute the RFP Documents with the Successful Bidder for **procurement of Bagasse based power on long term basis through competitive bidding procedure for meeting the requirements of the Procurer(s)**, the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer(s) at –.....[Insert address of Procurer(s)] forthwith on demand in writing from the Procurer(s) *or* any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees only [Insert the amount of the bank guarantee computed on the basis of fifteen (15) lakhs/MW with respect to the Contracted Capacity of the Procurer(s) as per the terms of PPA] on behalf of M/s. [Insert name of the Successful Bidder].

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

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

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

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Lucknow shall have exclusive jurisdiction.

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crores (Rs. crores only) and it shall remain in force until[Date to be inserted on the basis of Articleof PPA], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.

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

Witness:

1.
Name and Address.
2.
Name and Address

Signature
Name:
Designation with Bank Stamp

Attorney as per power of attorney No.

For:

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

Banker's Stamp and Full Address:

Dated this day of 20.....

Notes:

- i. The Stamp Paper should be in the name of the Executing Bank. This date shall be one (1) month after the Bid Validity.

5.8 List of Banks

Scheduled Commercial Banks

SBI and Associates

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

Nationalised Banks

9. Allahabad Bank
10. Andhra Bank
11. Bank of India
12. Bank of Maharashtra
13. Bank of Baroda
14. Canara Bank
15. Central Bank of India
16. Corporation Bank
17. Dena Bank
18. Indian Bank
19. Indian Overseas Bank
20. Oriental Bank of Commerce
21. Punjab National Bank
22. Punjab and Sind Bank
23. Syndicate Bank
24. Union Bank of India
25. United Bank of India
26. UCO Bank

27. Vijaya Bank

2. Foreign Banks

- 1 BNP Paribas
- 2 Citi Bank N.A.
- 3 Deutsche Bank A.G.
- 4 The Hongkong and Shanghai Banking Corporation Ltd.
- 5 Standard Chartered Bank
- 6 ABN Amro Bank N.V.
- 7 UFJ Bank Ltd.
- 8 Sumitomo Mitsui Banking Corporation
- 9 Societe Generale
- 10 Barclays Bank

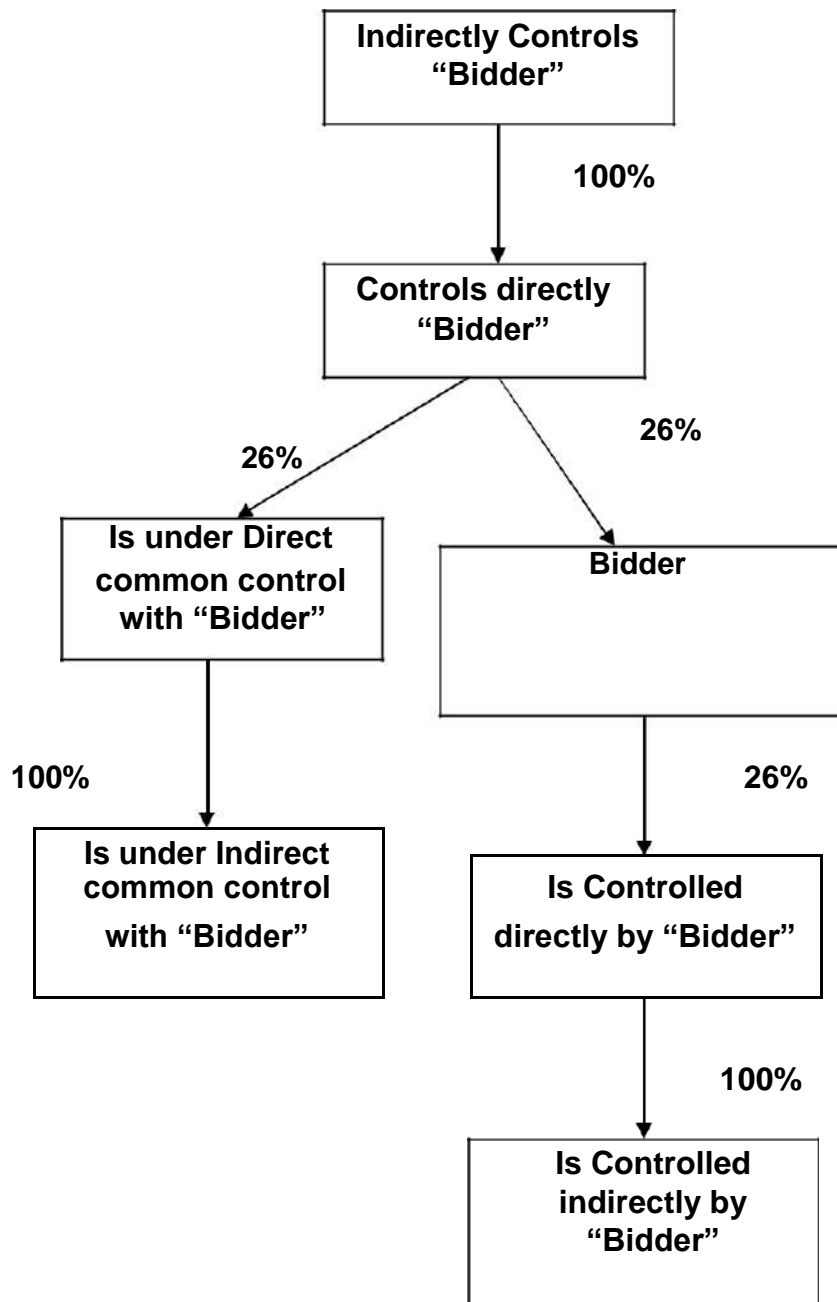
3. Scheduled Private Banks

- 11 ING Vysya Bank Ltd.
- 12 ICICI Bank Ltd.
- 13 HDFC Bank Ltd.
- 14 IDBI Bank Ltd
- 15 Axis Bank
- 16 Kotak Mahindra Bank
- 17 IndusInd Bank

5.9 Illustration for Bid evaluation and computation of Levelized Tariff

5.10 Not Used

5.11 Not Used

5.12 Format for illustration of Affiliates

5.13 Illustration for meeting the requirement of land criteria under Clause 2.1.2.2 (a)

Considering that the Requirement of land as indicated in the proposal filed with the competent authority for seeking environmental clearance is 100 Acres, then;

Possible Scenarios	Requirement to be met
In case the total land is being acquired under the Land Acquisition Act, 1894	Notification under Section 4 of the Land Acquisition Act, 1894 for the total land (100 Acres) should be available
In all other cases i.e. the total land is proposed to be procured through allotment/ lease (lease period more than the life of power plant)/ ownership/ vesting	Documentary evidence for at least one-third of the area of land should be available.
In case say 30% of the total land is being acquired under the Land Acquisition Act, 1894 and the balance 70% of the total land is proposed to be procured through allotment/ lease (lease period more than the life of power plant)/ ownership/ vesting	Notification under Section 4 of the Land Acquisition Act, 1894 for the 30 Acres of land should be available and Documentary evidence for allotment/ lease (lease period more than the life of power plant)/ ownership/ vesting for at least one third of the balance 70 Acres of land should be available

POWER PURCHASE AGREEMENT

FOR

SUPPLY OF MW BAGASSE BASED POWER

FOR

..... YEARS

By

M/s.....

With

U.P. Power Corporation Limited

Table of Contents

1.	DEFINITIONS	6
2.	INTERPRETATION	13
3.	TERMS OF AGREEMENT	15
4.	CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/PROCURERS 16	
5.	SUPPLY OF POWER.....	21
6.	SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION	27
7.	DISPATCH.....	29
8.	METERING.....	30
9.	INSURANCES	32
10.	APPLICABLE TARIFF.....	33
11.	BILLING AND PAYMENT	36
12.	FORCE MAJEURE.....	41
13.	CHANGE IN LAW	44
14.	EVENTS OF DEFAULT AND TERMINATION	46
15.	LIABILITY AND INDEMNIFICATION	51
16.	ASSIGNMENTS AND CHARGES.....	54
17.	GOVERNING LAW AND DISPUTE RESOLUTION.....	56
18.	MISCELLANEOUS PROVISIONS	58
	Schedule 1- Particulars of the Project	69
	Schedule 2- Location of Plant.....	71
	Schedule 3- Plant Layout	73
	Schedule 4- Format for Monthly Power Bill	74
	Schedule 5- Bill Meter Readings Of Generating Plant	75
	Schedule 6- Check Meter Readings of Generating Plant.....	76
	Schedule 7: Representation and Warranties	77
	Schedule 8- Monthly Tripping Report	79
	Schedule 9- Planned & Forced Outage	80
	Schedule 10- Selected Bid	81
	Schedule 11- Approvals	82
	Schedule 12- Names and details of the Procurer.....	83
	Schedule 13- Substitution Rights Of The Lenders	84

THIS POWER PURCHASE AGREEMENT [the “**Agreement**”] is made on the day..... of at Lucknow

Between

M/s, a company incorporated under the Companies Act, 1956, having its registered office at (hereinafter referred to as “**Seller**” or “**Generating Company**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **FIRST PART**;

And

U.P. Power Corporation Ltd., a Company incorporated in India and registered under the Companies Act, 1956, having its registered office at which has been authorized by the distribution companies of state of Uttar Pradesh in its Board of Directors Meeting held on 24.8.2005 and subsequently on 20.7.2010 to enter into this Agreement on their behalf and to do all other relevant and incidental things, as may be required, (hereinafter referred to as “**Procurer**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **SECOND PART**;

WHEREAS:

- a) UPPCL, the Authorized Representative, had initiated a competitive bidding process through issue of, for procurement of Bagasse based power for long term for meeting the Renewable Purchase Obligations of the Procurers.
- b) Pursuant to the said bidding process, has been selected by the Authorized Representative, as the Seller for sale and supply of Bagasse based power in bulk to the Procurers, for the Aggregate Contracted Capacity (as defined hereunder) of MW, in accordance with the terms of this Agreement.
- c) The Generating Company is engaged in the business of and other incidental businesses situated at in the State of Uttar Pradesh, more particularly described in Schedule 1 attached hereto and made a part hereof and,
- d) The Generating Company desires to sell surplus (after its own use)/ MW power during generated in the Plant and UPPCL agrees to purchase electricity generated from such capacity by the Generating Company for sale, under the terms and conditions set forth herein, and
- e) The parties to this Agreement agree for prior consultation with the State Transmission Utility for the purpose of implementation of this agreement and seek its approval for permitting, inter alia, interconnection to the Generating Plant with the owned by STU or other transmission licensee, and
- f) has given a undertaking to UPPCL vide their letter dated for allowing them to sign this Agreement in accordance with the terms and conditions of this Agreement and at the rate discovered through competitive bidding. The generating company has confirmed and consented that they are giving its acceptance for the tariff Rs. per unit and for supply of power upto MW from its Bagasse based power plant ofMW and shall make it operational by
Initial term of PPA shall be years as per LOI issued to the generating company on datedvide Letter No. (Copy of which is collectively annexed hereto as Annexure-I), and
- g) The Generating Company agrees to purchase of Power for its such plant from the Procurer and Procurer agrees to supply power to such plant at retail tariff as per Regulation specified by the Commission, and

- h) The Seller has provided to the Procurers, Contract Performance Guarantee(s) as per format specified in of the RFP No.
- i) The Seller has agreed to sign this Power Purchase Agreement with the Procurers for sale of Bagasse based power for years as per the terms and conditions of this Agreement.
- j) The Procurers agree to procure Bagasse based power up to the Contracted Capacity from the Seller as per the terms of this Agreement.
- k) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by Seller to Procurer.
- l) The Parties to the agreement bind themselves for compliance of all relevant provisions specified by the Commission in different regulations framed by it for regulating the functioning of State Transmission Utility, other Transmission Licensee and State Load Despatch Centre.
- m) All the other RFP documents have been executed by the Procurer and the Seller simultaneously with the signing of this Agreement.
- n) The Parties hereby agree that this Power Purchase Agreement shall supersede any other Power Purchase Agreement signed earlier and not approved by the Uttar Pradesh Electricity Regulatory Commission.

Now, therefore, in consideration of premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:¹

¹ The terms not relevant to PPA may be omitted.

1. DEFINITIONS

Other than those defined below, the words/expressions used in this Agreement, unless repugnant to the context, shall have the meaning assigned to them in the Electricity Act, 2003, Uttar Pradesh Electricity Reforms Act, 1999 and Uttar Pradesh Electricity Grid Code as amended from time to time, UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 (“CRE Regulations, 2019”) as amended or re-enacted from time to time, and the rules framed there under. The words/expressions listed below shall have the meanings respectively assigned hereunder.

- 1.1.** ‘Act’ means the Electricity Act, 2003 as amended from time to time;
- 1.2.** ‘Affected Party’ means the Procurer or Seller whose performance has been affected by an event of Force Majeure;
- 1.3.** “Affiliate” shall mean a company that either directly or indirectly
 - (i) controls or
 - (ii) is controlled by or
 - (iii) is under common control witha Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
- 1.4.** ‘Aggregate Contracted Capacity’ with respect to the Seller, shall mean the aggregate capacity in [•] MW contracted with the Procurers for supply at the Interconnection Point;
- 1.5.** ‘Agreement’ or ‘Power Purchase Agreement’ or ‘PPA’ shall mean this Power Purchase Agreement including its recitals and Annexure, amended or modified from time to time in accordance with the terms hereof;
- 1.6.** ‘AMR’ shall mean Automatic Meter Reading;
- 1.7.** ‘Authorized Representative’ shall mean Uttar Pradesh Power Corporation Ltd. (“UPPCL”), the body corporate authorized by the Procurers to carry out the bidding process for the selection of the Successful Bidder on their behalf;
- 1.8.** ‘Bidding Company’ shall refer to such single company that has submitted the Bid in accordance with the provisions of the RFP;
- 1.9.** ‘Bid Deadline’ shall mean the last date and time for submission of the Bid in response to the RFP;

- 1.10.** ‘Bill’ means a bill raised, that includes all charges to be paid by UPPCL / DISCOM with respect to sale of Power by the Seller to the Procurers;
- 1.11.** ‘Bill Dispute Notice’ shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
- 1.12.** ‘Bill Meter’ means Availability Based Tariff (“ABT”) compatible Import and Export Meter installed at the grid substation [•] of DISCOM/STU for measurement on the basis of which energy bills shall be raised by the Seller;
- 1.13.** ‘Billing Period’ shall be the calendar month ending with the Metering Date. The first Billing Period shall commence from the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs;
- 1.14.** ‘Billing Date’ shall be the first Business Day after the Metering Date of each Billing Period;
- 1.15.** ‘Business Day’ shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Lucknow;
- 1.16.** ‘Change in Law’ shall have the meaning ascribed thereto in Article 13 of this Agreement;
- 1.17.** ‘Commission’ or ‘UPERC’ shall mean the Uttar Pradesh Electricity Regulatory Commission;
- 1.18.** ‘Competent Court of Law’ shall mean any court or tribunal or any similar judicial or quasi-judicial body in Lucknow that has jurisdiction to adjudicate upon issues relating to this Agreement;
- 1.19.** ‘Consents, Clearances and Permits’ shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the Bagasse based generation facilities and/ or supply of power;
- 1.20.** ‘Consultation Period’ shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 14 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

- 1.21.** ‘Contracted Capacity’ with respect to each Procurer, shall mean the allocation of the Aggregate Contracted Capacity to each of the Procurers as provided in Schedule 12 hereof, subject to adjustment as per terms of this Agreement;
- 1.22.** “Contract Year” shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;
- 1.23.** ‘Check Meter’ means ABT compatible Import and Export Meter for performing a check on the accuracy of the Bill Meter;
- 1.24.** ‘Day’ shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
- 1.25.** ‘Delivery Date’ shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurers;
- 1.26.** “Delivery Point” shall mean the STU Interface(s), where power is delivered to the Procurer(s) after it is injected by the Seller at the Injection Point;
- 1.27.** ‘DISCOM’ or ‘Discom’ shall refer to Dakshinanchal Vidyut Vitran Nigam Limited, Kanpur Electricity Supply Company Limited, Madhyanchal Vidyut Vitran Nigam Limited, Paschimanchal Vidyut Vitran Nigam Limited and Purvanchal Vidyut Vitran Nigam Limited;
- 1.28.** ‘Dispatch Instructions’ shall mean any instruction issued by the Procurers through the SLDC to the Seller, in accordance with Grid Code and this Agreement;
- 1.29.** ‘Dispute’ shall mean any dispute or difference of any kind between the Seller and the Procurer in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 17 of this Agreement;
- 1.30.** ‘Due Date’ shall mean the last day of the month provided the bill is received and acknowledged by the Procurer(s) up to 4th day of the month. For the bills received and acknowledged by the Procurer(s) after 4th, it shall be 30th day from such date;
- 1.31.** ‘Effective Date’ shall have the meaning ascribed thereto in Article 3.1 of this Agreement;
- 1.32.** ‘Electricity Laws’ shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;

- 1.33.** ‘Energy Accounts’ shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
- 1.34.** ‘Energy Account Month’ means period from date of meter reading in previous month to the date of meter reading in following month and such period should not exceed 35 days;
- 1.35.** ‘Event of Default’ shall mean the events as defined in Article 14 of this Agreement;
- 1.36.** ‘Expiry Date’ shall mean the date which is the tenth (10th) anniversary of the Delivery Date or such extended period as mutually agreed upon by both Parties;
- 1.37.** ‘Export Meter’ means Bill Meter installed at the grid substation[•] kV, [•] of DISCOM/STU for measurement of active energy, maximum demand and power factor for Energy exported to the Generating Plant from DISCOM/ STU's Grid Sub-Station[•] kV, [•];
- 1.38.** ‘Force Majeure’ or ‘Force Majeure Event’ shall have the meaning ascribed thereto in Article 12 of this Agreement;
- 1.39.** ‘Grid Code’ / ‘IEGC’ or ‘State Grid Code’ shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
- 1.40.** ‘Grid Sub Station’ means sub-station [•] of 132/33 kV or higher voltage owned, maintained and operated by U.P. Power Transmission Corporation Limited;
- 1.41.** ‘Import Meter’ means Bill Meter installed at the grid substation [•] kV, [•] of STU for Measurement of active energy, maximum demand and power factor of Energy imported to UPPCL / DISCOM from the Generating Station;
- 1.42.** ‘Indian Governmental Instrumentality’ shall mean department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

- 1.43.** ‘Invoice’ or ‘Bill’ shall mean either a monthly invoice, monthly bill or a supplementary invoice /supplementary bill by any of the Parties;
- 1.44.** ‘Injection Point’ shall mean the point located at the substation of STU or the “Delivery Point” as specified by the Bidder in its bid or the metering point for estimation of energy generation;
- 1.45.** ‘Injected Energy’ shall mean the kilowatt hours of Electricity actually fed and measured by the energy meters at the Injection Point in a Billing Period and certified in the SLDC / STU;
- 1.46.** ‘Interconnection Facilities’ in respect of the Seller shall mean all the facilities installed by the Seller to transmit the energy to the grid;
- 1.47.** ‘Interconnection Point’ shall mean the point where the power from the power station switchyard bus of the Seller is injected into the intrastate transmission system (including the dedicated transmission line connecting the power station with the intrastate transmission system);
- 1.48.** ‘Installed Capacity’ means the capacity of the Project at the generating terminal(s) and shall be equal to [•] MW;
- 1.49.** “Late Payment Surcharge” shall have the meaning ascribed thereto in Article 11.3.5 of this Agreement;
- 1.50.** ‘Law’ shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
- 1.51.** ‘Lead Procurer’ shall have the meaning ascribed thereto in Article 18.1;
- 1.52.** ‘Letter of Intent’ or ‘LOI’ shall mean the letter issued by the Procurer / Authorized Representative to the Successful Bidder for supply of power pursuant to the RFP;
- 1.53.** ‘Metering Date’ for a Billing Period, means the midnight of the last day of the calendar month;
- 1.54.** ‘Metering Point’ shall be the point of recording of Injected Energy at Injection Point;
- 1.55.** ‘MW’ means Megawatts;

- 1.56.** “Parent Company” or “Parent” shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be;
- 1.57.** ‘Party’ and ‘Parties’ shall have the meaning ascribed thereto in the recital to this Agreement;
- 1.58.** ‘Plant Load factor’ or ‘PLF’ means the total sent out energy corresponding to generation during the period expressed as a percentage of sent out energy corresponding to contracted capacity in that period and shall have the same meaning as provided in UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 as amended from time to time;
- 1.59.** ‘Preliminary Default Notice’ shall have the meaning ascribed thereto in Article 14 of this Agreement;
- 1.60.** ‘Project’ shall mean the Bagasse based power generation project as detailed under Schedule 1 of this Agreement;
- 1.61.** ‘Prudent Utility Practices’ means those practices, methods, techniques and standards, that are generally accepted for use in electric utility industries taking into account conditions in India, and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project, and that generally conform to the manufacturers' operation and maintenance guidelines;
- 1.62.** ‘Scheduled Delivery Date’ shall have the meaning ascribed thereto in Article 5.1 of this Agreement;
- 1.63.** ‘SLDC’ shall mean State Load Dispatch Center as Constituted under Section 31 of Electricity Act, 2003;
- 1.64.** ‘Successful Bidder’ shall mean the Bidder(s) selected by the Authorized Representative, pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;
- 1.65.** ‘STU’ shall mean U.P. Power Transmission Corporation Ltd. being the Government company specified so by the Government of Uttar Pradesh;
- 1.66.** “Ultimate Parent Company” shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company;

- 1.67.** ‘UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019’ shall mean in short “CRE Regulations, 2019”, as amended from time to time;
- 1.68.** ‘Wheeling’ means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 of the Act;

2. INTERPRETATION

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

- 2.1.** "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 2.2.** An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 2.3.** A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 2.4.** An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 2.5.** "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 2.6.** A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 2.7.** "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 2.8.** The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 2.9.** Words importing the singular shall include the plural and vice versa;
- 2.10.** This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

- 2.11.** A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 2.12.** A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 2.13.** Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 2.14.** The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 2.15.** All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 2.16.** The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 2.17.** The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 2.18.** The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1(vi) of Schedule 7 hereof.

3. TERMS OF AGREEMENT

3.1. Effective Date

3.1.1. This Agreement shall come into effect from the date it is executed, delivered by the last of all the Parties and subsequent to its approval and adoption of Tariff by the Uttar Pradesh Electricity Regulatory Commission and such date shall be referred to as the Effective Date.

3.2. Term of Agreement

3.2.1. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 3.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 3.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the Uttar Pradesh Electricity Regulatory Commission.

3.3. Early Termination

3.3.1. This Agreement shall terminate before the Expiry Date:

- (i) if either all the Procurers (jointly) or the Seller exercises a right to terminate, pursuant to Articles 4.4.2, 4.4.3, 4.4.4, 5.1.1, 14.2.2 (iv), 14.2.3 (iv), 14.5 or Clause 7.2.3 of Schedule 7 of this Agreement; or

3.3.2. This Agreement shall terminate before the Expiry Date:

- (i) if either Seller or all the Procurers (jointly) terminate this Agreement, pursuant to Article 14 (Events of Default and Termination) of this Agreement; or
- (ii) in such other circumstances as the Seller or all the Procurers (jointly) may agree, in writing;

3.4. Survival

3.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 12 (Force Majeure), Article 14 (Events of Default and Termination), Article 15 (Liability and Indemnification), Article 17 (Governing Law and Dispute Resolution), Article 18 (Miscellaneous Provisions) and other Articles and Schedules of this Agreement which expressly or by their nature survive the term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

4. CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/PROCURERS

4.1. Satisfaction of conditions subsequent by the Seller

4.1.1. The Seller agrees and undertakes to duly perform and complete all of the following activities at the Seller's own cost and risk within One Hundred Fifty (150) days from the date of signing of PPA, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 4.2.1 of this Agreement, or if any of the activities is specifically waived in writing by UPPCL:

- (i) The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer(s) as per the terms of this Agreement;
- (ii) The Seller shall have signed a Transmission/Connection Agreement with UPPTCL/ DISCOM confirming the evacuation and connectivity of Transmission system with their Power Project switchyard up to the Interconnection Point;
- (iii)[To be included if the Seller opts for substitution rights of the Lender(s)] The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Documents;
- (iv) The Seller shall have sent a written notice to all the Procurers indicating the Aggregate Contracted Capacity and total Installed Capacity for each unit and for the Power Station as a whole expressed in MW;
- (v) The Seller shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;
- (vi) The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract") or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable notice to proceed ("NTP") and shall have submitted a letter to this effect to the Procurers;

4.2. Satisfaction of conditions subsequent by the Procurers

4.2.1. The Procurers agree and undertake to duly perform and complete the following activities at the Procurers' own cost and risk within ten(10) Months from the date of signing of this Agreement, unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their

Obligations under Article 4.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- (i) The Procurers shall have obtained the order of the Uttar Pradesh Electricity Regulatory Commission for adoption of the Tariff under Section 63 of the Electricity Act, 2003 and given a copy of the same to the Seller.

4.3. Joint responsibilities of the Procurers and the Seller

4.3.1. The Lead Procurer and the Seller shall have jointly agreed on the specific date(s) for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurers from each such date. Such mutually agreed date(s) shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.

4.3.2. These date(s) shall be mutually agreed upon within twelve (12) Months and shall be the Revised Scheduled Delivery Date(s) for the respective quantum of power.

4.4. Consequences of non-fulfillment of conditions subsequent

4.4.1. If any one or more of the conditions specified in Article 4.1 is not duly fulfilled by the Seller, even within three (3) Months after the time specified under Article 4.1, otherwise than for the reasons directly attributable to the Procurer(s) or Force Majeure event in terms of Article 4.4.2, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 4.1, the Seller shall, on weekly basis, be liable to pay the following amounts:

(i) Up to 20 MW Projects

In case the Seller is not able to meet the timelines as mentioned in Article 4.1 then the Seller shall pay to UPPCL, the Liquidated Damages ("LD") at the rate of Rs. 1,25,000/- per MW per month of delay (pro-rata to the delay in number of days). LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of demand draft / pay order.

On non-submission of the above mentioned amount, UPPCL shall have the right to invoke the Contract Performance Guarantee submitted by the bidder.

Delay in the timelines for over and above six (6) months from respective task will lead to creation of the necessary grounds for UPPCL for termination of LOI / PPA.

(ii) Above 20 MW Projects

In case the Seller is not able to meet the timelines as mentioned in Article 4.1 then the Seller shall pay to UPPCL, the Liquidated Damages ("LD") at the rate of Rs. 1,50,000/- per MW per month of delay (pro-rata to the delay in number of days). LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of demand draft / pay order.

On non-submission of the above mentioned amount, UPPCL shall have the right to invoke the Contract Performance Guarantee submitted by the bidder.

Delay in the timelines for over and above six (6) months from respective task will lead to creation of the necessary grounds for UPPCL for termination of LOI / PPA.

4.4.2. In case of inability of the Seller to fulfil any one or more of the conditions specified in Article 4.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent as mentioned in Article 4.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurers (jointly) or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.

4.4.3. Similarly, in case of inability of the Procurers to fulfil the conditions specified in Article 4.2 due to any Force Majeure event, the time period for fulfilment of the condition subsequent as mentioned in Article 4.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurers (jointly) or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.

4.4.4. In case of inability of the Procurers to perform the activities specified in Article 4.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfilment of condition subsequent by the Procurers as mentioned in Article 4.2 would be extended for an additional time period which may be required by the Procurers to complete the activities mentioned in Article 4.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurers. If the Seller elects to terminate this Agreement, the Procurers shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurers shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee

4.4.5. No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 4.3;

Provided that due to the provisions of Articles 4.4.2, 4.4.3 and 4.4.4, any increase in the time period for completion of conditions subsequent mentioned under Article 4.1, shall also lead to an equal extension in the Scheduled Delivery Date.

4.5. Contract Performance Guarantee

4.5.1. The Contract Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contract Capacity within the time specified in this Agreement.[†]

4.5.2. The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.

4.5.3. If the Seller fails to commence supply of power on the respective Scheduled Delivery Date specified in this Agreement, subject to conditions mentioned in Article 5.7.1, the Procurers/UPPCL shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 5.8.1, without prejudice to the other rights of the Procurers under this Agreement.

4.6. Renewal of Contract Performance Guarantee

4.6.1. The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.

4.6.2. Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.

4.6.3. If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurers/UPPCL shall have the right to encash the then existing Contract Performance Guarantee..

[†] The CPG is furnished as Rs.

4.7. Return of Contract Performance Guarantee

- 4.7.1. The Procurers shall return / release the Contract Performance Guarantee in the event of termination of this Agreement by any Party under Article 4.4.2, 4.4.3 or 4.4.4 of this Agreement.
- 4.7.2. Subject to the provisions of Article 4.7.1, the Procurers/UPPCL shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- 4.7.3. The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurers under this Agreement.

5. SUPPLY OF POWER

5.1. Commencement of supply of power to Procurers

5.1.1. The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which shall be which shall be 365 days from the date of approval of Power Purchase Agreement and adoption of Tariff by the Uttar Pradesh Electricity Regulatory Commission. However, the Seller and the Procurers may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 4.3 of this Agreement.

5.1.2. The Seller shall give the Procurers and the concerned SLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

5.2. Seller's Obligations

5.2.1. The Generating Company undertakes to be responsible, at its own cost and risk, for:

- (i) obtaining all Consents, Clearances and Permits other than those obtained under Article 4.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
- (ii) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices;
- (iii) the commencement of supply of power up to the Contracted Capacity to Procurer(s) no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be; and continuance of supply of power throughout the term of Agreement;
- (iv) connecting the Power Project switchyard with the STU Transmission Lines at the outgoing terminal bay of the Project switchyard;
- (v) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 16;
- (vi) providing on a timely basis, all relevant information to the Procurers which may be required for receiving power at the Delivery Point; and
- (vii) Fulfilling all obligations undertaken by the Seller under this Agreement.

5.3. Procurers' Obligations

5.3.1. Subject to the terms and conditions of this Agreement, the Procurers shall:

- (i) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;
- (ii) fulfil all obligations undertaken by the Procurers under this Agreement.

5.4. Interconnection Facilities

- 5.4.1. Power from the Generating Plant shall be transmitted at [•]kV voltage through a [•]kV line from the Generating Plant located at [•] The power so transmitted shall be interfaced with STU[•] kV, grid sub-station located at [•] owned by STU.
- 5.4.2. The cost of the dedicated transmission line from the Generating Plant to the designated grid sub-station of STU and the cost of interfacing at both ends (the Generating Plant and grid substation) including work at the STU sub-station, cost of bay, tie- line, terminal equipment and associated synchronizing equipment, shall be borne by the Seller.
- 5.4.3. The construction of evacuation system for connecting the Generating Plant with grid substation shall be the responsibility of the Seller. The Seller shall construct transmission line under supervision of U.P. Power Transmission Corporation Limited and bay at sub-station will be constructed by U.P. Power Transmission Corporation Limited. The supervision charges and bay construction charges will be deposited by the Seller to U.P. Power Transmission Corporation Limited as per the deposit works rules.
- (Explanation: The technical and other specifications of the work shall be finalized with STU's approval and be in accordance with standards and specifications laid by DISCOM, construction of 132 kV or higher voltage line shall be done under the supervision of STU. The lines constructed for the evacuation of power from the Generating Plant, shall not be used for transmitting/supplying power for any other purpose, without a mutual agreement between the Generating Plant and DISCOM /STU and without prior approval of UPERC. Existing transmission/distribution lines of DISCOM/ STU may be utilized for evacuation of power from the Generating Plant to the Grid sub-station, on the basis of a mutual agreement between the Generating Plant and DISCOM/STU with the approval of UPERC. Notwithstanding the above, the work of interfacing at STU sub-station will be done by STU.)*
- 5.4.4. The Seller shall be responsible for the maintenance of equipment at the generating end.
- 5.4.5. For maintenance of transmission line and bay, either the Seller will undertake the maintenance work by their own or in case the Seller opts to maintain the same through U.P. Power Transmission Corporation Limited, they may entrust the maintenance work to them on the terms mutually agreed with the STU.

5.4.6. Any work to be done by the Seller shall be taken up only with a specific approval and on the basis of approved drawings and specifications from DISCOM and in compliance with the safety requirements as per the Grid Code. On the completion of work, final approval shall be obtained from DISCOM/STU (as the case may be) before charging the line. The Seller would obtain all statutory clearances/approvals required for this purpose.

5.4.7. The Seller shall consult DISCOM/STU on the scheme of protection of the interconnecting line/s and the facilities at both ends, and accordingly provide the equipment at both ends. The protection system, installed by the Seller, shall be checked by DISCOM/STU

5.4.8. Without limiting the foregoing, the Seller and STU shall, operate and maintain the interconnection and parallel operation facility in accordance with accepted good engineering practices in the electricity industry and the Grid Code as amended from time to time and directions of Director (Electrical Safety), GOUP and safety requirements as specified by the Central Electricity Authority under section 53 of the Act.

5.4.9. The interconnection facilities, to be provided by the Seller are set forth in Schedule 2 attached hereto and made a part hereof.

5.5. Protective equipment & interlocking

5.5.1. The interconnection facilities shall include necessary protective equipment and interlocking devices, which shall be so coordinated that any malfunctioning or abnormality in the generators or in the bus of the Generating Plant shall not adversely reflect on or affect STU grid system. In event of any malfunctioning or abnormality, the system shall be designed to ensure that the Generating Plant's breaker trips first to protect the equipment. Prior to adopting it, the Seller shall obtain approval of STU for the protection logic of the generator system and the synchronization scheme.

5.5.2. The Seller shall install necessary equipment to eliminate feeding of reverse power from the grid to the Generating Plant's system in absence of any agreement for purchase of power with DISCOM.

5.6. Purchase and sale of Contracted Capacity

5.6.1. Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurers and the Procurers undertake to pay Tariff for all the energy supplied at the Delivery Point corresponding to Contracted Capacity.

5.6.2. Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity to each Procurer in proportion of each Procurer's then existing Contracted Capacity pursuant to Dispatch Instructions of such Procurer.

5.7. Extensions of Time

5.7.1. In the event that the Seller is prevented from performing its obligations under Article 5.2 by the Scheduled Delivery Date due to:

- (i) any STU/Procurers' Event of Default; or
- (ii) Force Majeure events affecting STU/Procurer(s),
- or (iii) Force Majeure events affecting the Seller,

the Revised Scheduled Delivery Date, Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 5.7.2, for a reasonable period but not less than "day for day" basis, to permit the Seller or STU/Procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or Procurer(s), or till such time such Event of Default is rectified by STU/Procurer(s).

5.7.2. In case of extension occurring due to reasons specified in Article 5.7.1(i), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than twelve (12) months or the date on which the Seller elects to terminate this Agreement, whichever is later.

5.7.3. In case of extension due to reasons specified in Article 5.7.1(ii) and (iii), and if such Force Majeure Event continues even after the maximum period of twelve (12) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 14.5.

5.7.4. If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 17.

5.7.5. As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

5.8. Liquidated Damages for delay in commencement of supply of power to Procurers

5.8.1. If the Seller is unable to commence supply of power to the Procurers by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 5.7.1, the Seller shall pay to UPPCL within a period of ten(10) days, Liquidated Damages for the

delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date as per following:

(i) Up to 20 MW Projects

In case the Seller is not able to commence power supply on the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, then the Seller shall pay to UPPCL, the Liquidated Damages (“LD”) at the rate of Rs. 1,25,000/- per MW per month of delay (pro-rata to the delay in number of days). LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of demand draft / pay order.

On non-submission of the above mentioned amount, UPPCL shall have the right to invoke the Contract Performance Guarantee submitted by the bidder.

Delay in the timelines for over and above six (6) months from respective task will lead to creation of the necessary grounds for UPPCL for termination of LOI / PPA.

(ii) Above 20 MW Projects

In case the Seller is not able to commence power supply on the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, then the Seller shall pay to UPPCL, the Liquidated Damages (“LD”) at the rate of Rs. 1,50,000/- per MW per month of delay (pro-rata to the delay in number of days). LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of demand draft / pay order.

On non-submission of the above mentioned amount, UPPCL shall have the right to invoke the Contract Performance Guarantee submitted by the bidder.

Delay in the timelines for over and above six (6) months from respective task will lead to creation of the necessary grounds for UPPCL for termination of LOI / PPA.

5.8.2. The Seller’s maximum liability under this Article 5.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 5.8.1 for and up to six (6) Months of delay for commencement of supply of power from the Scheduled Delivery Date.

Provided that in case of failure of the Seller to start supply of power to Procurers even after expiry of six (6) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall be considered as a Seller Event of Default and provisions of Article 14 shall apply.

5.8.3. If Schedule Delivery Date is delayed due to construction of transmission line by U.P. Power Transmission Corporation Limited then no liquidated damages shall be imposed on the Seller. The Seller shall pay the amount calculated pursuant to Article 5.8.1 to the Procurers within ten (10) days of the earlier of:

a) the date on which the Seller commences supply of power to the Procurers, or

b) expiry of the six (6) Months period mentioned in Article 5.8.2.

5.8.4. If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 5.8.3, UPPCL shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to UPPCL, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by UPPCL.

5.8.5. The Parties agree that the formula specified in Article 5.8.1 for calculation of liquidated damages payable by the Seller under this Article 5.8, read with Article 14 is a genuine and accurate pre- estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

5.9. Transmission Losses

5.9.1. Transmission losses from the Interconnection Point onwards would be borne by the Procurers, and power lost on account of transmission loss would be to the account of the Procurers.

6. SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

6.1. Synchronisation and Commissioning

- 6.1.1. The Seller shall give the concerned SLDC and Procurers/UPPCL at least fifteen (15) days advanced written notice, of the date on which it intends to synchronise the Power Project to the grid system.
- 6.1.2. Subject to Article 6.1.1, the Power Project may be synchronized by the Seller to the grid system when it meets all the connection conditions prescribed in the Grid Code in effect and otherwise meets all other Indian/State legal requirements for synchronization to the grid system.
- 6.1.3. The synchronization equipment shall be installed by the Seller at its generation facility of the Power Project at its own cost. The Seller shall synchronize its system with the grid system only after the approval of synchronization scheme is granted by the concerned sub-station/grid system of STU/Discom and checking/verification is made by the concerned STU and Discom Authorities of the grid system.
- 6.1.4. The Seller shall immediately after each synchronization/tripping of generator, inform the sub-station of the grid system to which the Power Project is electrically connected in accordance with Grid Code.
- 6.1.5. UPPCL/STU shall not be responsible for the damage, if any, caused to the plant and equipment of the Generating Plant due to failure of the synchronizing or the protective system provided by the Seller.
- 6.1.6. The Seller shall inform the date of commencement of delivery of power to the designated officials of DISCOM and STU one month in advance and also arrange for testing and commissioning of the protection system at least 15 days in advance. If requested by the Seller, DISCOM, in consultation with STU as the case may be, shall extend assistance for testing, subject to the condition that the Seller shall pay the charges for such assistance to DISCOM, if so indicated by the concerned testing division of DISCOM. This charge shall be reasonable and be based on the man-hours devoted by DISCOM staff and their usual levels of remuneration, and DISCOM equipment used.

6.2. Operation of the Generating Plant

- 6.2.1. The Seller shall follow such operating procedures on its side of the electric interconnection with STUs system, as are consistent with applicable laws, rules and regulations, the terms and conditions of this Agreement, provisions of the Grid Code, and other related guidelines, if any, issued by UPERC, SLDC, DISCOM, STU and any other concerned Transmission licensee.

- 6.2.2. In no case, any other non-conventional / renewable fuel or fuels are to be used by the Seller to supplement Bagasse and the fuel linkage shall be the responsibility of the Seller. No pass through of cost on account of this shall be permitted.
- 6.2.3. All electrical equipments shall be installed in compliance with the requirements of the Director (Electrical Safety), Government of Uttar Pradesh and safety specifications of the Central Electricity Authority (CEA) under section 53 of the Electrical Act, 2003.
- 6.2.4. The Seller further agrees to make no material changes or additions to its facility, which may have an adverse effect on STU system, or amend the single-line diagram/ drawings and/or trip scheme given in Schedule 3, without DISCOM's prior written consent. DISCOM agrees that such consent shall not be unreasonably withheld or given without the prior permission of STU.
- 6.2.5. Without prejudice to the foregoing, the Seller shall install, operate, and maintain its facility in accordance with accepted Prudent Utility Practices in the electricity industry. The Seller's operation and maintenance schedules and staffing shall be adequate to meet such standards at all times.
- 6.2.6. DISCOM/STU shall follow such operating procedures on its side of the electric interconnection point with the Seller, as required to receive Power from the Seller's facility, without avoidable interruptions or adverse consequences on the Seller, and consistent with applicable laws, rules and regulations, and the terms and conditions of this Agreement.

7. DISPATCH

7.1. Dispatch

- 7.1.1. The Power Project shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time.

7.2. Supply Schedule

- 7.2.1. The Seller shall furnish to DISCOM and the STU or SLDC, as the case may be, a day ahead Supply Schedule, schedule of banking and withdrawal of banked energy and other information, as required in the CRE Regulations, 2019 and Grid Code as amended from time to time or provisions of any other regulation, code, order or direction in that regard or as desired otherwise.

7.3. Maintenance requirement of the Generating Plant

- 7.3.1. The Generating Plant's annual maintenance schedule shall normally be from May to September. The Generating Plant shall inform DISCOM and the STU regarding the maintenance schedule in accordance with provisions of the Grid Code as revised by the Commission from time to time.
- 7.3.2. Environmental clearance and compliance of environmental standards shall be the sole responsibility of the Seller.

8. METERING

8.1. Meters

- 8.1.1. The Generating Plant shall supply two identical sets of ABT compliant meters, with the facility for downloading data to measure the quantity and time details of the Power exported from and imported by the Generating Plant, conforming to the specifications approved by DISCOM/STU, along with all necessary associated equipment. These meters shall be installed and maintained by DISCOM/STU. These meters shall be installed at the grid substation of STU at the interconnection point. One set of export/import meters shall be termed as Bill Meter and other set will serve as the Check Meter. The complete metering system consisting of meters, Current Transformers & Potential Transformers shall conform to the 0.2 accuracy class, individually and collectively, and shall comply with the technical standards, accuracy and calibration requirements of the Indian Electricity Rules and the specifications of the Bureau of Indian Standard and the guidelines of CEA for installation of meters. The meters shall have AMR facility.
- 8.1.2. The joint meter readings shall be recorded in the format given in Schedule 5 & 6.
- 8.1.3. The Meter/Metering system shall be properly sealed and made pilfer proof, to the satisfaction of both parties.
- 8.1.4. DISCOM (in consultation with STU if the generating plant is connected to the sub-station of STU) shall, test all the metering equipment for accuracy, in the presence of a representative of the Generating Plant, if the Generating Plant so elects, at least once every year while the agreement is in force. Either party may, however, elect to get the meters tested at any time they so desire, at their own cost, in the presence of the other party.
- 8.1.5. DISCOM/STU's designated representative and the representative of the Seller shall jointly certify the meter test results. After every testing all metering equipment and the Metering system shall be securely sealed jointly by the representatives of DISCOM and the Seller.
- 8.1.6. The reading and testing of meters and associated equipment shall be in accordance with accepted good engineering practices in the electricity industry.
- 8.1.7. Calibration, inspection and testing of meters and the associated equipment shall be the responsibility of DISCOM, who shall bear the related costs.

Meter readings shall be taken jointly by parties as indicated below:-

- (i) DISCOM side- Executive Engineer (Distribution), as authorized by DISCOM and Executive Engineer (Transmission) as authorized by STU.

(ii) Seller side – Authorized representative of the Seller.

- 8.1.8. The reading of the Bill Meter shall form the basis for the energy account, provided that the magnitude (i.e. absolute value) of the difference between the Check and Bill Meter reading is within one percent of the Bill Meter reading.
- 8.1.9. If in any month the readings of the Bill Meter and Check Meter are found to be doubtful or beyond the permissible 1% deviation indicated above, both sets of meters shall be checked and calibrated in the presence of authorized representatives of both the parties. Corrections shall be made, if required, on the basis of the error detected during this process, in the Monthly Bill for the period between the previous meter readings and the date and time from which accurate readings become available through replacement or re-calibration. These corrections shall be full and final for the Bill of that month.
- 8.1.10. During the period of checking and calibration of both meters simultaneously another export and import meter duly calibrated would be installed by DISCOM (in consultation with STU if the plant is connected to the Sub-station of STU/other transmission licensee). For this purpose, one spare set of meters would be required to be available with the Generating Plant at all times.
- 8.1.11. If the Bill Meter is found to be defective, and the Check meter is found to be accurate then the reading from the latter shall be used for billing purpose and the Bill meters would be re-calibrated and re-installed or replaced by duly tested and calibrated meters, as necessary. Where error in the Check Meter is indicated beyond permissible limit but there is no error in the Bill Meter, monthly energy account would be prepared on the basis of the Bill Meter reading and the Check Meter shall be immediately re-calibrated and reinstalled or replaced as necessary. If both meters are found to be defective, then the Bill will be revised on the basis of the in-accuracy discovered in the testing. The M.R.I. output from the meters shall be considered an authentic document for verification.
- 8.1.12. Metering at generating terminal of each unit of the Generating Plant shall be ensured as per the guidelines of the Central Electricity Authority.

9. INSURANCES

9.1. Insurance

9.1.1. The Seller shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the financing agreements.

9.2. Application of Insurance proceeds

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

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

9.3. Effect on liability of Procurers

9.3.1. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the Seller can claim compensation, under any Insurance shall not be charged to or payable by Procurers.

10. APPLICABLE TARIFF

10.1. General

The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Article.

10.2. Monthly Tariff payment

10.2.1. Monthly Capacity Charges

10.2.1.1. The Monthly Capacity Charge payment for any Month “m” in a Contract Year “n” shall be calculated as below:

$$FC_m = AFC_{yn} * AES_m,$$

where:

FC_m is the Capacity Charge payment for the Month m (in Rupees)

AFC_{yn} is the Payable Non Escalable Capacity Charges for the Month “m”, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such Month “m” occurs, as provided in Schedule 10; and

AES_m is the Actual Energy Supplied to the Procurers for the Month “m” (in kWh).

Provided that no Capacity Charges shall be payable for generation above 50% PLF.

The Generating Plant, to generate more power beyond 50% PLF, shall be paid incentive @ 50 paise per kWh.

10.2.2. Monthly Energy Charges

10.2.2.1. The Monthly Energy Charges payment (in Rupees) for any Month “m” in a Contract year shall be calculated as below:

$$MEC_m = AES_m * MEP_{mn}$$

where:

- a) MEC_m is the Monthly Energy Charges for Month “m” in a Contract year (in Rs.);
- b) AES_m is the Actual Energy Supplied to the Procurers for the Month “m” (in kWh); and
- c) MEP_m is the Payable Escalable Energy Charges in Rs/ kWh, for the Month “m” of the Contract Year “n” and shall be computed as mentioned hereunder:

$$MEP_m = QMEP_n * p(E)/q(E)$$

where:

- a) QMEP_n for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charge as per Schedule 10 and for subsequent Contract Years it shall be taken as at the last month of the previous Contract Year (n-1);
- b) p(E) is the Escalation Index as per Article 10.2.4 at the beginning of Month “m” (expressed as a number);
- c) q(E) is the Escalation Index as per Article 10.2.4 (expressed as a number);

10.2.3. Deviation from the Schedule

10.2.3.1. The provisions of Availability Based Tariff shall be implemented and the Generating Plant shall be subject to day ahead scheduling. Generating Plant shall be required to schedule its power as per the applicable regulations/requirements/guidelines of CERC/UPERC/SLDC and maintain compliance to the Grid Code requirements and directions, as specified by SLDC from time to time. Any deviation from the schedule will attract the provisions of applicable regulation /guidelines /directions and any financial implication on account of this shall be to the account of the Generating Plant.

10.2.4. Escalation Index

10.2.4.1. The index (“Escalation Index”) to be applied for escalation of Quoted Escalable Energy Charges shall be computed by assuming that as on the date of the Bid Deadline, the value of such Escalation Index is 100. Thereafter, for each Month after the Bid Deadline, the value of the Escalation Index shall be computed by applying the per annum escalation rate specified by the Central Electricity Regulatory Commission for payment of Escalation rate for domestic coal³, as per the provisions of this Agreement.

³The increase in price of bagasse being the primary fuel will be considered on coal equivalence approach

10.2.4.2. For the avoidance of doubt, it is clarified that if the prevailing escalation rate specified by the Central Electricity Regulatory Commission is 5% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.417 [i.e. $100 * (1 + 0.05/12)$]. The value of the Escalation Index at the end of the Pth Month after the Bid Deadline shall be calculated as: $100 * (1 + P*0.05/12)$ for Quoted Escalable Energy Charge. The value of the inflation rate shall be modified as and when specified by the CERC and the base value q(E), (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the three decimal points.

10.2.4.3. In case due to any reason, Central Electricity Regulatory Commission discontinues the publication of any of the escalation rate(s) mentioned above or for any other change from the existing practice, the Procurers and the Seller shall replace the above escalation rate(s) with escalation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified escalation rate.

11. BILLING AND PAYMENT

11.1. General

11.1.1. From the commencement of supply of power by the Seller, the Procurers shall pay the Seller the monthly Tariff payments, on or before the Due Date, in accordance with Tariff as specified in Article 10 and Schedule 10. All Tariff payments by the Procurers shall be in Indian Rupees.

11.1.2. The provisions of banking and wheeling of electricity shall be as per the CRE Regulations, 2019.

11.1.3. The Seller shall pay any applicable taxes, cess, duties, levies imposed by the Government or Competent Authority from time to time on banking of power.

11.2. Delivery and Content of Monthly Bills/Provisional Bills

11.2.1. The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding month not later than ten (10) days of the next month. In case the Monthly Bill for the immediately preceding month issued after ten (10) days of the next month, the Due Date for payment of such monthly Bill shall be extended by thirty (30) days.

Provided that:

- (i) if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a month, the first Monthly Bill shall be issued for the period until the last day of such month, or
- (ii) if the date of commencement of supply of power falls after the fifteenth (15th) day of a month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following month.

11.2.2. Each Monthly Bill and Provisional Bill shall include the following:

- (i) Adjustments against the Provisional Bill(s) based on Energy Accounts for the power supplied in the month(s) preceding to the previous month(s);
- (ii) supporting data, documents and calculations in accordance with this Agreement.

11.3. Payment of Monthly Bills

11.3.1. The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 11.3.4 below.

11.3.2. All payments made by the Procurers shall be appropriated by the Seller in the following order of priority:

- (i) towards the earlier unpaid Monthly Bill(s), if any; and
- (ii) towards the then current Monthly Bill.

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

- (i) deductions required by the Law; and
- (ii) amounts claimed by the Procurers from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurers shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

11.3.4. The Seller shall open a bank account at Lucknow, Uttar Pradesh ("Seller's Designated Account") for all Tariff payments to be made by the Procurers to the Seller, and notify the Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurers shall also designate a bank account at Lucknow (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurers, if any, and notify the Seller of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The Seller and the Procurers shall instruct their respective bankers to make all payments under this Agreement to the Procurer's designated account or the Seller's designated account, as the case may be, and shall notify either Party of such instructions on the same day.

11.3.5. In the event of delay in payment of a Monthly Bill by the Procurers beyond 180 days of its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable State Bank Advance Rate per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

11.3.6. For payment of any bill within due date, the following rebate shall be paid by the Seller to the Procurer in the following manner:

- (i) Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, upto fifth (5th) day of the Month.
- (ii) Applicable rate of Rebate at (i) above shall be based on the date on which payment has been actually credited to the Seller's account. Any delay in transfer of money to the Seller's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurers.
- (iii) Two percent (2%) Rebate shall be provided for credit of payment to the Seller's account made within one (1) day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- (iv) For credit to Seller's account made on other days the Rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	Rate of Rebate applicable
29	Two percent (2.00%)
Each day thereafter up to the Due Date	Two percent (2%) less $[0.033\% \times \{29 \text{ less number of days before Due Date when the payment is made by the Procurers}\}]$

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

- (v) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to the Procurers who credits one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller's account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.
- (vi) In the event only part amount of Provisional Bill is credited to the Seller's account, within first five (5) days and the balance amount is credited to the Seller's account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Seller's account;
- (vii) The above Rebate will be allowed only to the Procurer(s) who credits to the Seller's account the full Monthly Bill.
- (viii) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;

If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

11.4. Disputed Bill

- 11.4.1. If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party by the due date, such Bill shall be taken as conclusive.
- 11.4.2. If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- (i) the details of the disputed amount;
 - (ii) its estimate of what the correct amount should be; and
 - (iii) all written material in support of its claim.
- 11.4.3. If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.4.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at a rate of 1.25% per month, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 11.4.4. If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.4.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- (i) reasons for its disagreement;
 - (ii) its estimate of what the correct amount should be; and
 - (iii) all written material in support of its counter-claim.
- 11.4.5. Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 11.5.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 11.4.6. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 11.4.4, the matter shall be referred to Dispute resolution in accordance with Article 17.

11.4.7. In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Commission for Dispute resolution in accordance with Article 17 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Commission.

11.4.8. If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 11.4 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 11.4.5 or settled by Dispute resolution mechanism along with interest at a rate of 1.25% per month from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

11.4.9. For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

11.5. Quarterly and Annual Reconciliation

11.5.1. The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account the Regional Energy Accounts (REA), Tariff rebate, or any other reasonable circumstance provided under this Agreement.

11.5.2. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year, as the case may be, has been finally verified and adjusted, the Procurers and the Seller shall jointly sign such reconciliation statement. Within fifteen (15) days of signing a reconciliation statement, the Seller or Procurers, as the case may be, shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Interest at a rate of 1.25% per month shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 17.

11.6. Payment of Supplementary Bill

11.6.1. Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- (i) Adjustments required by the Regional Energy Account (if applicable);
- (ii) Change in Law as provided in Article 13,
and such Supplementary Bill shall be paid by the other Party.

11.6.2. The Procurer(s) shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to concerned Procurer's designated bank account and notify Procurer of such payment on the same day. For such payments by the Procurer, Rebate as applicable to Monthly Bills pursuant to Article 11.3.5 shall equally apply.

12. FORCE MAJEURE

12.1. Definitions

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

12.2. Affected Party

12.2.1. An affected Party means any of the Procurers or the Seller whose performance has been adversely affected by an event of Force Majeure.

12.3. Force Majeure

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

- (i) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years;
- (ii) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s);
- (iii) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible;
- (iv) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party;
- (v) Industry wide strikes and labour disturbance having a nationwide impact in India;
- (vi) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Seller;
- (vii) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Project,

Provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

- (viii) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Seller to the Procurers, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.
- (ix) An event of force majeure affecting the concerned STU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Procurers;

12.3.2. Force Majeure exclusions

- (i) Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
 - a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Project;
 - b) Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 12.2;
 - c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
 - d) Strikes or labour disturbance at the facilities of the Affected Party;
 - e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
 - f) Non-performance caused by, or connected with, the Affected Party's:
 - a. Negligent or intentional acts, errors or omissions;
 - b. Failure to comply with an Indian Law; or
 - c. Breach of, or default under this Agreement.

12.3.3. Notification of Force Majeure event

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

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the

other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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

12.3.4. Duty to Perform and Duty to Mitigate

- (i) To the extent not prevented by a Force Majeure event pursuant to Article 12.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure event as soon as practicable.

12.3.5. Available Relief for a Force Majeure event

- (i) Subject to this Article 12
 - a) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event;
 - b) Every Party shall be entitled to claim relief in relation to a Force Majeure event in regard to its obligations as specified under Article 5.7;
 - c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure event in respect of such Party.
 - d) Provided that no payments shall be made by either Party affected by a Force Majeure event for the period of such event on account of its inability to perform its obligations due to such Force Majeure event.
 - e) Provided that for any other relief, either Party affected by a Force Majeure event shall be required to approach the UPERC, within 15 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure, for seeking relief for such event and the decision of the UPERC shall be final and governing on both the Parties.

13. CHANGE IN LAW

13.1. Definitions

In this Article 13, the following terms shall have the following meanings:

- 13.1.1. "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:
- (i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
 - (ii) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
 - (iii) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
 - (iv) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
 - (v) any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) any change on account of regulatory measures by UPERC.

13.2. Relief for Change in Law

13.2.1. The aggrieved Party shall be required to approach the UPERC for seeking approval of Change in Law.

13.2.2. The decision of the UPERC to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

13.3. Notification of Change in Law

13.3.1. If the Seller is affected by a Change in Law in accordance with Article 13.1 and the Seller wishes to claim relief for such a Change in Law under this Article 13, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2. Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to the Procurers under this Article 13.3.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material.

13.3.3. Provided that in case the Seller has not provided such notice, the Procurers shall have the right to issue such notice to the Seller.

14. EVENTS OF DEFAULT AND TERMINATION

14.1. Seller event of Default

14.1.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure event or a breach by Procurer(s) of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

- (i) the failure to commence supply of power to Procurers up to the Contracted Capacity, relevant to the Revised Scheduled Delivery Date or the Scheduled Delivery Date, as the case may be, or
- (ii) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurers under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurers on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurers under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or
- (iii) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation and submission of the Contract Performance Guarantee;
Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days, or
- (iv) if
 - a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Generating Plant in contravention of the provisions of this Agreement; or
 - b) the Seller transfers or novates any of its rights and/ or obligations under this Agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - i. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - ii. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (v) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings

remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to meet the Qualification Requirements in terms of the RFP till six (6) months after commencement of supply of power by the Seller, and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

- (vi) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Procurers in this regard; or
- (vii) except where due to any Procurers' failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurers and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by any of the Procurer on behalf of the Procurers.
- (viii) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- (ix) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or
- (x) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

14.2. Procurer Event of Default

14.2.1. The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer:

- (i) a defaulting Procurer fails to meet any of its obligations, as specified in Article 5.3; or
- (ii) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of one hundred eighty (180) days after the Due Date; or
- (iii) the defaulting Procurer(s) repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is/are in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the

Procurers and the Seller are Parties, and such material breach is not rectified by Procurers within thirty (30) days of receipt of notice in this regard from the Seller to Procurers; or

- (v) any representation and warranties made by the Procurers in Schedule 7 of this Agreement, being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurers in writing of at least thirty (30) days; or
- (vi) if
 - a) Procurer(s) becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - b) any winding up or bankruptcy or insolvency order is passed against Procurers, or
 - c) Procurer(s) goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurers or such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurers or such Procurer and expressly assumes all obligations of Procurers or such Procurer under this Agreement and is in a position to perform them; or,

- (vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of Procurers.

14.3. Procedure for cases of Seller Event of Default

- (i) Upon the occurrence and continuation of any Seller Event of Default under Article 14.1, Procurer(s) shall have the right to deliver to the Seller a notice stating its intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- (ii) Following the issue of Procurer Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- (iii) During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- (iv) Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurers may terminate this

Agreement by giving a written Termination Notice of thirty (30) days to the Seller.

14.4. Termination for Procurer Event of Default

- (i) Upon the occurrence and continuation of any Procurer Event of Default specified in Article 14.2.1, the Seller shall have the right to deliver to the Procurers, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- (ii) Following the issue of a Seller Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- (iii) During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- (iv) After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity to any third party of the Seller's choice.

Provided that such Procurer shall have the liability to make payments for Capacity Charges based on Normative PLF up to 50% to the Seller for the period up to the Expiry Date, subject to maximum of three (3) years from the eighth day after the expiry of the Consultation Period.

Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurers.

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer(s). Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate but only with respect to such Procurer and thereafter, such Procurer shall have no further Capacity Charge liability towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to such Procurer(s) even before the expiry of such period provided on such termination, the future Capacity Charge liability of such Procurer(s) shall cease immediately.

14.5. Termination due to Force Majeure

If the Force Majeure event or its effects continue to be present beyond the period as specified in Article 5.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 4.7.

15. LIABILITY AND INDEMNIFICATION

15.1. Indemnity

15.1.1. The Seller shall indemnify, defend and hold Procurers harmless against:

- (i) any and all third party claims, actions, suits or proceedings against the Procurers for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents; and
- (ii) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurers from third party claims arising by reason of:
 - a) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 15 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents, or
 - b) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

15.1.2. Procurers shall indemnify, defend and hold the Seller harmless against:

- (i) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurers of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- (ii) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest (‘Indemnifiable Losses’) actually suffered or incurred by the Seller from third party claims arising by reason of
 - a) a breach by Procurers of any of its obligations under this Agreement (Provided that this Article 15 shall not apply to such breaches by

Procurers, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents, or

- b) any of the representations or warranties of the Procurers under this Agreement being found to be inaccurate or untrue.

15.2. Procedure for claiming Indemnity

15.2.1. Third party claims

- (i) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1(i) or 15.1.2(i), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 15.1.1(i) or 15.1.2 (i) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- a) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 15.2.1(ii) below; and
- b) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- (ii) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 15.1.1(i) or 15.1.2(i) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the

defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

15.3. Indemnifiable Losses

15.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 15.1.1(i) or 15.1.2(i), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 15.3, such event shall constitute a payment default under Article 14.

15.4. Limitation on Liability

15.4.1. Except as expressly provided in this Agreement, neither the Seller nor Procurers nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non- performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Procurers , the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

15.4.2. Procurers shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholder of Procurers, or any Affiliate of Procurers or any of its officers, directors or shareholders for such claims excluded under this Article.

15.5. Duty to Mitigate

15.5.1. The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 15.

16. ASSIGNMENTS AND CHARGES

16.1. Assignments

16.1.1. This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurers seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- (i) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and
- (ii) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

16.1.2. Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 13 of this Agreement.

16.2. Permitted Charges

16.2.1. Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

16.2.2. However, the Seller may create any encumbrance over all or part of the receivables or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

- (i) amounts payable under the Financing Agreements; and
- (ii) any other amounts agreed by the Parties,

Provided that:

- (i) the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements and agreed upon in writing to the provisions of Schedule 13 of this Agreement; and
- (ii) any encumbrances granted by the Seller in accordance with this Article 16.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurers to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the

Procurers to claim its right of subrogation. For the purposes of this Article, additional compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurer(s) as well as compensated by any person other than the Procurer(s) for the same event.

16.2.3. Article 16.1.2 does not apply to :

- (i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of supply of power by the Seller;
- (ii) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Seller; or
- (iii) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Seller.

17. GOVERNING LAW AND DISPUTE RESOLUTION

17.1. Governing Law

17.1.1. This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of court in Lucknow.

17.2. Amicable Settlement and Dispute Resolution

17.2.1. Amicable Settlement

- (i) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - a) a description of the Dispute;
 - b) the grounds for such Dispute; and
 - c) all written material in support of its claim.
- (ii) The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 17.2.1(i), furnish:
 - a) counter-claim and defences, if any, regarding the Dispute; and
 - b) all written material in support of its defences and counter-claim.
- (iii) Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 17.2.1(i) if the other Party does not furnish any counter claim or defence under Article 17.2.1(i) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 17.2.1, the Dispute shall be referred for dispute resolution in accordance with Article 17.2.2.

17.2.2. Dispute Resolution

- (i) Dispute Resolution by UPERC
 - a) Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to UPERC,

such Dispute shall be submitted to adjudication by UPERC. Appeal against the decisions of the UPERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- b) The obligations of the Procurers under this Agreement towards The Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

(ii) Dispute Resolution through Arbitration

- a) If the Dispute arises out of or in connection with any claims not covered in Article 17.2.2(i)a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 17.2.1 (iii) hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.
 - i. The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
 - ii. The place of arbitration shall be Lucknow. The language of the arbitration shall be English.
 - iii. The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
 - iv. The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

17.3. Parties to Perform Obligations

- 17.3.1. Notwithstanding the existence of any Dispute and difference referred to the UPERC or the Arbitration Tribunal as provided in Article 17.2.2 and save as UPERC or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

18. MISCELLANEOUS PROVISIONS

18.1. Lead Procurer

- 18.1.1. The Procurers hereby appoint and authorize UPPCL [hereinafter referred to as the “Lead Procurer”] to represent all the Procurers for discharging the rights and obligations of the Procurers under this Agreement, which are required to be undertaken by all the Procurers. All the Procurers shall follow and be bound by the decisions of the Lead Procurer. Accordingly each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on matters specified under this Agreement to be dealt with by the Lead Procurer shall be deemed to have been on its/his behalf and shall be binding on each of the Procurer. The Seller shall be entitled to rely upon any such action, decision or communication or notice from the Lead Procurer. It is clarified that provisions under this Article 18.1 are not intended to and shall not render the Lead Procurer liable to discharge Tariff Payments due to Seller from the other Procurers.
- 18.1.2. On the occurrence of any Event of Default specified in Article 14.2 by the Lead Procurer, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Seller’s Preliminary Default Notice referred to in Article 14.4(i) and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the UPPCL shall be the new Lead Procurer, as per the provisions of this Article 18.1. In such a case, if the Seller so notifies, the new Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under Article 18.1.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the UPPCL appointed under Article 18.1.1, in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.
- 18.1.3. Notwithstanding anything contained above, any decision which is required to be taken by the Procurers jointly under the provisions of this Agreement, shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers, as defined in Article 18.1.4 below.
- 18.1.4. Any decision taken by Procurers, who taken together constitute sixty five percent (65%) of the Contracted Capacity and constitute in number at least fifty percent (50%) of the total number of Procurers (hereinafter referred to as “Majority Procurers”), shall be binding on the Lead Procurer and all other Procurers. Majority Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice. All decisions taken by the Majority Procurers in this Agreement shall be conveyed by the Lead Procurer.

18.2. Minimum Equity holding/ Equity Lock-In

18.2.1. The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder.

18.2.2. The aggregate equity share holding of the Successful Bidder in the issued and paid up equity share capital of the Seller shall not be less than the following:

- a) Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and
- b) Twenty-six (26%) for a period of three (3) years thereafter.

18.2.3. All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the other remaining investors hold the minimum equity specified in Article 18.2.2.

18.2.4. In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

18.2.5. All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurers.

18.2.6. For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%), (i.e., $30\% * 50\%$)

18.2.7. The provisions as contained in this Article 18.2 shall override the terms of the consortium agreement submitted as part of the Bid.

18.3. Amendment

18.3.1. This Agreement may only be amended or supplemented by a written agreement between the Parties.

18.4. Communication

18.4.1. In order to have effective co-ordination between DISCOM and the Generating Plant, a designated official shall be kept on duty round the clock by the Generating Plant and DISCOM in their respective premises, with information to each other about the name, location, telephone number etc., of the official. Without prejudice to discharge of their rightful duties by others, this duty official shall take necessary action on receiving information about developments from the other Party. The Generating Plant shall provide reliable and effective communication through wireless/hotline etc., between the Generating Plant & the interconnecting sub-station of STU and between the Generating Plant and the SLDC. The Generating Plant shall make provision for a Remote Terminal Unit (RTU) for remote monitoring of voltage, current and other related electrical parameters, as may be required by the STU.

18.5. Third Party Beneficiaries

18.5.1. This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

18.6. Waiver

18.6.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party.

18.6.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

18.7. Authority to Execute

18.7.1. Each respective party represents and warrants as follows:

- (i) Each party has all necessary rights, powers and authority to execute, deliver and perform this Agreement.
- (ii) The execution, delivery and performance of this Agreement by each respective party shall not result in a violation of any law or result in a breach of any government authority, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which either respective party is a party or by which it is bound.
- (iii) No consent of any person or entity not a party to this Agreement, including any governmental authority, is required for such execution, delivery and performance by each respective party. All necessary consents have been either obtained or shall be obtained in the future as and when they become due.

18.8. No Party Deemed Drafter

18.8.1. The parties agree that no Party shall be deemed to be the drafter of this Agreement and that in the event this Agreement is ever construed by Arbitrators, or by a court of law, no inference shall be drawn against either Party on account of this Agreement or any provision hereof being drafted by them. Procurer and the Seller acknowledge that both Parties have contributed substantially and materially to the preparation of this Agreement.

18.9. Entirety

18.9.1. This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

18.9.2. Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurers by the Seller shall stand superseded and abrogated.

18.10. Confidentiality

18.10.1. The Parties undertake to hold in confidence this Agreement and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- (i) to their professional advisors;
- (ii) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (iii) disclosures required under Law.

without the prior written consent of the other Parties.

18.10.2. Notwithstanding the provisions under Article 18.10.1, the Seller agrees and acknowledges that the Procurers may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law.

18.11. Affirmation

18.11.1. The Seller and Procurers, both affirm that:

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurers hereby undertake not to engage in any similar acts during the Term of Agreement.

18.12. Severability

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

18.13. Relationship of the Parties

18.13.1. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship 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.

18.14. Counterparts

18.14.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

18.15. Notices

18.15.1. All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

18.15.2. If to the Procurers, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address: Chief Engineer (PPA-II),
Uttar Pradesh Power Corporation Ltd.,
14th Floor, Shakti Bhawan (Extn.),
14 – Ashok Marg, Lucknow – 226 001

18.15.3. If to the Seller, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address:

18.15.4. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

18.15.5. Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

18.16. Language

18.16.1. All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

18.16.2. If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

18.17. Breach of Obligations

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

18.18. Nomination Restriction

18.18.1. Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurers to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurers in question.

18.19. Commercial Acts

18.19.1. The Procurers and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

18.20. Restriction of Shareholders / Owners' Liability

18.20.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Companies Act, 2013.

18.21. Taxes and Duties

18.21.1. The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Seller, contractors or their employees, that are required to be paid by the Seller as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

18.21.2. Procurers shall be indemnified and held harmless by the Seller against any claims that may be made against Procurers in relation to the matters set out in Article 18.21.1.

18.21.3. Procurers shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurers on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurers for such work, which consent shall not be unreasonably withheld.

18.22. No Consequential or Indirect Losses

18.22.1. The liability of the Procurers and The Seller shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Seller or the Procurers claim from one another any indirect or consequential losses or damages.

18.23. Discretion

18.23.1. Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

18.24. Order of priority in application

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- 18.24.1. applicable Law, rules and regulations framed thereunder,
- 18.24.2. this Agreement

18.25. Independent Entity

18.25.1. The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

18.25.2. Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, of the Seller and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Seller.

18.26. Fraudulent and Corrupt Practices

18.26.1. The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive

practice in the Bid process. In such an event, the Procurers shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurers hereunder or subsistence otherwise.

18.26.2. Without prejudice to the rights of the Procurers under Article 18.26.1 hereinabove and the rights and remedies which the Procurers may have under this Agreement, if a Seller is found by the Procurers to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurers shall forfeit the Contract Performance Guarantee.

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

18.26.4. For the purposes of this Article 18.26, the following terms shall have the meaning hereinafter respectively assigned to them:

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

(b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

(d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Procurers with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

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

18.27. Compliance with Law

18.27.1. Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

Seller:

UPPCL:

.....

.....

Signature:

Signature:

Name: _

Name:

Designation:

Designation:

Seal:

Seal:

Witness:

Witness:

1. Name: _____

1. Name: _____

Designation: _____

Designation: _____

Signature:

Signature:

2. Name: _____

2. Name: _____

Designation: _____

Designation: _____

Signature:

Signature:

Schedule 1- Particulars of the Project

1. The Generating Plant:

a. Name:	
b. Location:	
c. Chief executive:	
d. Contact person:	
e. Mailing address:	
f. Telephone number:	
g. Fax number:	
h. Emergency telephone number:	

2. Generating Equipment:

a. Boilers:	
b. Turbo-generator sets:	
c. Generation voltage:	
d. Speed:	
e. Type of governor:	
f. Transformer:	

Transmission Line:

First Synchronization date:

Commercial operation date:

Sr.No.	Item	Description
1	Project Capacity	----- MW
2	Units to be generated per annum (kWh) at projected PLF	-
3	Auxiliary Consumption (kWh)	-
4	Reactive Power requirement	-
5	Scheduled Month /Year of Commissioning	
6	Plant Load Factor (PLF- %)	-----%
7	Type Test Certificate	-
	Any Other Documents	-

Seal of Company

Name of Seller:

Date:

Signature:

Schedule 2- Location of Plant

To be filled & duly signed by Seller

Sr. No.	Particulars	Details to be filled up by the Seller
1.	Land details	
2.	Total area of the land in possession	
3.	Name of (a) village (b) Tehsil (c) District Location/Installation	Village- Tehsil- District- State- U.P.
4.	Power Evacuation system used for transmitting the power generated from the plant to the Delivery Point	

Interconnection facilities provided by the Generating Plant

	Items provided	Not provided
Line Bay/s		
a) Structures		
b) Bus Bars, Clamps And Connectors		
c) Grounding Grid		
d) Isolators		
e) Current Transformers		
f) Circuit Breakers		
g) Control Cubicles		
h) Control Cabling		
i) AC / DC Power Supply		
j) Communication Equipment		
k) Synchronisation & Protection Facilities		
l) Automatic Voltage Regulator		
m) Auto Synchronisation Unit		
n) Check Synchronisation Relay		
<u>Protection For Internal Faults:</u>		

	Items provided	Not provided
a) Differential Generator		
b) Differential Unit Transformer		
c) Restricted Earth Fault		
d) Stator Earth Fault		
e) Rotor Earth Fault		
f) Inter- Turn Fault		
g) Over Voltage		
h) Loss of Excitation		
i) Under Voltage		
j) Reverse Power		
k) Low Forward Power Relay		
Protection Against Grid Faults:		
a) Minimum Impedance (Distance Protection Relay)		
b) Unbalance (Negative Phase Sequence)		
c) O/C & E/F (Unit Transformer)-LT & HT		
<u>Items</u>	Items Provided	Not Provided
a) Overload Alarm		
b) Over Fluxing Relay		
Protection Against Grid Disturbances:		
a) Under Frequency		
b) Over Frequency		
c) Pole Slip		

Seal of Company

Date:

Name of Seller:

Signature:

Schedule 3- Plant Layout

Attach Appropriate Drawings/Documents

Schedule 4- Format for Monthly Power Bill

Sample Monthly Bill

Invoice

Date :	
For the Month of:	
Monthly Purchase Bill No.	
Name of Buyer: DISCOM	Name of the Generating Plant:
Address:	Address:
Town:	Town:
District:	District:
PIN Code:	PIN Code:
Tel. No.:	Tel. No.:
Fax:	Fax:

Description	Quantity	Unit Price	Amount
1.Energy Supplied (kWh)			
2.Energy For Wheeling (kWh)			
3.Energy For Payment (kWh) (1-2)			

Banked Energy:

1. Energy banked during the month	
2. Energy balance as on preceding month	
3. Energy scheduled for withdrawal during the month	
4. Banking charges	
5. Energy withdrawn during the month (3-4)	
6. Energy banked at the end of the month (1+2-3)	

Other Charges:

Less/Add:	
Subtotal:	
Total Due :	

Verified by:

For Generating Plant Ltd.

For DISCOM

Authorised Signatory

Authorised Signatory

Schedule 5- Bill Meter Readings Of Generating Plant

Reading should be taken on 1st working day of every month, at 12.00 noon.

Name of the generating plant:	
Place:	
Taluka:	
District:	
State:	
C.T. Ratio available/connected:	
P.T. Ratio available/connected:	
Scale factor (if any):	
Multiplying factor (mf):	
Billing meter make / number:	

Meter Readings:

<u>kWh</u>	Export Meter Reading	Import Meter Reading
Previous Reading		
Current Reading		
Difference		
Difference X Multiplying Factor		

Authorised Signatory

Authorised Signatory

Authorised Signatory

Executive Engineer
Transmission

Executive Engineer Discom

Auth. Representative
Generating Plant

Date:

Notes:

- 1.DISCOM / STU shall maintain a daily logbook to record hourly readings of the Bill Meter/ HT Meter.
- 2.The Generating Plant shall maintain a daily log to record the hourly generation and supply in kWh, along with the schedule given by DISCOM's Despatcher.
- 3.If the meter is changed, the reason/s, date, time of meter change and new meter make and number must be recorded by both parties.

**Schedule 6- Check Meter Readings of
Generating Plant**

Reading should be taken on 1st working day of every month, at 12.00 noon.

Name of the generating plant:	
Place:	
Taluka:	
District:	
State:	
C.T. ratio available/connected:	
P.T. ratio available/connected:	
Scale factor (if any):	
Multiplying factor (mf):	
Check meter make / number:	

Meter readings:

kWh	Export meter reading	Import meter reading
Previous reading		
Current reading		
Difference		
Difference x multiplying factor		

Authorised Signatory

Authorised Signatory

Authorised Signatory

Executive Engineer
Transmission

Executive Engineer
Discom

Auth. Representative
Generating Plant

Date:

Notes:

1. DISCOM /STU shall maintain a daily logbook to record hourly readings of the Check Meter/ HT Meter.
2. The Generating Plant shall maintain a daily log to record the hourly generation and supply in KWh, along with the schedule given by DISCOM's Despatcher.
3. If the meter is changed, the reason/s, date, time of meter change and new meter make and number must be recorded by both parties.

Schedule 7: Representation and Warranties

7.1 Representations and Warranties by the Procurer

Each Procurer hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

7.1.1

- i) The Procurers have all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Procurers in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurers will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurers is a party or to which the Procurers is bound, which violation, default or power has not been waived;
- iv) The Procurers are not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurers;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurers at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

7.1.2 Each Procurer makes all the representations and warranties above to be valid as on the date of this Agreement.

7.2 Representations and Warranties of the Seller

7.2.1 The Seller hereby represents and warrants to and agrees with the Procurers as follows and acknowledges and confirms that the Procurers are relying on such representations and warranties in connection with the transactions described in this Agreement:

- i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Seller in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of, nor constitute a default under,

nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;

- iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

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

7.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 14 of this Agreement and the Procurers shall have the right to terminate this Agreement in accordance with Article 14 of this Agreement.

Schedule 8- Monthly Tripping Report

Name and Address of the Generating Plant :
 Installed generation Capacity (MW) :
 Date of First Commissioning (Synchronising) :
 Date of Commercial Operation :
 Date of Synchronising :
 Progressive Days (generation): In Days :

TRIPPING ON FAULT:

	Tripping			Tripping Reasons				Synchronization		Total Time Lost		Remark
S. N	Date	Time		Relay Operated	Mec	Elec	Others	Date	Time	Hr	Min	
		Hr	Min						Hr	Min		

To:

1. Concerned SLDC, DISCOM
2. Authorised Person/ Executive Engineer, STU
3. Authorized Representative of the Generating Plant

Schedule 9- Planned & Forced Outage

	Outage			Outage Reasons				Synchronisation		Time lost		Remark	
S.N	Date	Time		No Fuel	Mech	Elec	Other	Date	Time		Hr	Min	
		Hr	Min						Hr	Min			

Progressive Days :

Time Lost (In Hours) :

•During Month& Year :

•Since First Commissioning :

To:

1. Concerned SLDC, DISCOM
2. Authorised Person/ Executive Engineer, STU
3. Authorized Representative of the Generating Plant

Schedule 10- Selected Bid

**In case of additional capacity commissioned under supplementary PPA using existing transmission infrastructure, the applicable tariff given shall be reduced by 20 Paise/kWh.*

Schedule 11- Approvals

1. Consent from the STU for evacuation of the power generated by the---- MW Bagasse based Power Project.
2. Approval of the Electrical Inspectorate, for commissioning of the transmission line and the-----MW Bagasse based Power Project.
3. Certificate of Commissioning of Bagasse based Power Project issued by Concerned SLDC.
4. Permission from all other statutory and non-statutory bodies required for the Project, as applicable.

Schedule 12- Names and details of the Procurer

Sl. No.	Name of the Procurer	Address of the Registered Office of Procurer	Law under which incorporated	Contracted Capacity (MW)
	Paschimanchal Vidyut Vitran Nigam Ltd.	Urja Bhawan, Victoria Park, MD Camp Office. Meerut 250001. Phone : +91-0121-2665734. Fax : +91-121-2666062	Companies Act, 1956	
	Purvanchal Vidyut Vitran Nigam Ltd.	DLW Bhikharipur, Varanasi - 221004. Phone: (0542) 2318348, Fax: (0542) 2319439	Companies Act, 1956	
	Madhyanchal Vidyut Vitran Nigam Ltd.	4A Gokhale Marg, Lucknow. Phone: +91-522-2204044/ 2208737, Fax: +91-522-2208769	Companies Act, 1956	
	Dakshinanchal Vidyut Vitran Nigam Ltd.	Urja Bhawan, NH - 2 (Agra – Delhi Bypass Road), Sikandra, Agra - 282002. Phone & Fax : 0562- 2605465	Companies Act, 1956	
	Kanpur Electricity Supply Company Ltd.	Kesa House, 14/71 Civil Lines, Kanpur Ph : 0512-2540505	Companies Act, 1956	
Total				

Schedule 13- Substitution Rights Of The Lenders

13.1. Substitution of the Seller

13.1.1. Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

13.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurers and the Seller in favour of the Selectee, the Procurers and the Seller shall cooperate with the Lenders to carry out such substitution.

13.2. Procurers Notice of Default

13.2.1 The Procurers, who serve(s) the Preliminary Default Notice on the Seller as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

13.3. Substitution Notice

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

13.4. Interim operation of Power Station

13.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 13 of this Agreement.

13.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurers to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurers. If the Procurers, at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurers shall be compensated for rendering such services in accordance with Clause 13.9.4 of this Schedule.

13.4.3 If the Procurers refuse to takeover the Power Station on request by the Lenders in accordance with Clause 13.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

13. 4.4 The Lenders and the Procurers shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

13.5. Process of Substitution of Seller

13.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurers and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Lead Procurer, such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurers, in accordance with these terms of substitution.

13. 5.2 The Lenders and the Seller shall ensure that, upon the Lead Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurers in favour of the Selectee as mentioned in Clause 13.1.2 of this Schedule.

13.6. Modality for Substitution

Criteria for selection of the Selectee

13.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

(a) if the Seller is proposed to be substituted prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.

(b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurers under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and any of the Procurers, involving sums greater than Rupees (Rs) [Insert amount] at any time in the last two (2) years as on the date of the substitution notice to the Seller.

(d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

13.7. Modalities

13.7.1 The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

13.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurers (the "Proposal") pursuant to Clause 13.7.3 below, the name of the Selectee for acceptance, seeking:

- (a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurers and the Seller, to the Selectee (as substitute for the Seller);
- (b) amendment of the PPA and the other RFP Documents executed between the Procurers and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurers and the Seller; and
- (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.

13.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as Procurers may reasonably require. The Procurers may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

13.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurers of the Proposal:

- (a) observe, comply, perform and fulfil the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurers or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and
- (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurers as if such Selectee was the Seller originally named under such Financing Agreements.

13.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 13.7.2, the Procurers may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurers as to acceptance or

rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

13.7.6 The Procurers (insert as applicable) shall convey their approval or disapproval of such Proposal, through the Lead Procurer, if applicable, to the Selectee. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

- (a) the date of receipt of the Proposal by the Procurers; or
- (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the Procurers under Clause 13.7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurers or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 13.6.1.

13.7.7 Upon approval of the Proposal and the Selectee by the Procurers, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

13.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply mutatis mutandis to such fresh Proposal.

The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurers and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurers and upon transfer of ownership and complete possession of the Power Station by the Procurers or the Seller, as the case may be, to the Selectee. The Procurers shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurers shall in no way be responsible to bear the same.

13.7.9 Upon the substitution becoming effective, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurers or any claim of the Procurers against the erstwhile Seller or the Selectee.

13.7.10 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Seller.

13.7.11 The decision of the Lenders and the Procurers in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

13.7.12 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurers shall not be liable for the same.

13.7.13 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

13.8. Seller's Waiver

13.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurers or exercise of their rights under and in accordance with these terms.

13.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 13.7.9, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

13.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurers. The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

13.9. Interim Protection Of Service And Preservation Of Security

Appointment of a Receiver

13.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurers refusing to takeover the Power Station and the Seller failing to operate the Power Station in accordance with Clause 13.4.3 and the Procurers not electing to act as Receiver as per Clause 13.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and

protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

13.9.2 If the assets of the Power Station are, in the opinion of the Procurers, necessary and required for the operation and maintenance of the Power Station, the Procurers shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurers so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.

13.9.3 Upon appointment of the Court appointed Receiver or the Procurers acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurers and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

13.9.4 When acting as a Receiver or operator in accordance with Clauses 13.9 or 13.4.2, Procurers shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurers shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurers.

13.10 Substitution Consideration

13.10.1 The Lenders and Procurers shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurers' respective dues, to the exclusion of the Seller.

13.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

13.11. Change in the Procurers or Lenders

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