

Part I
Preliminary

AGREEMENT FOR PROCUREMENT OF POWER¹

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

BETWEEN

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

AND

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

WHEREAS:

- (A) The Utility had resolved to procure electricity for and on behalf of its four subsidiary electricity distribution companies from a power generating station that would dedicate a contracted capacity of *** MW (at Delivery Point) for production of electricity and supply thereof to the Utility on finance, own and operate (the **"FOO"**) basis, in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.
- (B) The Utility had accordingly invited proposals by its Request for Qualification dated *** (the **"Request for Qualification"** or **"RFQ"**) for short listing of Bidders who offer to supply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia*, the selected bidder.
- (C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No. dated (the **"Request for Proposals"** or **"RFP"**) from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the Bids received, the Utility had accepted the Bid of the selected bidder and issued its Letter of Award No. dated (hereinafter called the **"LOA"**) to the selected bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Power within 30 (thirty) days of the date of issue thereof.
- (E) Omitted
- (F) In pursuance of the LOA, the Parties have agreed to enter into this Agreement for Procurement of Power on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

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

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

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

- v. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- w. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- x. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- y. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- z. time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (za) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Utility shall be provided free of cost and in three copies, and if the Utility is required to return any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4. Priority of agreements, clauses and schedules

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

- a. this Agreement; and
- b. all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

Part II

The Procurement Contract

SCOPE OF THE PROJECT

2.1. Scope of the Project

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

- a. ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement;
- b. supply of electricity to the Utility in accordance with the provisions of this Agreement; and
- c. performance and fulfilment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.

GRANT OF PROCUREMENT CONTRACT

3.1. The Procurement Contract

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein [for producing electricity at the Power Station" if Supplier is NOT a Trading Licensee] for supply thereof to the Utility (the "**Procurement Contract**") for the period **1st Sept 2021 to 31st July 2023** , and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five per cent) of initial contract period or one year whichever is lower.

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

- a) finance, own, operate and maintain the Power Station in accordance with this Agreement" if Supplier in NOT a Trading Licensee, or ensure that the Developer finances, owns, operates and maintains the Power Station in accordance with this Agreement" if Supplier is a Trading Licensee];
- b) [procure if Supplier is NOT a Trading Licensee, or ensure that the Developer procures if Supplier is a Trading Licensee] Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;
- c) to receive Fixed Charge from the Utility in respect of the Availability of Contracted Capacity;
- d) to receive Variable Charge in accordance with the provisions of this Agreement;
- e) perform and fulfil all of the Supplier"s obligations under and in accordance with this Agreement;
- f) Omitted
- g) Omitted
- (h) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement; and
- (i) [neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this

Agreement" if Supplier is NOT a Trading Licensee, or neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or Encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement if Supplier is a Trading Licensee.]

3.2. Omitted

3.3. Substitution of the Utility

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

ARTICLE 4

CONDITIONS PRECEDENT

4.1. Conditions Precedent

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

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

- a. Opened and submitted the Letter of Credit in accordance Payment Security mechanism under this Agreement;
- b. procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3. The Conditions Precedent required to be satisfied by the Supplier within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

- a. provided Performance Security to the Utility;
- b. delivered to the Utility a legal opinion from the legal counsel of the Supplier with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;
- c. deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;
- d. submitted the Capacity Certificate and evidence of the capacity of the Power Station;
- e. Omitted.
- f. procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.

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

4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5. The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2. Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3. Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4. Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been

waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1. Obligations of the Supplier

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Supplier shall, [at its own cost and expense" if Supplier is NOT a Trading Licensee, or insert "through the Developer" if Supplier is a Trading Licensee], procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. [further in case Supplier is a Trading Licensee; The Supplier shall further ensure that the Developer maintains all consents, clearances and permits as required under Applicable Law for the operation and maintenance of Power Station and production of power, in full force and effects during the Term of this Agreement]
- 5.1.2. The Supplier shall comply [and shall cause the Developer to comply if Supplier is a Trading Licensee] with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4. The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof during each year of the Contract Period (the "**Normative Availability**"). Contract Period under this arrangement shall be sub-divided into three parts i.e. (i) Sep-2021 to Mar-2022 (ii) Apr-2022 to Mar-2023 & (iii) Apr-2023 to July-2023. Accordingly, Normative Availability as well as Incentive / Penalty as per the provision of this Agreement shall be worked out for above contract period respectively.

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to []* kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not

Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.1.5. The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of open access shall be mutually decided by the Utility and Supplier;
- b. procure, or cause to be procured, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;
- c. [perform and fulfil its obligations in respect of debt service for the Project" if Supplier is NOT a Trading Licensee, "ensure performance and fulfilment of Developer"s obligation in respect of debt service for the Project" if Supplier is a Trading Licensee];
- d. [make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement if Supplier is NOT a Trading Licensee];
- e. ensure and procure that its [Contractors" if Supplier is NOT a Trading Licensee, or insert "Developer" if Supplier is a Trading Licensee] comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier"s obligations under this Agreement;
- f. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- g. [procure that all equipment and facilities comprising the Power Station are operated and maintained in accordance with Good Industry Practice if Supplier is NOT a Trading Licensee];
- h. support, cooperate with and facilitate the Utility in the implementation of this Agreement;

- i comply with the provisions of Applicable Laws with regard to metering of supply of electricity;
- j comply with the directions of the Commission issued from time to time under the Act;
- k ensure and comply that the Power Station has access to an assured supply of Fuel in order to supply power under this agreement.
- l ensure compliance towards norms for end usage of fuel as per FSA / allocation / Policy / prevailing norms in order to supply power under this Agreement.

5.2. Obligations relating to Project Agreements

It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Supplier from its obligations or liability hereunder.

5.3. Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Utility.

[*In case the Supplier is a Trading Licensee* "The provisions of Clause 5.3 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 5.3 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to (name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid). The Supplier shall ensure the compliance of the provisions mentioned in this Clause 5.3. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Article 19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.3."]

5.4. Obligations relating to operation of the Power Station

- 5.4.1. The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the SLDC may give from time to time in accordance with the provisions of the Act.
- 5.4.2. The Supplier shall [enter if Supplier is NOT a Trading Licensee, or cause the Developer to enter if Supplier is a Trading Licensee] into and comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5. Obligations relating to transmission charges

The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Due Date for and in respect of the Contracted Capacity to be made available at Delivery Point and any differential arising from revision of the regulated tariffs and rates thereafter for Inter-State Transmission Charges determined by National Load Despatch Centre in accordance with Regulation notified by Central Commission and specified by Utility shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. (Rupees) for and in respect of the Contracted Capacity, which charges shall at all times be due and payable by the Supplier. For avoidance of doubt, it is clarified that all intra-state transmission charges of the State where project is located shall be borne by the Supplier throughout the contract period.

5.6. Obligations relating to transmission losses

5.6.1. The Supplier shall be liable for the transmission losses in all inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses notified by the National Load Despatch Centre in accordance with Regulation notified by Central Commission and specified by Utility, as on the Bid Due Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission (for Inter-State Transmission System) shall be borne by the Utility. For avoidance of doubt, it is clarified that all intra-state losses of the State where project is located shall be borne by the Supplier throughout the contract period.

5.6.2. The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as notified by National Load Despatch Centre in accordance with Regulation notified by Central Commission for and in respect of the Bid Due Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. For avoidance of doubt, it is to clarify that the same shall be applicable in accordance with Sr. 30 of Appendix-I of RFP

5.7. Obligations relating to SLDC and RLDC charges

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

5.8. Omitted.

5.9. Obligations relating to taxes

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

5.10. Obligations relating to reporting requirements

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

[The Trading Licensee shall ensure that wherever applicable, the obligations of the Supplier shall be fulfilled through the Developer.]¹⁴

5.11. Obligations relating to Open Access

The Supplier (incl. Trading Licensee, in case of a Trader) shall be responsible for timely making application for Short Term Open Access / Medium Term open Access for & on behalf of the Utility. It is to clarify that all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier (incl. Trader). Further, the obligations towards payment of transmission charges & losses for supply upto Delivery Point shall be on the account of Supplier. In case, Utility pay the transmission charges on behalf of Supplier, the Supplier shall be responsible for reimbursing same to Utility or Utility is authorized to adjust the same from monthly Energy Bills. In case of power flow under Short term open access, transmission charges towards Medium Term Open Access would not be payable to Supplier by Utility.

5.12. Impact of additional expenditure due towards compliance to revised Environmental norms

It is to clarify that any impact on Tariff on account of compliance to revised environmental norms shall be on account of the Supplier / Trader at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions.

¹⁴ Insert if the Supplier is a Trading Licensee

ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1. Obligations of the Utility

6.1.1. The Utility shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2. The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- a. upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non-grant of open access shall be mutually decided by the Utility and Supplier;
- b. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- c. support, cooperate with and facilitate the Supplier in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.

6.1.3. Omitted

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, [it if Supplier is NOT a Trading Licensee, or insert the Developer if Supplier is a Trading Licensee] has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality

which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;
- (l) the selected bidder and [its Associates if Supplier is NOT a Trading Licensee, or the Developer if Supplier is a Trading Licensee] have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Utility to enter into this Agreement with {itself/the Supplier} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) [it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is NOT a Trading Licensee, or the Developer has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is a Trading Licensee]; Bidder / Supplier acknowledges that any implication / consequence / risk arising out of non-availability / shortage of fuel shall be to the account of Bidder / Supplier only
- (o) Omitted.
- (p) [it has a good and valid right to the Station Premises if Supplier is NOT a Trading Licensee, or the Developer has a good and valid right to the Station Premises and the Power Purchase Agreement/any other Agreement executed between the Supplier and the Developer is valid and shall remain valid during the Contract Period" if Supplier is a Trading Licensee];
- (q) no representation or warranty by it contained herein or in any other document furnished by it to the Utility or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (r) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Utility in connection therewith;
- (s) all information provided by the selected bidder in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (t) all undertakings and obligations of the Supplier arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Supplier as if they form part of this Agreement.

Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

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

Disclosure

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

ARTICLE 8
DISCLAIMER

8.1. Disclaimer

- 8.1.1. The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Utility makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Utility in this regard.
- 8.1.2. The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Utility shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Utility to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Utility contained in Clause 8.1.1 and shall not in any manner shift to the Utility any risks assumed by the Supplier pursuant to this Agreement.
- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Utility shall not be liable in any manner for such risks or the consequences thereof.

Part III
Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1. Performance Security

- 9.1.1. The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank (as per the list annexed herewith at _____) for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹⁵ in the form set forth in Schedule-B (the "Performance Security") for a period of 6 (six) months.
- 9.1.2. Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Utility shall release the Bid Security to the Supplier.
- 9.1.3. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 30 (thirty) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2. Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

¹⁵ To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 6 (six) months after the Appointed Date, and shall be released upon the Deemed Performance Security taking effect in accordance with the provisions of Clause 9.4.

9.4. Deemed Performance Security

The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5.

9.5. Appropriation of Deemed Performance Security

Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6. References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Utility, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10

ALLOCATION OF CAPACITY

10.1. Contracted Capacity

Pursuant to the provisions of this Agreement, Supplier shall dedicate a generating capacity of *****MW to the Utility as the capacity contracted hereunder (the "Contracted Capacity")¹⁶ and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.

10.2. Dispatch of unutilised Contracted Capacity

10.2.1. In the event that the Utility does not require the supply of the whole or part of the Contracted Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% (twenty five percent) of the Fixed Charge payable for Availability thereof and the waived Fixed Charge under Clause 10.2.2. Provided, however, that any reduction in supply under Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours.

10.2.2. In the event that any part of the Contracted Capacity, which is not utilised by the Utility or its nominees, and is, therefore, utilised for production of electricity and sale thereof to any Buyer, the Fixed Charge due and payable for and in respect of such Contracted Capacity shall deemed to be waived and accordingly, no Fixed Charge shall be due or payable by the Utility in respect thereof; provided that Utility may, in its sole discretion, agree to pay to the Supplier such proportion of the waived Fixed Charge, and in such manner, as it may determine from time to time. For the avoidance of doubt, the Parties agree that supply of electricity to a nominee of the Utility shall be subject to provisions of adequate payment security either by the nominee or by the Utility.

10.3. Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge. For avoidance of doubt, it is to clarify that, the Utility may deny in its sole discretion to accept supply from such alternative source which is ineligible in accordance with Clause 2.6.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.

10.4. Omitted**10.5. Omitted**

Part IV

Financial Covenants

ARTICLE 11

TARIFF

11.1. Tariff

11.1.1. The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Utility to the Supplier for Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the "**Tariff**").

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

11.2. Base Fixed Charge

The Parties agree that the fixed charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. (Rupees)^{\$} per kWh (the "**Base Fixed Charge**"), which shall remain constant for the entire contract period.

11.3. Omitted

11.4. Computation of Fixed Charge

11.4.1. Omitted

11.4.2. The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) computed with reference to the Contracted Capacity (the "**Capacity Charge**"). Provided, however, that in the event of Despatch of the Power Station beyond such 85% (eighty five per cent), Incentive shall be payable in accordance with the provisions of Clause 11.6.1

11.4.3. Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof, and in the event it supplies electricity to the Utility in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge excluding cost of transmission charge, save and except the payment of Incentive due under the provisions of Clause 11.4.2.

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

- 11.4.4. In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. The Parties further agree that any and all revenues received from Buyers shall be applied first towards reduction of Fixed Charge payable by the Utility hereunder and only the balance remaining shall be appropriated by the Supplier.
- 11.4.5. In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3..

11.5. Declaration of Availability

- 11.5.1. Unless otherwise notified by the [Supplier *if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee*], the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.
- 11.5.2. In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in transmission between the Point of Grid Connection and Delivery Point, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier *if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee*] to the Utility forthwith.
- 11.5.3. In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier *if Supplier is NOT a*

*Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee]*to the Utility forthwith.

11.5.4. The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, [its *if Supplier is NOT a Trading Licensee, or Developer*'s *if Supplier is a Trading Licensee*] maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of [its *if Supplier is NOT a Trading Licensee, or Developer*'s *if Supplier is a Trading Licensee*] maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.

11.5.5. In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Contracted Capacity or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the "**Mis- declaration**") shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Fixed Charge, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.

11.5.6. Notwithstanding the provisions of Clause 11.5.5, any reduction in Availability arising out of de-commissioning due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses 17.5.

11.6. Incentive and Damages

11.6.1. In the event that the Availability in any month exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50% (fifty per cent) of the Fixed Charge for Availability in excess of Normative Availability. Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Power Station. For the avoidance of doubt and by way of illustration, in the event the Availability in any month shall exceed the Normative Availability by 3% (three per cent) of the Contracted Capacity but the Despatch during that month shall exceed 1% (one per cent) of the Contracted Capacity, the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

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

- 11.6.3. The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year (i.e. as per contract period), the cumulative monthly Availability for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

11.7. Variable Charge

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

11.8. Taxes and duties

- 11.8.1. The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties,. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.
- 11.8.2. The Tariff and Incentives payable by the Utility under this Article 11 shall be inclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier.
- 11.8.3. Any payment to be made by the Utility shall be subject to any tax deduction at source, tax collection at source, if required to be made by the Utility as per Applicable Laws.

11.9. Billing and Payment

- 11.9.1. Commencing from the month following the month in which the Appointed Date occurs, the Supplier shall, upon the issuance of Regional Energy Account (REA)/ State Energy Account (SEA) certifying the availability as well as energy scheduled for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit to the Utility, an invoice in the agreed form (the "**Monthly Invoice**") signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Variable Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.
- 11.9.2. The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to

be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5 & in accordance with Clause 12.6; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6; and (l) the net amount payable under the Monthly Invoice.

11.9.3. The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice, through email/ courier/ hand delivery in accordance with Clause 11.9.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**"). It is to clarify that, in case Monthly Invoice is raised through email, it shall be ensured that original invoice is received by the Utility within 3 working days from date of invoice raised. In case of non-receipt of original invoice as per above, the date of receipt of Invoice shall stand revised to the date of receipt of original invoice by Utility.

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

11.10. Disputed Amounts

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

11.10.2. If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 25.4.

11.11. Discount for early payment

The Parties expressly agree that in the event the Utility pays the Energy Bills within 7 (seven) days of the date of submission of the invoice thereof, it shall be entitled to deduct 2% (two per cent) of the amount comprising the Energy Bills by way of discount for early payment. In case the event of due date for payment including for

early payment being a Bank Holiday / strike / GUVNL Holiday, the next working day shall be considered as due date.

ARTICLE 12

Variable CHARGE

12.1. Variable Charge

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

12.2. Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. (Rupees)^{\$} per kWh, [comprising Rs....(Rupees...)²¹ per kWh as the cost of Fuel/generating cost and, Rs....(Rupees....) per kWh as the cost of transmission charges and Rs....(Rupees.) per kWh as the cost of transmission loss]²² (the "**Base Variable Charge**") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period. For the avoidance of doubt, the Parties expressly agree that the Variable Charge shall include the transmission charges and transmission losses as on Bid Due Date upto the Delivery Point.

12.3. Computation of Variable Charge²³

Option k: Lumpsum Tariff³¹

12.3.1 The Supplier represents and warrants that it shall supply electricity to the Utility at the Delivery Point for a lumpsum Tariff that shall comprise: (a) a Base Variable Charge referred to in Clause 12.2, which shall include the entire generating cost of electricity, the transmission charges thereof and the transmission losses, and (b) a Base Fixed Charge which shall be equal to the Base Variable Charge excluding the transmission charges and transmission losses specified in Clause 12.2. For the avoidance of doubt, the Parties agree that the Base Fixed Charge and the Base Variable Charge shall be revised in accordance with the provisions of Clauses 11.3 and 12.3.2 respectively.

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Base Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the latter being 1 (one) year after the first such date, increases by 5% (five per cent), the Variable Charge in the Accounting Year following the first Accounting Year shall be 82 paise (eighty two paise).]

³¹ May be used for procurement any sources of energy including renewable source of energy where deemed feasible. There is no restriction on use of coal from any type of source for participation by Bidder(s). However, the same shall be in accordance with the Terms of FSA, allocation and Govt. Policy / prevailing norms. Any implication / consequence / risk arising out of non-availability / shortage / non-compliance of fuel allocation conditions etc. shall be on the account of Bidder /Supplier only

12.4. Shortage of Fuel

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

12.5. Omitted**12.6. Cost of Transmission Charge:**

As per the Agreement, the Cost of Transmission Charge is a part of Base Variable Charge and is payable to Supplier / Bidder by Utility as per actual despatch of electricity. Cost of Transmission Charge shall be payable upto Normative Availability level i.e. 85% in line with Clause 11.4.3 of this Agreement even in the cases when actual energy scheduled in a month is more than normative availability (85%).

In the case where the availability declared by the Supplier is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of transmission charge for shortfall i.e. difference between Normative Availability & Actual Availability. Whereas, in the case when Utility schedules power less than the availability actually declared by the Supplier during the month, Utility shall be obliged to bear the cost of transmission charge to the extent of difference between lower of Actual or Normative Availability less Energy Scheduled by Utility.

ARTICLE 13

PAYMENT SECURITY

13.1. Omitted

13.1.1. Omitted

13.2. Letter of Credit

13.2.1. The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit (the "**Letter of Credit**"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Average Monthly Payment for previous year in accordance with the provisions of this Agreement.

13.2.2. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.2.3. In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:

- a a copy of the Monthly Invoice which has remained unpaid; and
- b a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

13.2.4. In the event that the amount covered by the Letter of Credit is at any time insufficient for recovery of payment due against the Monthly Invoice, the Utility shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 13.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Monthly Payment, except to give effect to such revision once every year.

13.2.5. The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

13.3. Recovery from sale of Contracted Capacity

13.3.1. In the event the Supplier is unable to recover its Tariff through the Letter of Credit, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell

the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility.

13.3.2. The sale of Contracted Capacity pursuant to Clause 13.3.1 shall not extinguish any liability of the Utility or any claim that the Supplier may have against the Utility, save and except to the extent of amounts recovered under the provisions of Clause 13.3.1.

13.3.3. Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement renews the Letter of Credit.

13.4. Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, shall be appropriated every month from the Letter of Credit submitted by Utility and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that Letter of Credit shall be replenished until its liability for an in respect of the Termination Payment is fully discharged.

ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1. Despatch of Contracted Capacity

- 14.1.1. The Utility shall, in accordance with Applicable Laws, issue instructions to the Supplier for production of electricity and despatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the "**Despatch**"). Provided that the Utility shall not Despatch in excess of the Contracted Capacity, unless mutually agreed between the Parties. For the avoidance of doubt, the Parties agree that the Utility may, in its discretion, direct the Supplier to Despatch on its behalf, all or part of the Contracted Capacity, in favour of the third parties designated by it from time to time on the express understanding that the payment thereof shall be made by the Utility to the Supplier as if the electricity has been Despatched in favour of the Utility.
- 14.1.2. Pursuant to the provisions of Clause 14.1.1, the [Supplier shall if the Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to] plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.
- 14.1.3. In the event the Supplier schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Supplier shall pay Damages equal to the higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoidance of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder.

14.2. Settlement of Deviation Settlement Mechanism (DSM) charges

- 14.2.1. All payments due to or from the Supplier on account of any unscheduled interchange in terms of the UI / DSM Regulations (the "**Unscheduled Interchange**" or "**UI**" / "Deviation Settlement Mechanism" or "DSM") shall be solely to the account of and borne by the Supplier,.
- 14.2.2. Omitted
- 14.2.3. Omitted.

14.3. Overriding powers of the Utility

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

14.3.2. In the event the Supplier does not comply with the directions of the Utility issued in pursuance of Clause 14.3.1, the Utility may issue directions to the RLDC and SLDC to undertake despatch and scheduling in accordance with such instructions as the Utility may issue hereunder from time to time.

14.3.3. The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the RLDC and SLDC, the Supplier shall be deemed to have agreed and undertaken to abide by the provisions of this Clause 14.3 and to have given irrevocable instructions to the RLDC and SLDC to carry out all the directions given by the Utility hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Clause 14.3 shall remain in force and effect until the Termination Payment, if any, has been made by the Supplier to the Utility.

14.3.4. The exercise of any overriding powers by the Utility under this Clause 14.3 shall not in any manner affect or diminish the liability and obligation of the Utility to make payments to the Supplier for the electricity supplied or the Availability of Contracted Capacity and the Utility shall, for this purpose, ensure and procure compliance of the provisions of Article 13. Notwithstanding anything to the contrary contained in this Clause 14.3, the Utility shall not be entitled to issue any directions hereunder nor shall the RLDC and SLDC comply with such directions to the extent and for the period during which Utility is in material breach of the provisions of Article 13 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 13.3 shall apply.

14.4. Ramp up of Despatch

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

ARTICLE 15

INSURANCE

15.1. Insurance during Contract Period

The [Supplier in case Supplier is NOT a Trading Licensee or Supplier shall ensure that Developer shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier [and/or the Developer if Supplier is a Trading Licensee] during the Contract Period.

15.2. Insurance Cover

Without prejudice to the provisions contained in Clause 15.1, the Supplier shall, during the Operations Period, procure and maintain [and cause the Developer to procure and maintain, as the case may be, if Supplier is a Trading Licensee] Insurance Cover including but not limited to the following:

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

15.3. Evidence of Insurance Cover

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

15.4. Remedy for failure to insure

If the Supplier [and/or the Developer if Supplier is a Trading Licensee] shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier [and/or the Developer if Supplier is a Trading Licensee].

15.5. Waiver of subrogation

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

15.6. Supplier's waiver

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

15.7. Application of insurance proceeds

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

ARTICLE 16

ACCOUNTS AND AUDIT

16.1. Audited accounts

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

16.2. Appointment of auditors

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

16.3. Certification of claims by Statutory Auditors

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

16.4. Set-off

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

16.5. Dispute resolution

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

Part V

Force Majeure and Termination

ARTICLE 17
FORCE MAJEURE

17.1. Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Utility(s) or the [Supplier *if Supplier is NOT a Trading Licensee*, or and/or the Developer *if Supplier is a Trading Licensee*] claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

17.2. Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);
- b. strikes or boycotts (other than those involving the Supplier, [Developer, *if Supplier is a Trading Licensee*] Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;
- c. any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor;
- d. Omitted ;
- e. any judgement or order of any court of competent jurisdiction or statutory authority made against the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or Developer *if Supplier is a Trading Licensee*] in any proceedings for reasons other than (i) failure of the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or Developer *if Supplier is a Trading Licensee*] to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any

contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Utility;

- f the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- g any event or circumstances of a nature analogous to any of the foregoing.

17.3. Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operation of the Project to be financially unviable or otherwise not feasible;
- c industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- d any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- e any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor;
- f any Indirect Political Event that causes a Non-Political Event; or
- g any event or circumstances of a nature analogous to any of the foregoing.

17.4. Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a Omitted
- b compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, [Developer *if Supplier is a Trading Licensee*] or of the Contractors;
- c unlawful or unauthorised or without jurisdiction revocation of, or refusal to

renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, [Developer *if Supplier is a Trading Licensee*] or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, [Developer's *if Supplier is a Trading Licensee*] or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- d any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor; or
- e any event or circumstance of a nature analogous to any of the foregoing.

17.5. Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 17 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.6. Effect of Force Majeure Event on the Procurement Contract

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

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

17.7. Allocation of costs arising out of Force Majeure

17.7.1. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Power Station (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be borne by the Supplier.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations.

17.7.2. Notwithstanding anything contained in this Clause 17.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity or part thereof is deemed Available in accordance with the provisions of Clause 5.1.4, the Utility shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Supplier under this Clause 17.7.

17.7.3. Save and except as expressly provided in this Article 17, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8. Termination Notice for Force Majeure Event

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

17.9. Excuse from performance of obligations

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

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

17.10. Omitted

ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT**18.1. Compensation for default by the Supplier**

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

18.2. Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Supplier by way of compensation, all direct costs suffered or incurred by the Supplier as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, and other revenues, debt repayment obligations, or any consequential losses.

18.3. Extension of Contract Period

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

ARTICLE 19
TERMINATION

19.1. Termination for Supplier Default

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

- a. The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- b. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- c. the Supplier has failed to make any payment to the Utility within the period specified in this Agreement;
- d. a breach of: (a) the Fuel Supply Agreement or (b) commitment to arrange fuel for supply of power as per Clause 2.2.1 (d) & Clause 2.12.2 (vi) of RFQ or (c) compliance of fuel allocation conditions or (d) any other Project Agreements by the [Supplier *if Supplier is NOT a Trading Licensee*, or Developer *if Supplier is a Trading Licensee*] has caused a Material Adverse Effect;
- e. the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier or Developer *if Supplier is a Trading Licensee*] creates any Encumbrance in breach of this Agreement;
- f. the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;
- g. [insert this clause if Supplier is a Trading Licensee "the Power Purchase Agreement between the Supplier and the Developer stands expired, cancelled or terminated, for any reason whatsoever;"]
- h. the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 14.1.3;
- i. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

- j. the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4 (four) months within any continuous period of 12 (twelve) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] or (iii) shortage of Fuel occurring for reasons not attributable to the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee];
- k. *Omitted.*
- l. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee], and such transfer causes a Material Adverse Effect;
- m. an execution levied on any of the assets of the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] has caused a Material Adverse Effect;
- n. the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] or for the whole or material part of its assets that has a material bearing on the Project;
- o. the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;
- p. a resolution for winding up of the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] is passed;
- q. any petition for winding up of the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or the Developer if Supplier is a Trading Licensee] is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the [Supplier if Supplier is NOT a Trading Licensee, or Supplier and/or

the Developer, as the case may be *if Supplier is a Trading Licensee*] are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or the Developer, as the case may be *if Supplier is a Trading Licensee*] under this Agreement and the Project Agreements; and provided that:

- i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier and/or the Developer, as the case may be *if Supplier is a Trading Licensee*] as at the Appointed Date;
 - iii. each of the Project Agreements remains in full force and effect; and
 - iv. such amalgamation or reconstruction is approved by the Commission.
- r. any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;
 - s. the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;
 - t. the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
 - u. the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
 - v. the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

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

19.2. Termination for Utility Default

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

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

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

19.3. Termination Payment

19.3.1. Upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [70 (seventy) days]³⁵ as if the Contracted Capacity was Available for such [70 (seventy) days] from the date of Termination.

19.3.2. Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [35 (thirty five) days]³⁶ as if the Contracted Capacity was Available for such [35 (thirty five) days] from the date of Termination.

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

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

19.4. Instructions to RLDC and SLDC

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

19.5. Survival of rights

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

Part VI
Other Provisions

ARTICLE 20

ASSIGNMENT AND CHARGES

20.1. Restrictions on assignment and charges

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

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

20.2. Permitted assignment and charges

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

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

20.3. Assignment by the Utility

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

20.4. Approvals for assignment

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

ARTICLE 21
CHANGE IN LAW

21.1. Adjustment in costs

Change in Law means the occurrence of any of the following events after the last date of the submission of bid resulting into any additional recurring / non recurring expenditure by the Supplier or any income to the Supplier.

i) Any change in transmission charges & losses (as determined by NLDC from time to time) and open access charges

ii) Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable on sale of power by the Bidder(s) / Seller(s).

It is clarified that any income / gain to the Supplier due to reduction in (i) & (ii) above after last date of bid submission, shall be passed on to the Utility whereas any expenditure / loss to the Supplier due to increase in (i) & (ii) above shall be reimbursed to the Supplier.

21.2. Omitted

21.3. Omitted

21.4. Omitted

21.5. No claim in the event of recovery from Buyers

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

ARTICLE 22

LIABILITY AND INDEMNITY**22.1. General indemnity**

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

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

22.2. Indemnity by the Supplier

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

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

22.2.2. Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands,

liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the [Supplier *if Supplier is NOT a Trading Licensee*, or Supplier shall cause the Developer to" *if Supplier is a Trading Licensee*] promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the [Supplier *if Supplier is NOT a Trading Licensee*, or Developer *if Supplier is a Trading Licensee*] is unable to secure such licence within a reasonable time, the [Supplier *if Supplier is NOT a Trading Licensee*, or Developer *if Supplier is a Trading Licensee*] shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3. Notice and contest of claims

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

22.4. Defence of claims

22.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying

Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

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

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

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

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

22.5. No consequential claims

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

ARTICLE 23
DISPUTE RESOLUTION

23.1. Dispute resolution

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

23.2. Omitted

23.3. Omitted

23.4. Adjudication by the Commission

- 23.4.1. Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by Gujarat Electricity Regulatory Commission and the Commission may refer the matter for Arbitration as provided under Sec 86 of the Electricity Act. For disputes beyond the power conferred upon Gujarat Electricity Regulatory Commission, such disputes shall be subject to the jurisdiction of the High Courts of Gujarat.

23.5. Omitted

ARTICLE 24
DISCLOSURE

24.1. Disclosure of Specified Documents

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

24.2. Disclosure of Documents relating to safety

The [Supplier shall *if Supplier is NOT a Trading Licensee, or* Supplier shall cause the Developer to *if Supplier is a Trading Licensee*] make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier's Registered Office and the Power Station. The [Supplier shall *if Supplier is NOT a Trading Licensee, or* Supplier shall cause the Developer to *if Supplier is a Trading Licensee*] make copies of the same available to any person upon payment of copying charges on a „no profit no loss" basis.

24.3. Withholding disclosure of Protected Documents

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

Explanation:

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

ARTICLE 25
MISCELLANEOUS

25.1. Governing law and jurisdiction

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

25.2. Waiver of immunity

Each Party unconditionally and irrevocably:

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

25.3. Interest

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

25.4. Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate for the first month of default, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. The rate of interest for the period of delay for the successive months of default shall increase by 0.5 percent for every month of delay provided

that the such rate shall not be more than 3 percent higher than the (Bank Rate plus 5 percent) at any time.

25.5. Waiver

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

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

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

25.6. Exclusion of implied warranties etc.

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

25.7. Survival

25.7.1. Termination shall:

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

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

25.8. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such

modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.9. Severability

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

25.10. No partnership

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

25.11. Third parties

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

25.12. Successors and assigns

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

25.13. Notices

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

- a. in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from

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

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

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

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

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

25.14. Language

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

25.15. Counterparts

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

ARTICLE 26

DEFINITIONS

26.1 Definitions

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

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

"Act" means the Electricity Act, 2003;

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

"Agreement" or **"Agreement for Procurement of Power"** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

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

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

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

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

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

"Bank Rate" means one year Marginal Cost of Funds Based Lending Rate (MCLR) fixed by State Bank of India (SBI) / any replacement thereof by SBI for the time being in effect applicable for 1 year period, as on 1st April of the respective Financial Year in accordance with the regulations and guidelines of Reserve Bank of India or any replacement of such Bank Rate for the time being in effect ;

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

"Base Year" means the Accounting Year in which the Bid was received;

"Bid" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all pre-qualified bidders;

"Bid Due Date" means the last date on which the Bid is to be submitted in accordance with the provisions of the Request for Proposals;

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

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

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

"Capacity Certificate" means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

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

"Change in Law" shall have the meaning as set forth in Article 21;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline, at any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

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

"Commission" means the Appropriate Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

"Conditions Precedent" shall have the meaning as set forth in Clause 4.1.1;

“Contract Period” means the period starting on and from 1st September 2021 to 31st July 2023 or the date of termination of the Agreement, whichever is earlier;

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

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

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

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

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

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

“Delivery Point” (i) For Projects connected with Gujarat State Transmission Utility (STU) network i.e. GETCO – Delivery Point shall be Interconnection of Generator & Gujarat STU in intra-state Grid where supply is received by Utility (ii) For Projects connected to network other than Gujarat State Transmission Utility i.e. GETCO – Delivery Point shall be Interconnection Point of Central Transmission Utility (CTU) with Gujarat STU network

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

“Developer” shall mean the owner of the Power Station from which the Supplier shall supply the Power to the Utility(s);]

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

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

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

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

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

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Project Cost, and

for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Supplier, and any interest-free funds advanced by any shareholder of the Supplier for meeting such equity component;

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

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

"Fuel" means the [coal/gas]⁴⁰ which is fit for use in generation of electricity at the Power Station;

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

"GOI" means the Government of India;

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

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

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

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

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

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

⁴⁰The words "Fuel" and "coal/gas" may be substituted by "Water" in case electricity is procured from a hydro-electric Power Station.

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

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

"Indirect Political Event" shall have the meaning as set forth in Clause 17.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 15, and includes all insurances required to be taken out by the Supplier under Clause 15.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"LOA" or "Letter of Award" means the letter of award referred to in Recital

(D); **"Letter of Credit"** shall have the meaning as set forth in Clause 13.2.1;

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

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

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

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

"Non-Political Event" shall have the meaning as set forth in Clause 17.2;

"Normative Availability" shall have the meaning as set forth in Clause 5.1.4;

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

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

"Performance Security" shall have the meaning as set forth in Clause 9.1;

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

"Political Event" shall have the meaning as set forth in Clause 17.4;

[Insert this definition in case Supplier is a Trading Licensee:

"Power Purchase Agreement" shall mean the back to back arrangement for supply of electricity between the Supplier and the Developer from the Power Station;]

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

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

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

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

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

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

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

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

"Request for Proposals" or "RFP" shall have the meaning as set forth in Recital (C);

"Request for Qualification" or "RFQ" shall have the meaning as set forth in Recital (B);

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

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

"Scope of the Agreement" shall have the meaning as set forth in Clause 2.1;

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

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

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

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

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

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

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

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

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

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

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

[Insert this definition in case Supplier is a Trading Licensee:

“**Trading Licensee**” shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement / any other agreement / authorization allowing Trading Licensee to submit the bid on behalf of Generator accepting the terms & conditions under Bid Documents executed with the entity with identified generation source from where the power is proposed to be supplied by the Applicant/Bidder.]

“**DSM (UI) Regulations**” means the CERC Deviation Settlement Mechanism Regulations 2014 and any amendment / substitute thereof;

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

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

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

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

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

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE UTILITY by:

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

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

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

In the presence of:

1.

2.

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

Schedules

SCHEDULE – A

*(See Clause 2.1)***SITE OF THE POWER STATION⁴²****1 The Site**

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

2 Power Station

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

⁴² In case of a Trading Licensee being the Supplier, the details of the Power Station of the Developer need to be filled in this Schedule.

Annex – I⁴³
(Schedule-A)

Description of Coal-based Power Station^s

1 The site

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

{Provide a brief description here.}

2 Capacity of the Power Station

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

The configuration of Units is given below:

- (a) The number of Units is
- (b) The nameplate capacity of each Unit is..... MW.

3 Dedicated communication

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

3 Specifications and Standards

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

4 Station Heat Rate

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

5 Ramp Rates

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

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

⁴³ Three formats have been provided for this Annex-I. Depending on project-specific requirements, the appropriate format of Annex-I may be retained and the remaining two formats may be omitted. In case of non-conventional sources of energy, a suitable format may be evolved.

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

7 Description of the Power Station

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

The Power Station is briefly described below:

A. Boiler

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

B. Steam Turbine

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

C. Condenser

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

D. Generator

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

Annex - I
(Schedule-A)

Description of Gas-based Power Station[§]

1 The site

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

{Provide a brief description here.}

2 Capacity of the Power Station

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

The configuration of Units is given below:

- (a) The number of Units is.....
- (b) The nameplate capacity of each Unit is..... MW.

3 Dedicated communication

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

4 Station Heat Rate

The Station Heat Rate of the Power station shall be [] (NCV basis) or such lower figure as may be specified in the Capacity Certificate.

5 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 5% (five per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.

- 6 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of [3 (three) hours].

7 Description of the Power Station

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

Gas based thermal generating stations comprise of Gas turbine/IC Engine as prime mover with the Generator coupled to it. The engine shall be based on four stroke technology with spark ignition, for gas as the main fuel, or dual fuel ignition capabilities, for Liquid/Gas as main fuel or even both.

A. Engine

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

Number of cylinders	
Cylinder bore	mm
Stroke	mm
Speed	Rpm
Mean Piston Speed	m/s
Mean effective Pressure	Bar
Compression ratio	
Number of inlet valves	
Number of outlet valves	
Direction of rotation faced towards	
Flywheel	
Noise level	---dB (A) ---m distance

B. Generator

Number of units	
Capacity	---MVA
Power Factor	---
Cooling	
(a) Rotor	
(b) Stator	---

C. Exhaust gas boilers and STG for plant combined cycle operation*

One exhaust gas boiler shall be considered per Engine set.

Evaporator, economizer, super heater & steam drum sized for heat recovery corresponding to 100% load on Engine load.

Boiler

Type	---
Number of steam generators with auxiliaries	---
Steam capacity (BMCR)	---T/hr
Pressure at SH outlet	---kg/cm ² (abs)
Temperature at SH outlet	--- ⁰ C
Temperature at RH outlet	--- ⁰ C

Steam Turbine

Type	
Number	
TMCR output	---MW
VWO output	---MW
Turbine inlet pressure at TMCR	---kg/cm ²
MS temperature at turbine inlet	--- ⁰ C
RH temperature at turbine inlet	--- ⁰ C
HP/LP by pump	%
Boiler feed pump	
(a) TDBFP Capacity (m ³ /hr)	---
(b) MDBFP Capacity (m ³ /hr)	---

*In case small stream generators, this may be omitted.

Annex - I
(Schedule-A)

Description of Hydro-based Power Station^s

1 The site

The Site of the Hydro-electric Power station shall include the land, building and structures comprising a Dam/Barrage, HRT, Penstocks/Pressure Shaft, Power House (Underground/Surface/Semi surface) & TRT. The Power Station may be based on Storage/Run off River.

2 Capacity of the Hydro Power Station

The Hydro Power Station has a generating capacity ofMW.

The configuration of Units is given below:

- (a) The number of Units is
- (b) The nameplate capacity of each Unit is..... MW.

3 Head

Maximum net head available for power generation is, which is the maximum gross head less all the losses in the water conductor system including penstock.

Minimum net head results from the difference in elevation between the minimum head water level (MDDL) and the maximum tailrace water level (TWLO, minus losses with all turbines operating at full gate opening.

4 Overloading Limits

All Units of Hydro Power Station shall be capable of increasing their output by 10% (ten per cent). The rate of increase or decrease in machine output shall be governed by change in speed/pressure rise in compliance other relevant IS.

5 Ramp Rates

Each Units of the Hydro Power Station shall have the capacity to ramp up from spinning at zero load to reach full capacity within 5 minutes.

6 Description of the Power Station

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

The Power Station is briefly described below:

A. Intake

- (i) Number :

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

- (ii) Invert Level:
- (iii) Design Discharge:
- (iv) Intake Gates (Size) :

B. Head Race Tunnel

- (i) Number:
- (ii) Size:
- (iii) Shape:
- (iv) Length:
- (v) Design Discharge:
- (vi) Velocity

C. Surge Shaft

- (i) Number:
- (ii) Type:
- (vi) Size:
- (vii) Height:
- (viii) Max. Surge Level:
- (ix) Min Surge Level:

D Penstock

- (i) Number:
- (ii) Diameter:
- (iii) Length:
- (iv) Shape:
- (v) Design Discharge:

E. Water Levels

- (i) Full Reservoir Level:
- (ii) Minimum Draw Down Level:
- (iii) Minimum TWL:
- (iv) Maximum TWL:

F. Power House

- (i) Type:
- (ii) Installed Capacity:
- (iii) Number of Units:
- (iv) Power House Cavern Size:
- (v) Type of Turbine:
- (vi) Type & Capacity of Generator:

(vii) Number & Rating of Transformer:

(viii) Overall efficiency:

G. Tail Race Tunnel

(i) Type:

(ii) Size:

(iii) Length:

(iv) Design Discharge:

SCHEDULE -B
(See Clause 9.1.1)

PERFORMANCE SECURITY

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

WHEREAS:

- (A) (the "**Supplier**") and [the.... Distribution Company] represented by and having its principal offices at.... ("**Utility**") have entered into an Agreement for Procurement of Power dated (the "**Agreement**") whereby the Utility has agreed to the [Supplier if supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] undertaking the financing and operation of the Power Station with a generating capacity of MW in the State ofon finance, own and operate (the "**FOO**") basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [Rs..... cr. (Rupees.... crore)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).
- (C) We,.... through our Branch atthe "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

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

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

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of six months from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

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

NOTES:

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

SCHEDULE – C
(See Clause 13.1.1)

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

Annex- I
(Schedule-C)

SCHEDULE – D
(See Clause 13.1.2)

²To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

SCHEDULE -E
(See Clause 13.2.1)

LETTER OF CREDIT

DATE:

TO:Limited (the "**Supplier**")

FROM: (Specify the name and address of the bank issuing the Letter of Credit)^s
(the "**Bank**")

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

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

^{ss} As provided in the Agreement for Procurement of Power, this amount shall be equal to 1 month energy bill payable by the Utility to the Supplier for Normative Availability of the power station. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Average Monthly Payment for previous year

- (i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of Power) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and
 - (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of Power) is in accordance with the Agreement for Procurement of Power and that the amount due has remained unpaid and has not been disputed by the Utility.
- 6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
- 7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.
- 8. The Expiry Date of this Letter of Credit shall be _____
- 9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
- 10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.
- 11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.
- 12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

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

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

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

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

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

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

NOTES:

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

Appendices

APPENDIX-I

LIST OF BID-SPECIFIC CLAUSES^E

A. Provisions with currency-based footnotes

Footnotes with "£" sign

1. Agreement for Procurement of Power: Signature Page
- ..
2. Appendix-I: List of Bid-Specific Clauses.

Note: The above footnotes marked "£" shall be removed prior to execution of the Agreement for Procurement of Power.

Footnotes with "\$" or "\$\$" signs

1. Clause 5.5: Obligation relating to Transmission .
2. Clause 11.2: Base Fixed Charge
3. Clause 12.2: Base Variable Charge.
4. Schedule-A (Annex-I): Site of the Power Station.
5. Schedule -E: Letter of Credit: Form; and Paragraph 1.

Note: Non-numerical footnotes marked "\$" or "\$\$" shall not be deleted. They shall remain in the Agreement for Procurement of Power to be executed between the Parties.

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 25.13 (a) and (b): Notices
3. Schedule-A (Annex-I): Site of the Power Station: Paragraph 1.

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.5: Obligations relating to transmission charges.
3. Clause 11.2: Base Fixed Charge.
4. Clause 12.3: Base Variable Charge.
5. Clause 12.3: Variable Charge.
6. Agreement for Procurement of Power: Signature page.

D. Schedules with blank spaces

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

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

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

APPENDIX-II
LIST OF PROJECT-SPECIFIC CLAUSES⁴⁵

A. Clauses with serially numbered Footnotes (Fn)

1. Heading of the Agreement for Procurement of Power (Fn. 1).
2. Recital A (Fn. 2)
3. Recital E (Fn. 3 and 4)
4. Clause 2.1.(a): (Fn. 5)
5. Clause 3.1.1: The Procurement Contract (Fn. 6 and 7): Also address definition of Contract Period and other timelines.
6. Clause 3.1.2 (Fn. 8 and 9)
7. Clause 4.1.2 (d) (Fn. 10)
8. Clause 4.1.2 (e) (Fn. 11)
9. Clause 4.1.3 (e) (Fn. 12)
10. Clause 5.1.4: Obligation of the Supplier (Fn. 13)*.
11. Clause 5.10 (Fn. 14)
12. Clause 9.1.1: Performance Security (Fn. 15)*.
13. Clause 10.1: Contracted Capacity (Fn. 16)*: Also address Clause 10.4 and the definition of Peak Hours.
14. Clause 10.4: Supply during Peak Hours (Fn. 17)*.
15. Clause 10.5: Supply during Off-Peak Hours (Fn. 18)*
16. Clause 11.2: Based Fixed Charge (Fn. 19)*
17. Clause 11.4.2: Computation of Fixed Charge (Fn. 20)*. Also address clause 11.4.3.
18. Clause 12.2: Base Variable charge (Fn. 21 & 22)*.
19. Clause 12.3: Computation of Variable Charge (Fn. 23 to 32)*.
20. Clause 12.4: Shortage of Fuel (Fn. 33).
21. Clause 14.4: Ramp Up of dispatch (Fn. 34)
22. Clause 18.3 (Fn. 35)
23. Clause 19.3: Termination Payment (Fn. 36 and 37)*
24. Clause 19.6 (Fn. 38)
25. Clause 21.1: Increase in Cost (Fn. 39): Also address Clauses 21.2.
26. Clause 26.1: Definition of Fuel (Fn. 40, 41 and 42)*.
27. Appendix-II: List of Project-Specific Clauses (Fn. 46).

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

B. Clauses with square parenthesis

1. Clause 12.6: Take or Pay supply of Fuel.
2. Clause 17.2 (d): Non-Political Event.
3. Clause 26.1: Definitions of Captive Mine, Fuel Supply Agreement and Project Assets.

⁴⁵ This Appendix-II contains a list of provisions that would need to be suitably modified prior to issue of bid documents for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft MAPP, forming part of the Bid documents

C. Clauses with asterisks

1. Recitals; Recitals 1, A, B and C.

D. Schedules with Footnotes and square parenthesis

1. Schedules A relate to the physical and technical aspects of the Project and contain several Notes, Footnotes and square parenthesis. These Schedules require a comprehensive and integrated scrutiny for Project-specific customisation.
2. Schedule-B: Performance Security: Recitals A and B.

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

Subject: FW: GUVNL Petition No. 1978/2021
Date: Wednesday, 16 June 2021 at 3:27:36 PM India Standard Time
From: S. R. Pandey <membert@gercin.org>
To: D. R. Parmar <drparmar@gercin.org>, M R Jhala <mrjhala@gercin.org>, Sanjay Anada <s.anada@gercin.org>, P.J.Jani <dydirlegal@gercin.org>, Wasim Ansari <wasim@gercin.org>, Varun Gupta <varun@gercin.org>

Attachments: Complaint to Gujarat CM against GUVNL and Adani.docx

For kind perusal and further directives please

*- Hon'ble Member lia (SRP)
 - Hon'ble Member lia (mmg)*

*Varun
 17/06/2021*

From: krishan bajaj <kabajaj2003@yahoo.com>

Date: Tuesday, 15 June 2021 at 10:48 AM

To: "Mehul M. Gandhi" <member@gercin.org>, "S. R. Pandey" <membert@gercin.org>

Subject: GUVNL Petition No. 1978/2021

To, Hon'ble Members
 GERC
 Gandhinagar

Respected Sir,

*AD (Legal) / Ex (Legal)
 Process
 17/06/2021*

Legal
17/6
Inward No - 2524
Date: 16 JUN 2021

This has reference to my trailing mail complaining and bringing to the notice before the Government of Gujarat in respect of illegal actions of GUVNL for initiating bidding process and GUVNL's continuous attempt by exploiting Gujarat Consumers are detailed in the attached letter.

I would like to bring to your kind notice that till date I have not received any reply from Government or GUVNL.

Just now, I got to know from GERC website that Hon,ble Commission has scheduled the hearing in respect of petition filed by GUVNL having case Number – 1978/ 2021 seeking approval of the Commission for the deviations from the Ministry of Power Guidelines having following matter:

In the matter of filing of Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Ministry of Power guidelines dated 30.01.2019 for procurement of electricity for medium term from power stations set up on finance, own & operate basis.

It appears that due to complaints being filed against GUVNL, GUVNL is trying to seek the approval of the Hon,ble Commission so that it can regularize its illegal actions and transfer the responsibility on the Hon,ble Commission.

My complaint and issues are detailed herewith in the attached letter based on limited information made available by GUVNL. GUVNL is making all efforts from circumventing public participation in these important issues and therefore not detailed or taken up in the Tariff petition.

I request the Hon,ble Commission for following immediate action :

- (1) To direct GUVNL to explain as to why the issue of shortfall in power requirement and need for competitive bidding was not taken up in the recent tariff proceedings
- (2) To take on record the issues raised in the attached letter in respect of the petition and issue direction to GUVNL to file reply to the same.
- (3) To request Hon'ble Commission to direct GUVNL to place the petition on the website inviting objections from general public as this additional cost is to be borne by the Consumers of Gujarat.
- (4) To let us know whether the approval for the quantum is sought by GUVNL in the separate petition. If yes, the copy of the petition should be shared in the public domain and invite the objections. If no, how can it pursue for approval of deviations without approval of quantum.

I humbly request the Hon,ble Commission to adjourn the matter till GUVNL replies to my objections on affidavit and also direct to place the present petition on its website so that stakeholders can submit their objections.

Yours faithfully,

K K Bajaj
Energy & Regulatory Expert



K . K . Bajaj
Energy & Regulatory Expert
Contact No : 9374103578 / 9099926592
Email : kabajaj2003@yahoo.com
Email : kkbajaj37@gmail.com

B-62, Goyal Complex
Nr. Sandesh Press
Vastrapur
Ahmedabad – 380 054
Tel : 079 - 26745268

20th May, 2021

To,
Shri Vijaybhai Rupani
Hon'ble Chief Minister of Gujarat
SwarnimSankul – 1,
Sachivalaya, Gandhinagar

Sub : Tendering process initiated by GUVNL in connivance with Adani to favour Adani Power Ltd

Respected Sir,

I would like to bring to your kind notice that recently GUVNL has initiated bidding process on 6th April, 2021 to tie up 1000 MW power under Medium Term Power Purchase scheme from 1st September 2021 to 31st July 2023 by referring the competitive bidding guidelines.

It is very surprising that GUVNL, who always claims Gujarat as power surplus State all these years, has come out with the requirement to tie up power.

Whenever we ask the reasons for lower Plant Load Factor of GSECL plants, GUVNL claims that Gujarat is Power Surplus State having signed **PPAs of more than 23000 MW against the peak demand of 18000 MW** and therefore, majority of GSECL plants remain under shutdown due to high generation cost.

We all are well-aware that Covid situation has deteriorated in the month of March 2021 and further worsened in the month of April, 2021. Accordingly, self-imposed lockdown is being observed by major part of the State.

Labours have gone back to their hometown. Factories are already facing the issue of lower demand for their products, non availability of labour, Commercial offices were operated at 50% and now closed completely.

In this scenario, **surplus power should have increased due to lower demand.** In any case, if there is any shortage for time being, Power Exchange is available to arrange power for few hours or few days. **But, despite surplus situation and availability of sufficient power, GUVNL has come out with the Tender to tie up for 1000 MW power for medium term, which is surprising.** Therefore, I have perused the document to understand the real reason.

The perusal of Bid Document reveals the **real reason** for initiating the bid document. Though, there is no need to tie up additional power, GUVNL has come out with the Tender Document to source power from Adani Power (i.e. Project which is lying idle after cancellation of PPA to supply

265

1000 MWs of power @ Rs. 2.35 per unit) and in turn, GUVNL has inserted the specific condition in the bid documents to favour Adani Power.

Relevant extract is as under (page 13 of Bid Document):

Explanation: It is to clarify that Bidders whose source of Fuel is from Coal Mine/Blocks allocated through auction by Government Instrumentality as per provisions of Applicable Laws or source of Fuel is allocated coal linkage as per SHAKTI Policy shall not be eligible to participate under above bid based on "Lumpsum Tariff".

As per available information in the public domain, **GUVNL has neither sought any approval from CERC nor GERC** for making such deviation from the Standard Bid Documents issued by the Ministry of Power. In turn, the questions which need to be dealt with are :

- **Whether GUVNL and its Officers are above the law of the land?**
- **Whether Central Government Guideline is not binding on GUVNL?**
- **Whether State Government has allowed GUVNL to indulge into illegal activities?**
- **Whether GUVNL has gone ahead without approval from Energy Minister?**

To unravel the nitty-gritty for initiating this Tender by GUVNL, it is important to recall the chronology of events and role played by GUVNL and GOG Officers to favour Adani Power:

(1) GUVNL had signed two PPAs with M/s Adani Power Ltd to supply 1000 MW each for 25 years on 2-2-2007 @ Rs. 2.35 per unit & Rs. 2.87 per unit.

After securing bid at above fixed rate and setting up project at the cost of Lenders (public money), Adani initiated litigations to terminate PPA of 1000 MWs at Rs.2.35 per unit. However, **Adani did not succeed in its attempt due to strong adherence to law by Dr P K Mishra Saheb, then Chairman of GERC.** GERC order against Adani was also upheld by the Appellate Tribunal in 2011. In turn, Adani approached Supreme Court in 2011 and kept the matter pending seeking adjournments.

(2) Subsequently, Adani initiated **fresh litigations before the CERC to bypass GERC.** In turn, Adani succeeded to get orders for compensation under the guise of compensatory tariff mechanism at CERC and APTEL. However, Adani lost the matter at Supreme Court. Thus, there was no respite to Adani Power.

(3) In turn, M/S Adani had pursued GOG to bail out Adani Power through Banks (being the main investor for the project) on the ground of viability issues due to increase in coal prices and **sought support of GOG as there was no option left after rejection of its pleas by Supreme Court.**

In turn, GOG had constituted the High Power Committee and **agreed** to extend support to Adani at the cost of consumers in the larger interest of Banks (being public money involved) and other stakeholders **with an understanding that Adani would not pursue any litigation.** Accordingly, Government had signed Supplementary Agreement to make Adani eligible to claim compensation and pursued CERC for its approval.

(4) However, upon approval of Supplementary PPAs by CERC, **Adani fooled the Government and instead of being grateful** to the Government to bail out from bankruptcy, it pursued the

litigation which was pending before Supreme Court since 2011 (wherein number of adjournments were sought before the various Benches of the Honourable Supreme Court) and pursued before the Vacation Bench on the ground of Urgency and got the favourable order from the Supreme Court Bench lead by Justice Arun Mishra. Here, **it is important to note that so called Expert and Competent Officers of GUVNL including very learned and knowledgeable Energy Minister Shri Saurabh Patel, did not ask or ensure withdrawal of litigations initiated by Adani Power before various Authorities though it was agreed upon as part of comprehensive settlement before signing Supplementary Agreement.**

(5) Now, after termination of agreement of PPA by Adani to supply electricity @ 2.35, GUVNL & Government Senior officials are trying to justify their credentials by pursuing the matter before Supreme Court by way of Curative petition as their connivance with Adani is exposed to the Honourable Prime Minister and you.

Thus, Adani's project of 1000 MW (for which PPA with GUVNL @ 2.35 per unit terminated) is lying idle. **Now, to make that idle Project operational at higher rate and to exploit the Consumers of Gujarat, this new Tender Process is being initiated.**

Further, as detailed hereinabove, the **process initiated by GUVNL is illegal** for following reasons:

(a) **GUVNL is required to seek approval of quantum before initiating any bidding process. However, GUVNL has not sought any such approval of quantum.**

(b) **Competitive Bidding Guidelines issued by Central Government is not followed. Though deviation is made from Bidding document, GUVNL has proceeded without the approval of GERC.**

(c) **Power Procurement Guidelines issued by GERC also requires GUVNL to seek approval of GERC. However, no approval as per GERC Power Purchase Guidelines sought from GERC.**

(d) **The question also arises as to why GUVNL has not sought any such approval in its tariff petition for which tariff order issued on 31st march, 2021. Because of they submit such proposal, people like us would have expose them in the tariff proceedings.**

Thus, GUVNL does not want to recognize not only the Government but also the State Regulator, who is the authority to grant such approval.

In above background, I request you immediately issue necessary directions to protect the interest of consumers of Gujarat:

- (i) **To issue URGENT direction to terminate the bidding process and cancel the illegal Bid Documents issued by GUVNL to support Adani Power**
- (ii) **To initiate inquiry against the officers of GUVNL and role of any Minister for hand in glove with Adani Power in this matter**
- (iii) **To seek explanation from GUVNL for initiating the bidding process without the regulatory approval of bid documents**

If above actions are not taken, the citizens of the State will loose faith from the Government and it will also send a wrong message to the public at large. I request you to initiate penal actions

267

against officers of GUVNL including role of Minister, who are involved in connivance with Adani, to loot the state of Gujarat. I request you to send strong message that no one will be allowed to exploit the consumers by taking law in their hands.

Thanking you.

Yours faithfully,

K.K.Bajaj

Copy to :

1. **Shri Narendra Modi, Prime Minister of India, New Delhi**
2. **Dr P K Mishra, Principal Secretary, Prime Minister Office, New Delhi**
3. **Shri Saurabh Patel, Energy Minister, Government of Gujarat, Gandhinagar**
4. **Additional Chief Secretary, Chief Minister Office, Govt of Gujarat, Gandhinagar**
5. **Additional Chief Secretary, Energy & Petrochemical Dept, Government of Gujarat, Gandhinagar**

**BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION, GANDHINAGAR**

Filing No:

Petition No: 1978 / 2021

IN THE MATTER OF

**MISCELLANEOUS PETITION UNDER SECTION 86 READ WITH
SECTION 63 OF THE ELECTRICITY ACT 2003 FOR APPROVAL OF
DEVIATIONS FROM THE MINISTRY OF POWER GUIDELINES
DATED 30.01.2019 FOR PROCUREMENT OF ELECTRICITY FOR
MEDIUM TERM FROM POWER STATIONS SET UP ON FINANCE,
OWN & OPERATE BASIS**

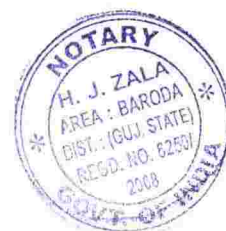
PETITIONER

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara - 390 007

**ADDITIONAL SUBMISSION ON BEHALF OF THE PETITIONER
(GUJARAT URJA VIKAS NIGAM LTD) IN PETITION NO. 1978/2021:**

MOST RESPECTFULLY SHOWETH:

- 1) It is to humbly submit that the Petitioner has filed this Petition before the Hon'ble Commission seeking approval to the deviations carried out by the Petitioner in the Model Bidding Documents notified by Ministry of Power vide Guidelines dated 30.01.2019 and approval of revised Bid Documents (RFQ, RFP & PPA).
- 2) The hearing in the matter was held on 15.06.2021. During the course of hearing, Hon'ble Commission directed the Petitioner to file additional submission clarifying the following aspects:



- i. What is the quantum to be tied up under the proposed Tender by the Petitioner and justification for the same
- ii. What are the deviations and modifications sought by the Petitioner in their Bid Documents vis-à-vis Model Bidding Documents and justification for the same

3) In order to comply with the above directive of Hon'ble Commission, Petitioner is filing this additional submission:

- i. The Petitioner is having gas based capacity of 2645 MW tied up under long term basis. However, presently market prices of gas are in the range of USD 10-11.5/ MMBTU for which the variable cost of tied up gas capacity works out to around Rs. 5.90-6.75/unit. Accordingly, considering the high variable cost, the Petitioner has not tied up gas at present due to which this capacity would not be available for generation.
- ii. It is humbly submitted that with an objective to arrange for replacement to the above unavailable gas based capacity, other coal based capacity under long term tie up and in order to optimize the power purchase cost through procurement from power market, the Petitioner has initiated this Tender process for ensuring availability of firm power under alternate arrangement by tying up of capacity in accordance with the Ministry of Power Guidelines dated 30.01.2019 through tariff based competitive bidding on DEEP Portal of Ministry of Power.
- iii. It is to further humbly submit that in addition to above, Petitioner is also taking steps to take advantage of new facilities / services / products available in power market like Power Exchanges, Short Term through DEEP portal etc. for optimization of power purchase cost as directed by Hon'ble



Commission in the Tariff Order dated 31.03.2021 of subsidiary DISCOMs of the Petitioner.

Therefore as a balancing mechanism, the Petitioner is proposing to invite bids for 1000 MW capacity under the above proposed Tender. It is to submit that the tie up of final quantum under the Tender is contingent to rates discovered under e-auction, market dynamics at the time of evaluation and would be subject to adoption by Hon'ble Commission.

- iv. It is to humbly submit that the Petitioner is inviting this tender for the period of 1.09.2021 to 31.07.2023 i.e 23 months due to following reasons:
 - a. In order to reduce the fixed cost obligation, commencement of supply is envisaged from Sep-2021 till July-2023 considering the monsoon period
 - b. It is to humbly submit that State has been allocated linkage coal under SHAKTI Policy of Ministry of Power wherein it is envisaged that the supply of coal would tentatively commence from 2022-23 as conveyed by M/s Coal India. In order to utilize this coal, the Petitioner would tie up capacity under long term basis for which process for tariff based competitive bidding will be initiated in due course. Accordingly, the contract period is kept till July-2023 i.e. 23 months.
- v. It is to humbly submit that the List of Clause-wise Deviations & Modifications carried out in the Draft Bidding Documents (RFQ, RFP & PPA) along with detailed reasons / justifications for the modifications is attached to the Petition. The detailed reasons / rationale for modifications is attached herewith at Annexure-G.



- 4) It is respectfully submitted that Hon'ble Commission may take on the record the above submission of the petitioner, may allow this Petition, accord approval to the Draft Bidding Documents along with the proposed deviations as well as modifications. Hon'ble Commission may accord approval for inviting bids for tie up of 1000 MW capacity for the period 1.09.2021 to 31.07.2023 in lieu of the non-availability of power from sources under long term tie up including gas based generation, short term arrangement and to optimize the power purchase cost.


 **GUJARAT URJA VIKAS NIGAM LIMITED**

Date: 16.06.2021

Place: Vadodara



BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION, GANDHINAGAR

Filing No:

Case No: 1978 / 2021

IN THE MATTER OF MISCELLANEOUS PETITION UNDER SECTION 86 READ WITH SECTION 63 OF THE ELECTRICITY ACT 2003 FOR APPROVAL OF DEVIATIONS FROM THE MINISTRY OF POWER GUIDELINES DATED 30.01.2019 FOR PROCUREMENT OF ELECTRICITY FOR MEDIUM TERM FROM POWER STATIONS SET UP ON FINANCE, OWN & OPERATE BASIS.

PETITIONER

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara - 390 007 Fax: 0265-2344543

Sr. No. 13964
Date: 16/6/2021

AFFIDAVIT

I, Sanjay Mathur, son of Shri. R. K. Mathur, aged about 45 years resident of Vadodara do hereby solemnly affirm and state as under:

1. I am Chief Finance Manager working in Gujarat Urja Vikas Nigam Limited and am well conversant with the facts of the case and able to swear to the present Affidavit.
2. I, on behalf of the Petitioner, Gujarat Urja Vikas Nigam Limited have gone through the contents of the accompanying Petition and say that the contents stated therein are based on the records of Petitioner maintained in normal course of business.

[Signature]

DEPONENT

VERIFICATION:

I, the Petitioner above named do hereby verify that the contents of my above Affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Identified before me.

Date: 16.06.2021
Place: Vadodara



[Signature]

DEPONENT

My Commission Expires
on 04/07/2023

Solemnly Affirmed/Declared
Sworn Before Me by: *[Signature]*
H. J. ZALA
NOTARY (Govt. of INDIA)



Annexure-G

Deviations & Modifications in RFQ & RFP

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
1.1.1 RFQ & Definition PPA Utility	Definition: Delivery Point means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the	i. For Projects connected with Gujarat State Transmission Utility (STU) network i.e. GETCO – Delivery Point shall be Interconnection of Generator & Gujarat STU in intra-state Grid where supply is received by Utility ii. For Projects connected to network other than Gujarat State Transmission Utility i.e. GETCO – Delivery Point shall be Interconnection Utility (CTU) with Gujarat STU network in intra-state Grid where supply is received by Utility	The clarification has been incorporated for having clarity with regard to evaluation of bids from projects connected at different network and to have landed cost working of all Projects at equal interconnection point for comparison
1.2.13 RFQ	Different option / categories of Tariff based on fuel sources is provided i.e. Option (a) to (k) Depending upon the choice of Fuel source, only the applicable Sub-clause may be retained and the remaining Sub-clauses should be omitted	GUVNL has invited Bids based on Option (k) – Lumpsum Tariff wherein Bidder would be required to quote only Base Variable Charge comprising Cost of Generation, cost towards transmission charges & losses while Base Fixed Charge to be considered would be equal to Base Variable Charge excluding transmission cost quoted.	As bids from multiple operational project is expected based on different fuel source, the option of Lumpsum tariff has been selected as the same allows supply of power irrespective of source of fuel including Renewable / Hydro as source of energy
2.2.1 RFQ	Eligibility of Bidders: For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply (d) the Power Station has access to an assured supply of Fuel	No change: (d) the Power Station has access to an assured supply of Fuel Clarification added with regard to documents to be submitted showing fuel arrangement to the satisfaction of Utility	In the present scenario, various generators / projects are procuring fuel from market including e-auction, SHAKTI Scheme, spot market etc. Accordingly, GUVNL has clarified that for eligibility towards pre-qualification, Bidder shall be required to submit details regarding firm fuel arrangement/ FSA /

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
			LOA / any other document showing fuel arrangement to the satisfaction of Utility towards assured supply of fuel. GUVNL has also clarified in the bid document that any implication/ consequence/risk arising out of non-availability / shortage of fuel shall be on the account of Bidder / Supplier only.
2.2.2 (B) RFQ	Financial Capacity The Bidder shall have a minimum Net Worth (the "Financial Capacity") equivalent to Rs. 1 crore (Rs. one crore) per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year. Bidders shall not be allowed to increase their capacity at e- Reverse Auction Stage or L1 Matching round greater than for which Financial Capacity has been demonstrated. In case the Bidder is a Trading Licensee, the condition under Clause 2.2.2(B) may be either fulfilled jointly or severally by the Trading Licensee and Developer.	The clause has been deleted. No financial capacity has been solicited	In order to encourage participation from various operational projects, the requirement of Financial Capacity has been modified taking into consideration the willingness to participate by various stressed operational projects. The same is in line with the PFC Tender Document under Pilot Scheme II for supply of 2500 MW power on Medium Term Basis through Aggregator. In the aforesaid tender, PFC has also removed the financial capacity criteria to encourage participation from stressed projects.
2.2.3 (ii) RFQ	certificate(s) from statutory auditors of the Bidder specifying the net worth of the Bidder as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this Section A, net worth (the "Net Worth") shall	Clause deleted	The same has been deleted as no financial capacity has been solicited

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
2.6.2 RFQ	mean the net worth as per the Companies Act, 2013. 2.6.2. The Utility reserves the right to reject any Application and/ or Bid if (a) at any time, a material misrepresentation is made or uncovered, or (b) the Bidder does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Application.	New provision added as 2.6.2 (c): c) Utility considers that the implementation of the Award and / or PPA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and / or PPA under this RFP will have any impact of implication on the pending litigation or otherwise disputes with the bidder / supplier	GUVNL at present is having litigations pending with Generator(s) regarding non-fulfilment of contractual obligations which are pending at various forum. Allowing such applicant(s) for participation may compromise/ dilute the stand taken by the GUVNL before regulatory forum and judicial body and may pose consequential implications.
2.12.2	2.12.2. Documents required to be uploaded as per this RFQ shall contain: i..... ii..... ... vi. a copy of Fuel Supply Agreement or equivalent arrangement for the Power Station;	Modification: (vi) a copy of Fuel Supply Agreement or equivalent arrangement for the Power Station <u>to the satisfaction of Utility</u>	The modification made in accordance with clarification added at 2.2.1 (d) of RFQ
2.18.1 RFQ	2.18.1. Prior to evaluation of Applications, the Utility shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive if:(i) it contains a statement on fuel supply arrangement for the Power Station.....	Modification: (i) it contains a statement on fuel supply arrangement for the Power Station <u>or equivalent arrangement to the satisfaction of Utility</u>	The modification made in accordance with clarification added with regard to documents to be uploaded towards fuel arrangement at Clause 2.2.1 (d) of RFQ & Clause 2.12.2 (vi)

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
3.3 RFP	Financial information for purpose of evaluation 3.3.1 The Application must be.... 3.3.2 In case the Annual Reports... 3.3.3 The Bidder must establish the minimum.....	Clause deleted	As no financial capacity has been solicited
Annexure-III RFP	Financial Capacity of the Bidder	Deleted	As the financial capacity condition has been removed
2.19 RFP	Bid Security 2.19.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee or e-bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Utility in the format at Appendix-II (the "Bank Guarantee").....	2.19.1. The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee or e-bank guarantee issued by a banks, as per the list of Banks approved by Govt. of Gujarat vide GR no. EMD/10/2021/7729/DMO dated 12.04.2021 (List attached) in favour of the Utility in the format at Appendix-II (the "Bank Guarantee")	The clarification with regard to list of Bank approved by Govt. of Gujarat for submission of Bank Guarantee has been added.
Appendix I RFP	Letter comprising the Bid: Sr. 30 – A Tariff of Rs.....and paise.....\$ (Rupees....and paise.....) per kWh comprising a Base Variable Charge of Rs....and paise.....\$ (Rupeesand paise) per kWh including (i) Rs....and paise...\$ (Rupees....and paise....) per kWh as the cost of generation (ii) Rs....and paise...\$ (Rupees....and paise....) per kWh as the cost of transmission charge and (iii) Rs....and paise...\$ (Rupees....and	Following clause added at Sr. 30 : The cost of transmission charge (in Rs./unit) for Projects connected to network other than Gujarat STU shall be specified by the Utility before Bid Due Date based on the prevailing NLDC notified charges. Bidders shall be required to quote the same while submitting the bid. Further, transmission loss (in %) shall be specified by Utility based on prevailing NLDC notified losses before Bid Due Date and Bidders shall be required to quote the	The proposed mechanism is explained as under: GUVNL to pre-specify transmission charges in Rs./unit (ISTS network) to be quoted by Bidder while submitting the bid online on DEEP Portal while variation thereafter shall be treated as pass through under Change in Law. As per present CERC POC framework, only one rate is applicable for ISTS Transmission Charges for Gujarat. Accordingly, Transmission

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	paise....) per kWh as the cost of transmission loss and a Base Fixed Charge of Rs.....and paise.....\$ (Rupeesand paise) per kWh which is equal to the cost of generation	cost of transmission loss (in Rs./unit) considering the same. Whereas, cost of transmission charge & transmission loss for Project connected with Gujarat STU shall be considered as NIL.	Charges cannot be changed during reverse auction as it will remain same for all Bidders. GUVNL to pre-specify transmission losses (in %) (ISTS network) to be quoted by Bidder while submitting the bid online on DEEP Portal while variation thereafter shall be treated as a pass through under Change in Law. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre-specified by Utility prior to bid due date. Bidder can change this parameter during reverse auction. Transmission charges & losses for the State wherein Generator / Bidder is located, if any applicable, shall be on the account of Generator / Bidder at all times. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier The above mechanism has been proposed for ensuring uniformity in transmission charges & losses to be quoted by bidder(s) for enabling bid evaluation at comparable level and landed cost working.

PPA:

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
3.2	Extension of Contract Period	Clause deleted	As the contract period is pre-defined, the provision with regard to damages to be paid by the Utility to Supplier in case of non extension of contract after original period has been deleted
	The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice	Modification: The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice	As a part of conditions precedent, Utility (GUVNL) required to (i) Open Letter of Credit & (ii) procure approval of Hon'ble GERC for payment of tariff as per the Agreement. Accordingly, GUVNL has increased the time limit for submission of Notice by Supplier to GUVNL from 15 days to 30 days after signing of PPA to have sufficient time for undertaking process of regulatory approval involving filing of petition along with signed PPA
4.1.2	Conditions Precedent (a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1; (b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2; (c) procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and	The clause has been modified as under: a. Opened and submitted the Letter of Credit in accordance with Payment Security mechanism under this Agreement; b. procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and	GUVNL has proposed to remove Default Escrow Agreement and Deed of Hypothecation as payment security mechanism to Supplier / Bidder and in lieu of the same amount of Letter of Credit to be opened by GUVNL has been increased equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier. The same will avoid multiple payment security mechanism under the arrangement and associated cost thereof taking into consideration that contract period is 23 months.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
5.1.4	The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least [85% (eighty five per cent) thereof during each year of the Contract Period (the "Normative Availability")].	Clarification added that: Contract Period under this arrangement shall be sub-divided into three parts i.e. (i) Sep-2021 to Mar-2022 (ii) Apr-2022 to Mar-2023 & (iii) Apr-2023 to July-2023. Accordingly, Normative Availability as well as Incentive / Penalty as per the provision of this Agreement shall be worked out for above contract period respectively.	The clarification has been incorporated in order to have commercial clarity with regard to availability, fixed charges, incentive, and damages.
5.1.5	Obligation of Supplier: The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement: (a) (b) (i)	New clauses added at (k) & (l) as under: k. ensure and comply that the Power Station has access to an assured supply of Fuel in order to supply power under this agreement. l. ensure compliance towards norms for end usage of fuel as per FSA / allocation / Policy / prevailing norms in order to supply power under this Agreement.	The clauses have been added in order to ensure commitment of Supplier towards arrangement of fuel for supply of power under the Agreement and to ensure compliance towards end usage of fuel as per the fuel allocation conditions.
5.5	Obligation related to transmission Charges	Clarification added that only differential arising from revision of regulated tariffs and rates after Bid Due Date for Inter-State Transmission charges determined by National Load Dispatch Centre in accordance with Regulation notified by Central Commission and specified by Utility shall be payable or recoverable as the case may be. Clarification also added that all intra-state	The clarification has been incorporated in order to have clarity with regard to applicability of National & State level transmission charges and pass through of variation after bid due-date.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		transmission charges, including any changes therein, of the State where project is located shall be borne by the Supplier throughout the contract period	
5.6	Obligation related to transmission losses	Clarification added that only differential arising after bid due date from revision of transmission losses for Inter-State Transmission losses notified by National Load Despatch Centre in accordance with Regulation notified by Central Commission and specified by Utility shall be payable or recoverable as the case may be.	The clarification has been incorporated in order to have clarity with regard to applicability of National & State level transmission losses and pass through of variation after bid due-date
5.9	Obligation related to taxes:	Clarification also added that all intra-state losses, including any changes therein, of the State where project is located shall be borne by the Supplier throughout the contract period	As the tender is invited based on Lumpsum tariff, Bidder is required to factor in all the cost component while submitting the bid and there shall not be separate reimbursement towards taxes, duties etc. unless the same is qualifying under Change in Law (Article 21 of PPA)
	The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.	The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station	

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
5.11	---	Clause 5.11: New provision added The Supplier (incl. Trading Licensee, in case of a Trader) shall be responsible for timely making application for Short Term Open Access / Medium Term open Access for & on behalf of the Utility. It is to clarify that all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier (incl. Trader). Further, the obligations towards payment of transmission charges & losses for supply upto Delivery Point shall be on the account of Supplier. In case, Utility pays the transmission charges on behalf of Supplier, the Supplier shall be responsible for reimbursing same to Utility or Utility is authorized to adjust the same from monthly Energy Bills. In case of power flow under Short term open access, transmission charges towards Medium Term Open Access would not be payable to Supplier by Utility.	The clarification has been incorporated in order to have for incorporating clarity with regard to: -Responsibility of Open Access -obligation to bear cost towards applicable charges (SLDC, RLDC, Open Access etc.) -Reimbursement / adjustment in case transmission charges are paid by Utility on behalf of Supplier to CTU
5.12	---	Clause 5.12: New provision added It is to clarify that any impact on Tariff on account of compliance to revised environmental norms shall be on account of the Supplier / Trader at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions.	To ensure parity inter-se bids submitted by various bidders and avoid unfettered cost implication on GUVNL pursuant to claim towards change in law citing compliance to environment norms.

282
271

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
6.1.3	The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.	Clause deleted	The clause has been deleted as not relevant under present tender
7.1	Representations and warranties of the Supplier [it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is NOT a Trading Licensee, or the Developer has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is a Trading Licensee];	Following clarification added: Bidder / Supplier acknowledges that any implication / consequence / risk arising out of non-availability / shortage of fuel shall be to the account of Bidder / Supplier only	The clarification has been added to highlight the obligation of the Bidder/ Supplier to have assured access of fuel and consequences on account of non-availability or shortage of fuel.
9.2	Appropriation of Performance Security Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent.....	Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Supplier Default or to meet any Condition Precedent.....	The cure period has been reduced from 120 days to 60 days as the Supply commencement is envisaged from month of Sep-2021.
10.3	Substitute Supply: In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance,	Following clarification added: For avoidance of doubt, it is to clarify that, the Utility may deny in its sole discretion to accept supply from such alternative source	The clarification has been added in line with the RFQ Clause 2.6.2 (c) – regarding generation sources ineligible for

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility....	which is ineligible in accordance with Clause 2.6.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.	participation
10.4	Supply during Off-peak hours	Clause(s) deleted	As the same is relevant for the tender wherein procurement of electricity is confined to peak / off-peak hours
10.5	Supply during Peak Hours		
11.2	Base Fixed Charge The Parties agree that the fixed charge payable for Availability shall, in accordance with the offer of the Supplier for the Base Year, be Rs. (Rupees) (the "Base Fixed Charge"), which shall be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year	The Parties agree that the fixed charge payable for Availability shall, in accordance with the offer of the Supplier for the Base Year, be Rs. (Rupees) per kWh (the "Base Fixed Charge"), which shall remain constant for the entire contract period.	Considering the contract tenure of 23 months and supply commencement from Sep-2021, GUVNL in the Bid Documents has clarified that Fixed Charge shall remain constant for the entire contract period.
11.3	Fixed Charge For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken.	Clause deleted	The same is in line with the PFC Tender Document under Pilot Scheme II for supply of 2500 MW power on Medium Term Basis through Aggregator

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
11.4.1	Computation of Fixed Charge Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year	Clause deleted	As the Fixed Charge shall remain constant for the entire contract period
11.4.3	Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% thereof, and in the event it supplies electricity to the Utility in excess of such 85%, such excess supply shall be eligible only for payment of Variable Charge, save and except the payment of Incentive due under the provisions of Clause 11.4.2.	Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% thereof, and in the event it supplies electricity to the Utility in excess of such 85%, such excess supply shall be eligible only for payment of Variable Charge <u>excluding cost of transmission charge</u> , save and except the payment of Incentive due under the provisions of Clause 11.4.2.	As per the Bid Documents, the Availability as well as Incentive / Damages shall be worked out on Monthly Basis and shall be tried up at the end of Accounting Year (in accordance with Clause 11.6.3 of PPA). Thus, the word "for and in respect of any day" has been deleted for clarity. As Supplier / Bidder would be recovering full transmission charge upon declaring normative availability (85%), the transmission charge would not be payable in case of scheduling above 85%
11.4.5	In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majeure shall, for the purpose of payment of	In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majeure shall, for the	As per the GUVNL's Bid Documents, the responsibility as well as risk for assured supply of fuel/arrangement thereof is on the Supplier/Bidder. Thus, the provision with regard to deemed availability to the extent of 30% in the event of non-availability arising as a consequence of Force Majeure event, for payment of fixed

285
-274

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.	purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.	charge to Supplier has been deleted
11.8.1	The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.8.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.	The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws	
11.8.2	The Tariff and Incentives payable by the Utility under this Article 11 shall be exclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars by the Supplier	The Tariff and Incentives payable by the Utility under this Article 11 shall be inclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars by the Supplier.	As per the GUVNL's Draft Bid Documents, bids are invited based on Lumpsum tariff. As per the terms of Bid Documents, Bidder(s) are required to factor in all the applicable taxes, duties etc. while submitting the bid and there shall not be any separate reimbursement towards taxes, duties etc. unless the same is qualifying under Change in Law (Article 21 of PPA)
11.8.3	Any payment to be made by the Utility shall be subject to any tax deduction at source, if required to be made by the Utility as per Applicable Laws.	Any payment to be made by the Utility shall be subject to any tax deduction at source / tax collection at source, if required to be made by the Utility as per Applicable Laws	The clarification is added to ensure compliance with prevailing laws.

286
275

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
11.9.3	The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 11.9.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").	The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice, <u>through email/ courier/ hand delivery</u> in accordance with Clause 11.9.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts"). <u>It is to clarify that, in case Monthly Invoice is raised through email, it shall be ensured that original invoice is received by the Utility within 3 working days from date of invoice raised. In case of non-receipt of original invoice as per above, the date for receipt of invoice shall stand revised to the date of receipt of original invoice by Utility</u>	The proposed modification to Billing mechanism is for providing clarification with regard to raising of invoice and payment due date.
11.11	Discount for early payment	Modification: The Parties expressly agree that in the event the Utility pays the Energy Bills within 7 (seven) days of the date of submission of the invoice thereof, it shall be entitled to deduct 2% (two per cent) of the amount comprising the Energy Bills by way of discount for early payment.	The proposed modification to Billing mechanism is for providing clarification with regard to consideration of due date and eligibility towards discount for early payment as per the Bid Documents. Further, the discount applicable for early payment has been revised in line with present practise of GUVNL.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
12.6	----	In case the event of due date for payment including for early payment being a Bank Holiday / strike/ GUVNL Holiday, the next working day shall be considered as due date New Provision added: As per the Agreement, the Cost of Transmission Charge is a part of Base Variable Charge and is payable to Supplier / Bidder by Utility as per actual despatch of electricity. Cost of Transmission Charge shall be payable upto Normative Availability level i.e. 85% in line with Clause 11.4.3 of this Agreement even in the cases when actual energy scheduled in a month is more than normative availability (85%). In the case where the availability declared by the Supplier is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of transmission charge for shortfall i.e. difference between Normative Availability & Actual Availability. Whereas, in the case when Utility schedules power less than the availability actually declared by the Supplier during the month, Utility shall be obliged to bear the cost of transmission charge to the extent of difference between lower of Actual	Cost of Transmission Charge is a part of Base Variable Charge which would be payable to Supplier by Utility as per actual despatch of electricity. As per the CERC Sharing of Inter-State Transmission Charges and Losses Regulation 2020, the bill for transmission charges for Medium Term Open Access would be raised on the Buyer i.e. GUVNL while in case of flow of power under Short Term Open access no additional charges would be payable in case of application of open access on behalf of Utility i.e. GUVNL. Accordingly, the GUVNL has added a new provision (Clause 12.6) wherein it is clarified that in case the GUVNL schedules less power than availability actually declared by Supplier, GUVNL shall reimburse/ adjust the cost of transmission charge to the extent of

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL or Normative Availability less Energy Scheduled by Utility.	Rationale for modifications / deviations normative availability or actual availability whichever is lower.
13.1	Payment Security Mechanism Default Escrow Account	Clause deleted	The linking of recovery of transmission charges will ensure declaration of adequate availability by the Supplier and avoid cost burden on GUVNL towards transmission charges in case project is unavailable for the GUVNL for procurement of power.
13.2	Letter of Credit The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "Letter of Credit")	The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "Letter of Credit")	GUVNL in the bid documents has removed the Default Escrow Agreement and Deed of Hypothecation as payment security mechanism to Supplier / Bidder and in lieu of the same has increased the amount of Letter of Credit equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier
	The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date		

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	Schedule E – \$\$ Footnote: As provided in the Agreement for Procurement of Power, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the Supplier for Normative Availability of the power station during a period of one month. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of the Agreement	As provided in the Agreement for Procurement of Power, this amount shall be equal to <u>1 month energy bill payable by the Utility to the Supplier for Normative Availability</u> of the power station. The Letter of Credit shall be modified and renewed once every year to reflect the <u>revision in Average Monthly Payment</u> for previous year	
14.2.2 & 14.2.3	Settlement of Deviation Settlement Mechanism (DSM) charges <i>(Relevant Clause not reproduced here entirely for sake of brevity)</i>	Clause deleted	Clause 14.2.2 & 14.2.3 are deleted as power under UI / DSM cannot be scheduled to Utility as per prevailing norms.
17.2 (d)	Force Majeure – Non Political Event any delay or failure of an overseas contractor to deliver equipment in India [or to supply Fuel from an overseas Captive Mine], if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the [Supplier if Supplier is	Clause deleted	The same being not relevant under the present bid to be invited by GUVNL has been deleted to avoid any consequential implication thereof

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] by such contractor		
17.4 (a)	Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 21 and its effect, in financial terms, exceeds the sum specified in Clause 21.1	Clause deleted	In order to avoid the interpretational disputes for apportionment / pass through of cost whether qualifying under Change in Law or Force Majeure, the above clause has been deleted as the contract period is pre-determined. i.e. 23 months
17.7.1	Allocation of costs arising out of Force Majeure Upon occurrence of a Force Majeure Event after the Appointed Date.....	Clause modified as under:	
	(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Utility to the Supplier	"(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be borne by the Supplier. "	It is proposed to modify the clause in order to avoid unfettered cost implication on GUVNL on account of Political Event.
17.10	Relief for unforeseen events: The above clause provided that that upon occurrence of an unforeseen event, parties may refer the matter to Conciliation Tribunal for appropriate relief / remedy including costs, expense, revenues of Power Station etc.	Clause deleted	It is anticipated that the provision with regard to relief to Supplier on account of unforeseen events may lead to dispute / litigation and consequential impact thereof including cost.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
19.1	Termination for Supplier Default	Clarification added as under:	Therefore, it is proposed to delete the above provision in the tender to be invited by GUVNL for tie up of power on medium term basis.
21	a.. b.. c... d.. a breach of the Fuel Supply Agreement or any other Project Agreements by the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] has caused a Material Adverse Effect; 21.1 – Increase in Costs 21.2 – Reduction in Costs 21.3 – Protection of NPV 21.4 – Restriction on Cash Compensation Change in Law – provides that if as a result in Change in law, in case Supplier suffers an increase / reduction in costs or reduction / increase in net after-tax return or other financial burden, the aggregate financial effect of which	d.a breach of: (a) the Fuel Supply Agreement or (b) commitment to arrange fuel for supply of power as per Clause 2.2.1 (d) & Clause 2.12.2 (vi) of RFQ or (c) compliance of fuel allocation conditions or (d) any other Project Agreements by the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] has caused a Material Adverse Effect; Clause 21.2, 21.3 & 21.4 have been deleted Clause 21.1 modified as under: 21.1. Adjustment in costs Change in Law means the occurrence of any of the following events after the last date of the submission of bid resulting into any additional recurring/non recurring expenditure by the Supplier or any income to the	The modification added to clarify the events of default by the Supplier in accordance with the provision of the GUVNL Bid Documents. It is to mention that the Cost reimbursement as well as adjustment for arriving at Net Present Value may lead to complexity and dispute in methodology for calculation. Further, the bids being invited by GUVNL is based on Lumpsum Tariff basis wherein Fixed Cost is constant

292
-281-

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	exceeds the higher of Rs. 1 Crore and 0.1% of the Capacity Charge in any Accounting Year, place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law. Further, it is mentioned that Parties shall endeavor to establish a NPV of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, so as the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. <i>(Relevant Clause not reproduced here entirely for sake of brevity)</i>	Supplier. i) Any change in transmission charges & losses (as determined by NLDC from time to time) and open access charges ii) Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable on sale of power by the Bidder(s) / Seller(s). It is clarified that any income / gain to the Supplier due to reduction in (i) & (ii) above after last date of bid submission, shall be passed on to the Utility whereas any expenditure / loss to the Supplier due to increase in (i) & (ii) above shall be reimbursed to the Supplier	throughout the contract period while Variable Charges quoted are indexed with pre-defined Wholesale Price Index (WPI) variation. It is to mention that the Change in Law provision has been modified in line with the provision being adopted for Short term Tender (for less than 1 year) in order to simplify the pass through of cost for Change in law occurring after bid deadline.
23	Article 23 - Dispute Resolution Clause 23.2 – Conciliation: Any Dispute which is not resolved amicably by conciliation, as provided in Clause 23.2, and is not required under..... ...pending the Award in any arbitration proceedings hereunder Clause 23.3 - Arbitration: Any Dispute which is	Clause 23.2 – Conciliation – clause deleted	In order to ensure adjudication of disputes under the contractual arrangement by Appropriate Commission i.e Honble Gujarat Electricity Regulatory Commission

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	not resolved amicably by conciliation, as provided in Clause 23.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission		in accordance with the provisions of Electricity Act, the provision with regard to conciliation and arbitration are proposed to be deleted.
24	Article 23 - Dispute Resolution	Clause 23.3 – Arbitration – clause deleted	
	Clause 23.4 - Adjudication by the Commission 23.4.1 - In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 23.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law. 23.4.2 Where any dispute is referred by the Commission to be settled through arbitration,	Clause 23.4.1 modified as under: Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by Gujarat Electricity Regulatory Commission and the Commission may refer the matter for Arbitration as provided under Sec 86 of the Electricity Act. For disputes beyond the power conferred upon Gujarat Electricity Regulatory Commission, such disputes shall be subject to the jurisdiction of the High Courts of Gujarat. 23.4.2 this clause has been deleted	In order to ensure adjudication of disputes under the contractual arrangement by Hon'ble GERC, GUVNL has taken the deviation and deleted the provision with regard to conciliation and arbitration. Further, clarification has been added that any dispute if not resolved amicably may be referred to adjudication by Hon'ble Gujarat Electricity Regulatory Commission for all purpose. Article 23 has been appropriately amended by GUVNL in the draft bid document.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
	the procedure specified in Clause 23.3 shall be followed to the extent applicable.		
23.5	Adjudication by a tribunal: In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 23.3 and 23.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly	Clause deleted	As stated above, any dispute if not resolved amicably may be referred to adjudication by Hon'ble Gujarat Electricity Regulatory Commission. Hence, the provision 23.5 regarding adjudication by a tribunal is proposed to be deleted.
25.4	The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.	The clause has been modified as under: The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate for the first month	Ministry of Power has notified Electricity Late Payment Surcharge Rules 2021 on 22.02.2021. The provision with regard to rate / interest towards Late Payment Surcharge for delayed payment has been appropriately modified as per the above Rules notified by Ministry of Power.

Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		of default, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. The rate of interest for the period of delay for the successive months of default shall increase by 0.5 percent for every month of delay provided that the such rate shall not be more than 3 percent higher than the (Bank Rate plus 5 percent) at any time.	
Schedule B	Performance Security	Sr. 11 This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of six months from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement	The modification has been done in order to align the time period with Clause 9.3 – Release of Performance Security
Definition	"Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect	Definition modified as under: "Bank Rate" means one year Marginal Cost of Funds Based Lending Rate (MCLR) fixed by State Bank of India (SBI)/any replacement thereof by SBI for the time being in effect applicable for 1 year period, as on 1 st April of the respective Financial Year in accordance with the regulations and guidelines of Reserve Bank of India or any replacement of such Bank Rate for the time being in effect;	The definition for Bank Rate has been appropriately modified as per business practises of linking with Marginal Cost of Funds Based Lending rate fixed by SBI from time to time.

296

BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION, GANDHINAGAR

Filing No:

Petition No: 1978 / 2021

IN THE MATTER OF

MISCELLANEOUS PETITION UNDER SECTION 86 READ WITH
SECTION 63 OF THE ELECTRICITY ACT 2003 FOR APPROVAL OF
DEVIATIONS FROM THE MINISTRY OF POWER GUIDELINES
DATED 30.01.2019 FOR PROCUREMENT OF ELECTRICITY FOR
MEDIUM TERM FROM POWER STATIONS SET UP ON FINANCE,
OWN & OPERATE BASIS

PETITIONER

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara - 390 007

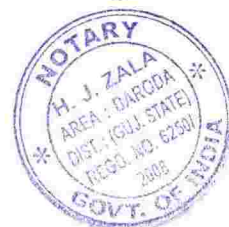
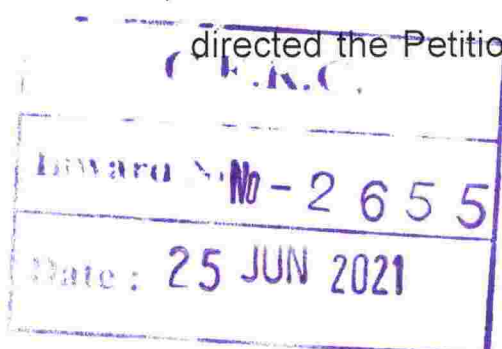
AD (Gujarat) / Ex (Legal) 28/06/2021
Put in relevant files
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28/06/2021

ADDITIONAL AFFIDAVIT ON BEHALF OF THE PETITIONER
(GUJARAT URJA VIKAS NIGAM LTD) IN PETITION NO. 1978/2021:

MOST RESPECTFULLY SHOWETH:

1) Hon'ble Commission vide oral order dated 18.06.2021 has directed the Petitioner to issue a Public Notice in Gujarati & English Newspaper having wide circulation in the State/National level for intimating the stakeholders regarding filing of the Petition before Hon'ble GERC for approval of deviations from the Ministry of Power Guidelines dated 30.01.2019 for procurement of electricity for medium term from power stations set up on finance, own and operates basis.

2) Hon'ble Commission vide oral order dated 18.06.2021 has also directed the Petitioner to upload the Petition along with documents



on its website and invite comments and suggestions from the stakeholders on the Petition on affidavit on or before 02.07.2021 and also mention in the public notice that the next hearing is scheduled by the Commission on 07.07.2021 at 11:30 A.M. Hon'ble Commission has also directed the Petitioner to file Compliance Affidavit of issuing public notice and uploading of Petition along with copy of Public Notices issued on its website.

- 3) In pursuance to the above directives of Hon'ble Commission, the Petitioner confirms that Public Notices have been issued in Gujarat Samachar Newspaper in Gujarati Language and Hindustan Times & The Mint Newspaper in English language on 22.06.2021 intimating the filing of petition by the Petitioner before Hon'ble GERC and inviting suggestions /objections from stakeholders on the Petition. Further, in the Public Notice, it has also been informed to the stakeholders that next hearing in the matter is scheduled before Hon'ble GERC on 07.07.2021 at 11:30 AM.
- 4) It is humbly submitted that the Petitioner has also uploaded the copy of Public Notice as well as the Petition along with all documents on its website www.guvnl.com under the Notice Section.
- 5) The Copy of Public Notice dated 22.06.2021 issued in Gujarat Samachar, Hindustan Times and The Mint (Livemint.com) is enclosed herewith and marked as an Annexure-H (Colly).

 GUJARAT URJA VIKAS NIGAM LIMITED

Date: 22.06.2021

Place: Vadodara



298

BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION, GANDHINAGAR

Filing No:

Case No: 1978 / 2021

IN THE MATTER OF MISCELLANEOUS PETITION UNDER SECTION 86
READ WITH SECTION 63 OF THE ELECTRICITY
ACT 2003 FOR APPROVAL OF DEVIATIONS
FROM THE MINISTRY OF POWER GUIDELINES
DATED 30.01.2019 FOR PROCUREMENT OF
ELECTRICITY FOR MEDIUM TERM FROM
POWER STATIONS SET UP ON FINANCE, OWN &
OPERATE BASIS.

PETITIONER

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara - 390 007 Fax: 0265-2344543

Sr. No.	14401
Date:	22/6/2021

AFFIDAVIT

I, Sanjay Mathur, son of Shri. R. K. Mathur, aged about 45 years resident of
Vadodara do hereby solemnly affirm and state as under:

1. I am Chief Finance Manager working in Gujarat Urja Vikas Nigam Limited and am well conversant with the facts of the case and able to swear to the present Affidavit.
2. I, on behalf of the Petitioner, Gujarat Urja Vikas Nigam Limited have gone through the contents of the accompanying Petition and say that the contents stated therein are based on the records of Petitioner maintained in normal course of business.



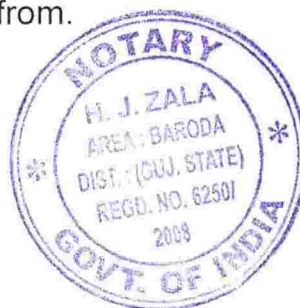
DEPONENT

VERIFICATION:

I, the Petitioner above named do hereby verify that the contents of my above Affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Identified before me.

Date: 22.06.2021
Place: Vadodara





DEPONENT

My Commission Expires
on 04/07/2023

Solemnly Affirmed/Declared
Sworn Before Me by: 
H. J. ZALA
NOTARY (Govt. of INDIA)





