GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007

Tele. No. : 0265-2310582 to 86 (PBX) Fax : 0265-2344543, 2337918	Ref. No.: GUVNL : GM (Com.) : 124 Date : 10.02.2022

To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar, Gujarat - 382355

Sub: Petition under Section 86 read with Section 63 of the Electricity Act 2003 for Approval of Deviations to the Ministry Of Power Guidelines Dated 06.03.2019 for Procurement of upto 3000 MW Electricity on Long Term basis for 15 years – Reg.

Sir,

Please find attached herewith 1 - original plus 4 - copies on affidavit on above subject matter. Further, requisite fees of Rs. 10,000/- in accordance with the GERC (Fees, Fines and Charges) Regulations, 2005, is remitted on 05.02.2022 in the Canara Bank account of Hon'ble GERC through Cheque Transfer vide No. 122036178854-862270.

Kindly acknowledge the receipt of the same.

Thanking You,

11/2/2022
AD(Legal) / Ex (Legal)
Process
11/02/2022

Yours faithfully,

(K.P. Jangid)
General Manager (Comm.)

No - 0890
11 FEB 2022

Encl: As above

Pl. accept the fees of Rs. 10,000/- subject to verification of GERC (Fees, Fines & charges) Regulations.
Encs.
10/2/2022
AD(Legal)

Ay Pf MRN. 894 f
dt. 11/2/22 of Rs. 10,000=-
Received from NPG on dt.
4/2/22
11/2/22

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO.....OF 2022

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 FOR LONG TERM PROCUREMENT OF ELECTRICITY FROM THERMAL POWER STATIONS SET UP ON DESIGN, BUILD, FINANCE, OWN AND OPERATE (DBFOO) BASIS AND SOURCING FUEL AS PROVIDED UNDER MODEL BIDDING DOCUMENTS INCLUDING ALLOCATION OF COAL UNDER B (I), B (III) AND B (IV) OF SHAKTI POLICY

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course, Vadodara 390007
Gujarat ------ **Petitioner**

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For Gujarat Urja Vikas Nigam Ltd

Place – Vadodara, Gujarat

Date – 08.02.2022

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION, GANDHINAGAR

Filing No:

Petition No:

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 FOR LONG TERM PROCUREMENT OF ELECTRICITY FROM THERMAL POWER STATIONS SET UP ON DESIGN, BUILD, FINANCE, OWN AND OPERATE (DBFOO) BASIS AND SOURCING FUEL AS PROVIDED UNDER MODEL BIDDING DOCUMENTS INCLUDING ALLOCATION OF COAL UNDER B (I), B (III) AND B (IV) OF SHAKTI POLICY

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

MOST RESPECTFULLY SHOWETH:

1) The Petitioner, Gujarat Urja Vikas Nigam Limited (herein after referred to as "GUVNL") is a Company incorporated under the provisions of the Companies Act, 1956 with registered office at Sardar Patel Vidyut Bhawan, Race Course, Vadodara (Gujarat). The Petitioner is engaged in the activities of bulk purchase and bulk supply of electricity for & on behalf of its four Distribution companies viz. Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL) and is a

licensee for the said activities under the provisions of the Electricity Act, 2003.

2) The Petitioner have been tying up power on long term, medium term as well as short term basis from time to time in order to ensure availability of adequate power as per the requirement at competitive rates.

2.1 As on 31.12.2021, GUVNL has tied up capacity of 19,099 MW from Conventional sources on long / medium term basis out of which around 2,645 MW capacity is Gas based capacity.

2.2 The peak power demand of State DISCOMs has reached upto 17,300 MW during the year 2021.

2.3 State has implemented Kisan Suryodaya Yojana (KSY) with an objective to enable utilization of generation from upcoming solar capacity for meeting power demand of agriculture sector during day period instead of present arrangement of supplying power to Agriculture sector under various groups during day & night period.

2.4 With implementation of scheme, State has witnessed increase in power demand during day period (5 AM–9 PM) due to shifting of Agriculture load. Further, with shifting of additional load in phased manner in upcoming period, the day power demand to be catered by State DISCOMs is anticipated to increase considerably.

2.5 It is to humbly submit that there are no new thermal units / capacity under development stage in the State of Gujarat. Further, the existing coal / lignite based capacity would have to be decommissioned / retired in phased manner during upcoming years.

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2.6 State is having 8969 MW wind capacity operational out of which capacity of Petitioner is 4280 MW. Further, State is having total 6158 MW Solar Capacity operational out of which capacity of Petitioner is 3007 MW. The generation from wind and solar is contingent to wind velocity and solar irradiance and is infirm in nature. Accordingly, same cannot be considered as firm capacity for meeting peak demand and adequate thermal generation capacity is required to be operated for balancing the grid requirement.

3) Govt. of Gujarat had requested Ministry of Power, Govt. of India for allocation of domestic coal under SHAKTI scheme to enable State to invite competitive bids for around 4000 MW capacity for meeting future power requirements. Ministry of Power vide Office Memorandum dated 03.05.2018 has recommended Ministry of Coal, Govt. of India to assign coal quantity of 19.712 MTPA (Grade 13 grade) to Gujarat. Standing Linkage Committee (Long Term), Ministry of Coal has recommended the allocation of 19.712 MTPA (Grade 13) coal to Gujarat. (Copy of MOP Office Memorandum and Standing Linkage Committee recommendation placed herewith as Annexure – A & Annexure – B respectively)

4) It is to further submit that Coal India has conveyed that supply of coal would commence from the year 2022-23 based on coal availability at different collieries during that period.

5) It is humbly submitted that with implementation of Kisan Suryodaya Yojana, it is anticipated that aggregate load curve may witness incremental load (due to load shift) of around 4250 MW by 2022-23 assuming power is supplied in two shifts during a day. This incremental load during day period would be in addition to growth of demand for other category of consumers.

6) The details of anticipated demand-supply scenario for GUVNL / State DISCOMs during next five years are placed herewith at

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Annexure-C. The summary of the anticipated demand-supply scenario is as under:

(in MW)

Year	Capacity	Demand @ 7% incl. KSY Load	Capacity required at 85%	Total RE availability during peak	(Deficit) after excl. SPOT gas based capacity
As on Dec-21	19099	17370	20435	2408	-1328
2021-22	20999	19620	23082	3170	-1313
2022-23	20843	22568	26551	5195	-2757
2023-24	20003	23851	28060	8521	-1779
2024-25	19593	25223	29674	9923	-2402

7) In the above background it is respectfully submitted that it would be necessary to have in-place adequate conventional generation capacity available as balancing generation for meeting base / peak load and ensuring uninterrupted power supply to the consumers of the State at economical rates more specifically when Renewable Generation is unavailable.

8) It is to submit that domestic coal linkage allocated by Ministry of Coal under SHAKTI Policy to the Petitioner (equivalent to 3915 MW capacity) wherein coal supply is envisaged from 2022-23 onwards can be put to use by tying up coal based capacity on long term basis through tariff based competitive bidding for meeting future power demand of State DISCOMs.

9) With regard to domestic coal allocation, it is kindly submitted that M/s Coal India has confirmed that coal supply would be based on coal availability at different collieries during relevant period at trigger level of model Fuel Supply Agreement (FSA). In case, coal availability is less, requirement may be met from other coal companies, where coal is available.

10) It is humbly submitted that in order to meet the power requirement of its subsidiary DISCOMs and with an objective to meet its long

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term demand-forecast, the Petitioner intends to procure power through competitive bidding process on long term basis (15 years) for the period from 2023 onwards.

11) It is submitted that Ministry of Power vide letter dated 05.03.2019 has issued Model Bidding documents and vide resolution dated 06.03.2019 has issued Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy. The guidelines mainly provides as under:

11.1 The aforesaid Guidelines provides for Model Bidding Documents comprising RFQ, RFP & PSA.

11.2 The application of these Guidelines shall be restricted to projects constructed and operated in accordance with a Power Supply Agreement signed for Supply of electricity for a period of 7 years and above upto a period of 25 years from the Date of Commencement of supply of Power with provision of extension of 5 years at the option of either party in accordance with the Power Supply Agreement

11.3 The tariff determined through the bidding process based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.

11.4 Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents

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The copy of Ministry of Power Letter dated 05.03.2019 & Guidelines dated 06.03.2019 is placed herewith as Annex-D colly.

12) Hon'ble Commission vide Notification dated 2/2013 has issued Guidelines for Procurement of Power by Distribution Licensee wherein Para 7 provides as under:

"7. *In case of procurement of power through competitive bidding, the Distribution Licensees shall initiate the process for long-term / medium-term power procurement in accordance with the Ministry of Power's 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' notified by the Ministry of Power on 19/01/2005 and in force from time to time. As provided in the MoP Guidelines:*

a. *The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In the latter case, intimation shall be sent by the Distribution Licensee to the GERC about initiation of the bidding process.*

b. *Approval of the GERC shall be sought in the event of any deviations from the bidding conditions contained in the MoP guidelines, and in following the process described in the MoP guidelines.*

c. *Approval of the GERC shall be sought prior to initiating the bidding process with regard to the following aspects:*

   i. *For the quantum of capacity / energy to be procured, in case the same exceeds the projected additional demand forecast for the next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at the time of issue of RFQ) Electric Power Survey published by the Central Electricity Authority (Both for Case 1 and Case 2)……."*

13) It is to humbly submit that the proposed quantum of capacity for which tender is to be floated by the Petitioner is within the projected additional forecast for the next three years following the year of expected commencement of supply under the aforesaid tender based on SHAKTI coal i.e. 2023.

14) It is respectfully submitted that in accordance with above Guidelines, the Petitioner vide letter no. 927 dated 26.08.2021 has apprised Hon'ble Commission regarding the initiation of stakeholders consultation process for tie up of upto 3000 MW power on long term basis. (the copy of letter dated 26.08.2021 is placed herewith at Annexure-E)

15) It is to humbly submit that the Petitioner has published a Notice Inviting Tender in 2 national newspapers and 1 newspaper of vernacular language on 25.08.2021. Further, Petitioner has also uploaded the Draft Bid Documents (RFQ, RFP & PSA) on DEEP Portal of Ministry of Power and Petitioner's website to accord wider publicity. As per the Guidelines, the Petitioner has invited the suggestions / queries from the prospective bidders. The Petitioner has received queries / comments as well as suggestions from various bidders. The Petitioner has released the Clarification to the Queries of interested bidders. (the copy of Notice Inviting Tender is placed herewith at Annexure-F and Clarification issued with regard to queries received from prospective Bidders is attached herewith at Annexure-G)

16) The Petitioner has prepared draft bid documents based on Model Bid Documents of Ministry of Power. However, the Petitioner intends to make certain deviations to Model Bidding Documents in order to ensure commercial clarity with regard to contractual provisions and in order to safeguard the interest of the Petitioner. Further, certain modifications in the Bid Documents are proposed in order to align contractual terms in accordance with prevailing Rules & Regulations, taking into consideration the concessional fuel being allocated to Supplier by the Petitioner and to avoid undue cost implication on the end consumers.

17) The Petitioner is seeking following major deviations / modifications from the Model Bidding Documents (MBD) for simplification of

commercial aspects and to optimize the overall cost of power procurement.

a. Delivery Point – Definition

MBD: Delivery Point means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility.

Revised: As various intra-State & inter-State Generators are expected to participate, the delivery point has been suitably amended for ensuring evaluation of bid on uniform basis.

Delivery Point is modified as Gujarat / GETCO Periphery i.e.

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

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

It is to submit that the above modification is proposed in order to have 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 and to have parity for evaluation of bids for projects in Gujarat or outside Gujarat.

b. Minimum Capacity for participation (in MW): (Clause 1.1.1 & 1.1.4 - RFQ)

MBD: As per the Model Bid documents, Minimum Capacity to be submitted by the bidders shall not be less than 25% of Capacity required (in MW) under the tender.

The aforesaid tender proposed to be invited by the Petitioner is for total 3000 MW for which 25% of capacity works out to 750 MW.

Revised: Various requests have been received requesting to reduce the aforesaid capacity on the grounds that considerable capacities are lying unutilized with the operational projects which can be offered under this bid at competitive rates. Further, it has been stated that if such minimum capacity criteria is kept, huge sub-critical technology based capacity with operational project would not be able to participate who would be having competitive rate of generation.

Taking into consideration that total quantum requirement of GUVNL is 3000 MW and the selection under the bid being on L1 matching mechanism on DEEP Portal, it is essential to encourage participation to ensure discovery of competitive rate.

Further, the Petitioner has allowed operational projects to submit bids under the tender so as to ensure better participation and competitive rates. Accordingly, under the draft Bid Documents, category of projects have been defined as under:

Type 1: Projects / Units that are already commercially operationalised on or after 1st January 2013

Type 2: New Projects that are yet to be commercially operationalized

It is respectfully submitted that the Petitioner has proposed the minimum MW requirement at 300 MW under the tender i.e. 10% which would enable larger capacity to participate under the tender more particularly from operational projects.

c. Right to accept or reject any Bid / Application (Clause 2.7.2 - RFQ)

The Petitioner at present is having litigations pending with Generator(s) regarding non-fulfilment of contractual obligations

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which are pending at various forum. Accordingly, allowing / making eligible such applicant(s) for participation under this tender may compromise/ dilute the stand taken by the Petitioner (GUVNL) before regulatory forum and judicial body and may pose consequential implications.

Revised: In order to avoid any implications under the pending litigations of the Petitioner (i.e. Utility), an additional clause has been incorporated in the Draft Bid Documents under RFQ (Clause 2.7) clarifying that the Petitioner shall have a discretion to accept / reject such bids at qualification stage.

d. Bid Security: (Clause 2.20 – RFQ & Clause 1.2.4 – RFP)

MBD: Bidder to provide Bank Guarantee issued by Nationalized Bank or Scheduled Bank in India having a net worth of at least Rs. 1000 Crores. Further it is provided that in case BG is issued by Foreign Bank outside India, nationalized bank in India shall be required to confirm the same.

Revised: In this regard, clarification added that the Bank Guarantee should be as per the list approved by Govt. of Gujarat vide GR no. EMD/10/2021/7729/DMO dated 28.06.2021, as amended from time to time. Moreover, the provision regarding issuance of Bank Guarantee by a foreign Bank located outside India has been deleted. Further, the provision with regard to submission of Bid security in form of Demand Draft has been deleted in view of short tenure of DD and payment of Bid Security through NEFT / RTGS / IMPS mode of payment has been allowed.

e. Appendix I – Letter comprising of Bid (RFP)

MBD: Appendix I provides for the format / parameters for the Bid to be submitted by the Bidder as on Bid Due Date.

Revised: Petitioner has incorporated certain conditions regarding bid component of transmission charges & losses for uniformity.

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Further, principle has been clarified with regard to charges / losses to be quoted by the Bidder and adjustment for the variation in the same after Bid Due Date.

The same is to ensure parity in evaluation of various bids having connectivity at STU & CTU level. It is proposed to include following clarification at the end of aforesaid Appendix-I:

Bid parameters	Unit	Rs and paise (in two decimals)
Fixed Charge for the base year --------- (1)	per kWh	
Fuel Charge = Sum of (a)+(b)+(c) --------- (2)		
(a) Cost of Fuel	Per kWh	
(b) Cost of transportation	Per kWh	
(c) Cost of Washing	Per kWh	
Transmission Cost = Sum of (a) + (b)------ (3)		
(a) ISTS Transmission Charges* (for Drawal State)	Per kWh	
(b) ISTS Transmission Losses* (for Drawal State) ISTS Transmission Losses (for Drawal State)	In % Per kWh	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

**To be pre-specified by Utility prior to bid submission date*

Additional clarifications regarding submission of bid:

i. Utility 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 adjusted in tariff as per the Bid Documents.

ii. Utility to pre-specify transmission losses (in %) (ISTS network) for the purpose of online bid submission by bidders on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre- specified by Utility.

iii. In the DEEP Portal bid; field of "Cost of Fuel in Rs per Kwh", Bidder to input single figure after summing "Cost of Fuel" & "Cost of Washing". While both this components have to be separately quoted

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and submitted as per the Appendix-1 of the RFP (i.e. Letter comprising the Bid)

iv. Intra-State Transmission charges & losses for the host State (other than the state of Gujarat) wherein Generator / Bidder is located, if any applicable from time to time, shall be on the account of Generator / Bidder at all times during the contract tenure. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier at all times during the contract tenure. Bidders are advised to factor in such costs in the tariff. No separate reimbursement / adjustment shall be allowed under Contract.

v. For the Projects connected with Gujarat STU, the "Transmission Cost" Parameter under above Table shall be assumed as NIL.

vi. At Sr. 34 of Appendix I under RFP, following additional details are to be submitted:

Sr.	Particulars	Unit	Details
1	CIL's Notified Price of Coal	Rs./Tonne	
2	GCV of Coal	Kcal/kg	
3	Freight payable to Indian Railways for coal transportation (inclusive of taxes)	Rs./Tonne	
4	Distance considered for transportation of coal from mines to plant location	Kms.	

**Bidder to refer clause 22.2.1 & 22.2.4 of PSA*

f. Cost of Transmission Charges & Losses: (Clause 5.5, 5.6 & 21.13 of PSA)

MBD: Transmission charges & losses upto delivery point are to be borne by Bidder / Supplier out of the tariff offered as on bid due date and any changes thereafter are pass through under the agreement.

Revised: In this regard, it is to mention that as per present CERC Sharing of Inter State Transmission Charges & Losses, only drawl charges for each State is applicable. Further, the transmission bill is raised by PGCIL on drawee utility on monthly basis.

Accordingly, in order to have uniformity for the purpose of bid parameters, prior to Bid Due date, the Petitioner shall specify the

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cost of transmission charge (in Rs./unit) for Projects connected to network other than Gujarat STU (after grossing up at normative availability level), based on the prevailing NLDC notified charges (for Inter-State Transmission Network) and Bidders shall be required to quote the same while submitting the bid.

Further, the ISTS losses are applicable on drawal side and Utility shall 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 adjusted in tariff as per the Bid Documents in reference to the rate quoted by the bidders as on bid due date. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre-specified by Utility.

Whereas, those projects which are connected to Gujarat STU, no transmission charges & losses would be applicable. Accordingly, cost of transmission charge & transmission loss for Project connected with Gujarat STU shall be considered as NIL for the purpose of bid submission.

In accordance with the modality incorporated under the RFP for Bid Parameters (as stated in detail at Point (e) above), GUVNL has appropriately modified the provision of PSA. Further, clarification has been added that in case, Utility is required to pay the transmission charges (to PGCIL) 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.

Moreover, the Model Bidding Documents does not explicitly provide for sharing of transmission cost in the event the available declared by Supplier is less than normative availability to Utility. Therefore, the transmission charge burden being sunk cost, in order to ensure that Supplier adopts prudent utility practice and ensures availability of power from project, Petitioner has incorporated a new clause (as 21.13 under PSA) as per which in case the availability of Supplier reduces below Normative Availability during the month, the applicable transmission cost burden for such shortfall would be passed on to the Supplier:

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"21.13. Adjustment of Transmission Charges based on Availability:

In the case where the actual availability of the Supplier at Delivery Point is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of actual applicable transmission charge for the respective month for shortfall i.e. difference between Normative Availability & Actual Availability.

g. The Supply Contract (PSA – Clause 3.1)

MBD: Not earlier than **3 years** and no later than **2 years** prior to completion of the contract period, Utility and Supplier are entitled to issue notice for extending the Contract Period by 5 years.

Revised: In view of the Contract Period under the proposed tender being 15 years, the above time period with regard to extension has been reduced to "not earlier than **1 year** and no later than **6 months**". Further, the fuel being arranged by Petitioner (Utility), the proposal of extension, if any, would be required to be initiated by the Petitioner taking into consideration the power requirement & fuel availability and therefore the provision regarding entitlement of Supplier seeking extension in contract period has been deleted.

h. Extension of Contract Period (Clause 3.2 – PSA)

MBD: In case the contract is not extended by Utility, it shall pay damages to Supplier on lump sum basis at the rate of fixed charge for the foregone period (i.e. period not extended).

Revised: In the bid to be invited by the Petitioner (Utility), the contract period is pre-defined i.e. 15 years and extension in contract period is allowed upto 5 years subject to PSA provisions. Further, as the fuel is arranged by the Utility under SHAKTI Scheme and operational projects are also allowed to participate, any extension would be contingent to coal availability, operational factors relevant at that time and power requirement of the Petitioner. Accordingly, the above clause 3.2 has been deleted in order to avoid cost implication on Utility in the event of non-extension of contract period.

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i. **Conditions Precedent (Clause 4.1 – PSA)**

MBD: Conditions Precedent required to be satisfied by the Supplier within a period of 180 days from the date of signing Power Supply Agreement (PSA).

Revised: It is to mention that Ministry of Environment, Forest and Climate Change (MoEF), Govt. of India vide notification dated 7.12.2015 has notified revised environment norms to be complied by thermal power plants originally by Dec 2021 / March 2022. The emission norms compliance timelines has been extended by MoEF upto 2023 / 2024.

Under the bid to be floated by the Petitioner, various operational projects are anticipated to participate. As the level of compliance met by various projects could be different based on technology and CAPEX incurred, the tariff component to be quoted by any bidder would be contingent to cost incurred, if any.

In order to remove anomaly towards the same, Petitioner has incorporated an additional clarification as Point (J) under Clause 4.1.3 (Conditions subsequent to be satisfied by Supplier within 180 days from date of signing PSA) regarding Undertaking to be submitted by Bidders for compliance to norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Further, it has been clarified that Petitioner (Utility) shall not be liable for any cost implication towards thereof. The draft of Undertaking would be shared by the Petitioner to maintain uniformity inter-se amongst bidders while submission of such Undertaking.

New Clause 5.10 – PSA: 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 environmental norms as applicable / notified as on Bid Due Date shall be on account of the Supplier at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions."

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j. **Fixed Charge for supply prior to COD (PSA – Clause 14.1.2)**

MBD: In the event COD is achieved prior to the Scheduled Completion Date, the Supplier shall be payable 70% of Base Fixed Charge for such period (for maximum 365 days)

Revised: In this regard, the fuel arrangement under the agreement is based on the coal allocation from CIL / subsidiaries. Accordingly, the date of commencement of supply would be as indicated by Petitioner prior to the Bid Due Date, based on commencement of coal supply under linkage. Accordingly, the above provision with regard to payment of fixed charge for supply prior to COD has been deleted.

k. **Open Capacity (PSA – Clause 18.4):**

MBD: 20% of Contracted Capacity & Committed Capacity shall be Open Capacity under this Agreement i.e. available to the Supplier for production and supply of electricity to any person.

Revised: Under the above bid, the concessional fuel from Coal India / Subsidiaries is being arranged & allocated by the Petitioner with allocation from SHAKTI Scheme. Accordingly, concept of Open Capacity from Power Plant at the disposal of Supplier has been deleted in order to ensure availability of contracted capacity with the Petitioner (Utility) and prudent use of concessional fuel.

l. **Substitute Supply (PSA – Clause 18.6):**

MBD: When Availability of Power Station is reduced due to Scheduled / Unscheduled Maintenance or Force Majeure, Supplier with prior consent of Utility, which consent the Utility may deny or accept with conditions, supply electricity from any alternative source, including Merchant Capacity, if any, and such supply shall, for payment of Fixed Charge and Fuel Charge be deemed to be supply under the Agreement.

Revised: The Petitioner under Clause 2.7 of RFQ has incorporated additional condition regarding the ineligibility for certain Projects/ Bidder with whom litigations of the Petitioner are pending.

In line with the same, under above Clause 18.6, the Petitioner has added clarification that it may deny to accept supply from such

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alternative source which is ineligible in accordance with Clause 2.7 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.

m. Termination due to failure to achieve Financial Close (PSA – Clause 20.2):

MBD: In the event Financial closure does not occur within the provided timeline (180 days from signing of PSA), Agreement shall be deemed to have been terminated by mutual agreement. Further, Utility shall be entitled to encash the Bid Security.

Revised: In this regard, it is to mention that Bid Security (Rs 5 Lakh / MW) submitted by Bidder shall remain valid for period of 180 days (inclusive 60 days claim period). Further, successful bidders shall be required to submit Performance Security (Rs 30 Lakh / MW) upon which Bid Security submitted will be released by Utility. Accordingly, considering the timelines of events, in the above clause regarding encashment of Bid security upon failure to achieve financial close, the term **"Bid Security"** has been modified to **"Bid Security / Performance Security, as the case may be"** to safeguard the interest of the Petitioner (Utility).

n. Billing & Payment (Clause 21.10 – PSA) and Discount for early payment (Clause 21.12 – PSA)

MBD: Monthly Invoice to be raised by the Supplier by 5th day of the month. Utility entitled to 1% rebate for payment within 5 days of submission of invoice. MBD does not provide clarification with regard to Regional Energy Account & State Energy Account which is essential for energy accounting and settlement. Further, there is no mention of Supplementary Invoice towards Change in Law, other claims etc.

Revised: In order to provide clarification with regard to raising of Monthly Invoice / Supplementary Invoice and discount for early payment, following modifications have been carried out by Petitioner.

(a) Clarification regarding Regional and State Energy Account for raising of Energy Invoices

HARISH CHANDRA SINH J. ZALA NOTARY DIST. BARODA (GUJ.) STATE GOVT. OF INDIA REG. NO. 6259

(b) Definition added: Supplementary Invoice - means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement

(c) Clarification: The Payment Due Date of 30 days applicable to Monthly Invoice shall also be applicable for the Supplementary Invoice.

(d) Modification: 2% rebate shall be allowed to the Petitioner towards discount for early payment for payment within 7 working days from the Date of receipt of Invoice (T0+ 7 days)

(e) Clarification: Discount for early payment (2%) shall not be applicable on the invoices raised on account of Change in Law relating to taxes, duties, cess etc.

(f) Modification: Supplier may raise invoices via email shall during office hours subject to submission of original invoice to the Petitioner within 5 working days.

o. Station Heat Rate (Clause 22.1 – PSA)

MBD: Station Heat Rate is to be pre-specified by Utility while inviting the bids based on which the bidders would be required to quote their Tariff. Further, as a part of compliance towards achieving Commercial Operation, projects / units would be required to demonstrate fulfilment of SHR by performing tests which shall be considered successful only in case tests establish that SHR is equal to lower than SHR pre-specified by Utility (upto 2 % variation allowed).

As per MBD, SHR is to be considered after accounting for applicable dedicated transmission losses and Auxiliary consumption.

Prospective bidders have submitted that it would not be feasible to achieve the pre-specified SHR i.e. 2350 kcal/kwh by old/ operational plants as the same is after considering the Auxiliary consumption and dedicated transmission losses. Considering the same, bidders have requested to increase the SHR upto 2500 kcal / kwh to enable participation from sub critical units and provide level playing field.

Revised: As per the Petitioner Bid documents, all plants (irrespective of commissioning status) would be required to demonstrate that the actual SHR is equal to or below the SHR pre-specified by the Petitioner while inviting the bid after carrying out the stipulated tests. PSA also provides for adjustment in fixed charge in case of variation in SHR with reference to pre-specified / actual SHR in accordance with the provisions of the PPA.

As per the provision of MBD, the Petitioner is required to pre-specify the Station Heat Rate for the purpose of participation by the prospective bidders. In order to encourage better participation from all categories of units including sub-critical, Petitioner has pre-specified the SHR as 2450 kcal/kwh which shall have to be taken into consideration by the bidders while submitting the bids.

p. Determination of Gross Calorific Value (Clause 22.3 – PSA)

MBD: Weighted average GCV of fuel received at power station shall be considered as average GCV which would be worked out based on classification provided by CIL under FSA for computation of Fuel Charge for payment.

Revised: As per the tender documents, for the purpose of fuel cost working the GCV as well as coal cost as specified under the FSA shall be applicable at all times and any additional burden in this behalf shall have to be borne by Supplier at all times. However, there is no provision under PSA with regard to adjustment GCV towards variation due to storage.

As per CERC Tariff Regulations 2019-24, for Energy Charge working, Calorific value of coal is worked out based on Weighted Average GCV of coal as received less 85 Kcal/Kg on account of variation during storage at generating station. Accordingly, Petitioner has proposed to allow the similar adjustment to the tune of 85 kcal/kg towards GCV adjustment in line with CERC Regulation for variation due to storage at generating station.

q. Additional Fuel Supply Agreement (AFSA) – (PSA – Clause 22.9)

MBD: In the event of Fuel Shortage, Supplier shall make best efforts to tie up additional source of fuel supply and transportation to meet

HARISHCHANDRASINH J. ZALA NOTARY DIST. BARODA (Gujarat) GOVT. OF INDIA

Fuel Shortage through AFSA. The Supplier shall, with the concurrence of Utility submit the AFSA for review and approval of the Appropriate Commission.

Revised: The tie up of additional fuel under AFSA would necessitate analysis and evaluation of landed cost by the Petitioner (Utility) in addition to terms of fuel supply to confirm the prudent practice in coal procurement. Accordingly, the above clause has been modified providing that Supplier shall submit AFSA for review and concurrence of the Petitioner (Utility) and thereafter Petitioner (Utility) shall submit AFSA for review and approval of Hon'ble Gujarat Electricity Regulatory Commission.

r. **PSA – Clause 24.2.2 – Settlement of UI charges:**

MBD: Utility shall have the first right to Despatch, in the form of UI, any surplus electricity generated from the entitlement of the Utility in the Contracted Capacity by utilizing the allocated Fuel.

Revised: As Unscheduled Interchange (UI) has been replaced with Deviation Settlement Mechanism (DSM) by Hon'ble CERC, the term has been appropriately modified. Further, the above provision regarding first right to dispatch has been deleted as power under UI / DSM cannot be scheduled to Utility as per prevailing norms.

s. **PSA – New Clause 24.5 added – Proportionate Availability:**

In the cases wherein entire installed capacity of any unit(s) are not tied up with Utility under PSA, there is a need to have an appropriate mechanism so as to ensure that the Supplier makes available to the Utility capacity proportionate to the contracted capacity out of installed capacity at all times.

Revised: Accordingly, the Petitioner has incorporated a new provision as Clause 24.5 regarding Proportionate Availability which is in line with the existing PPA signed by the Petitioner through competitive bidding. This clause provides for proportionate availability declaration to Utility by Supplier under the agreement and details of penalty applicable in case of failure of Supplier to supply power from the Contracted Capacity.

HARISHCHANDRASINH J. ZALA * NOTARY * DIST. BARODA (Guj. State) * GOVT. OF INDIA * REG. NO. 5259 2008

t. PPA – Article 28 – Force Majeure

i. MBD Clause 28.4 & 28.7

Clause 28.4 provides that any event of Change in law for which if consequences cannot be dealt with in accordance with Article 34 (Change in Law) and its effect in financial terms exceeds the sum specified (in Clause 34.1) shall be considered as Political Event under Force Majeure.

Clause 28.7 provides that upon occurrence of a Political Event, all Force Majeure costs attributable to Political event shall be reimbursed to Supplier by the Utility.

Revised: The details of modifications carried out by the Petitioner are as under:

With regard to Clause 28.4, it is to mention that making eligible any such Change in Law event by considering it as a Political Event of Force Majeure would pose risk towards unfettered cost claim and may dilute the sanctity of tariff based competitive bidding. Accordingly, to avoid any interpretational disputes, it is proposed to delete the above provision.

With regard to Clause 28.7, it is to mention that nature of events specified under Political Event (under Force Majeure) are business associated risks and allowing pass through of cost for consequences of such risk to Utility (GUVNL) may affect the interest of consumers. Moreover, it may result into litigations/ demand by Supplier seeking relief. Therefore, GUVNL has taken a deviation and clarified that such costs shall be borne by Supplier only. The modifications in the clause are as under:

"(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be borne by the Supplier."

Consequentially, clause 28.7.2 linked with the payment liability of Utility has been deleted.

ii. MBD Clause 28.11 – Relief for Unforeseen Events provides 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.

Revised: It is to state that Petitioner's Bid documents have various provision(s) to deal with Change in Law, Force Majeure as well as pass through of various costs. Further, as per the Bid documents, any dispute not settled amicably has to be taken up before Hon'ble Gujarat Electricity Regulatory Commission for adjudication. Accordingly, allowing mitigation relief for unforeseen events by referring the matter to Conciliation Tribunal would be in contravention to the provision of the tender documents. Further, such avenues for claims may lead to disputes/litigation with consequential impact including cost on Petitioner and ultimately on end consumers.

Accordingly, the Provision 28.11 – Relief for unforeseen events has been deleted by the Petitioner in its bid documents.

u. PSA – Article 30 – Suspension of Supplier's Rights

MBD Clause 30.1.2 provides that during the period of Suspension (due to Supplier default), the Utility shall pay to the Supplier 20% of the Fixed Charge for Contracted Capacity.

Revised: The above clause is with regard to suspension owing to Supplier default. Upon occurrence of Supplier default, Utility shall be entitled to suspend all rights of Supplier under FSA to produce electricity. As per the provision of PSA, Supplier can revoke the suspension by curing the default within 90 days of suspension by Utility.

In view of the above, the provision with regard to payment of 20% of fixed charge during suspension period has been deleted to avoid cost implication on the Petitioner (Utility).

v. Change in Law (PSA – Article 34)

MBD – 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 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, MBD provides 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.

Revised: It is to humbly submit state that 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 Petitioner are having two part tariff wherein Fixed Charges quoted are indexed with Wholesale Price Index (WPI) variation while Fuel price quoted would be subject to variation as per change in domestic coal price and change in railway transportation freight in accordance with conditions specified under PSA. In addition, the bids are also being solicited from operational projects with merchant capacity and therefore arriving at a NPV of the net cash flow for the purpose of adjustment in cost, revenue etc. for operational projects would be complicated and inaccurate.

Accordingly, it would be prudent to have in place a simplified mechanism for taking into consideration the impact on account of change in law in order to avoid any unfettered impact on tariff due to NPV calculation and cost adjustment thereof.

In view of the same, Petitioner has taken a deviation and modified the Change in Law provision in line with the provision being adopted under PPA signed with projects based on competitive bidding in 2006-07.

Further, Petitioner has added clarification that the Supplier shall not in any manner be entitled to claim any amount towards carrying cost till the time Hon'ble Gujarat Electricity Regulatory Commission has determined and approved the impact due to Change in Law qualifying under the PSA. The same will ensure timely filing of petition by Supplier before Hon'ble GERC for approval of change in law and avoid cost implication under claim seeking carrying cost.

w. Dispute Resolution (PSA – Article 36)

As per the MBD, any dispute, if not settled mutually shall be referred to Conciliation and then Arbitration. While any dispute under applicable laws if required to be adjudicated by Commission, be submitted before Commission. Further, Clause 36.5 provides that in the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes, all disputes shall be referred to adjudication by such tribunal instead of Arbitration or Appropriate Commission.

Revised: In order to ensure that any dispute if not resolved amicably through Conciliation, be taken up before Appropriate Commission i.e. Hon'ble Gujarat Electricity Regulatory Commission for adjudication, Petitioner has taken the deviation and deleted the provision with regard to arbitration. Further, the clause 36.5 regarding adjudication by statutory tribunal has also been deleted in view of prevailing norms of Electricity Act 2003 regarding adjudication of disputes by Appropriate Commission.

x. PSA – Article 38 – Miscellaneous – Delayed Payments

Ministry of Power has notified Electricity Late Payment Surcharge Rules 2021 on 22.02.2021. As per the Rules, all such PPA executed after the date of notification rules shall incorporate provisions with regard to rate of interest for late payment surcharge.

Accordingly, Petitioner has appropriately modified the Clause 38.4 of the PSA – Delayed Payments as per the above Rules notified by Ministry of Power.

y. PPA – Schedule J – Default Escrow Agreement & Schedule K – Deed of Hypothecation

Petitioner has signed Default Escrow Agreement & Deed of Hypothecation with various Private Projects Developers with whom PPA has been signed pursuant to competitive bidding in 2007 & 2010.

In order to have uniformity with regard to the modality of creation of charge over revenues and operation of escrow account for discharge the liabilities arising out of secured obligation inter-se various projects, it is proposed that earlier Petitioner's format of Escrow Agreement & Hypothecation Deed may be adopted and incorporated in the present Bid documents with required modifications. Further, the provision 23.1.1 of the PSA has been appropriately modified as per the terms of Escrow Agreement and Deed of Hypothecation.

z. Other project specific modifications:

In addition to above deviations / modifications, the Petitioner has carried out minor project specific modifications in the bid documents for ensuring clarity in operational aspects, the details of which is as under:

(i) Obligation of Open Access, Supply of contracted capacity at Delivery Point

(ii) Lowest Landed Tariff after including cost towards transmission cost to be considered for the purpose of bid evaluation & selection

(iii) Definition to Scheduled Supply Commencement Date has been incorporated – as Petitioner would be requiring power from a particular date which would be as per confirmation from Coal India regarding commencement of coal supply

(iv) Compliance / activities to be carried out by projects which are already operational as on Bid Due Date

(v) Clarification with regard to applicability of provisions under the tender documents for both category of projects i.e. Type 1 (units that are commercial operationalized on or after 1.1.2013) and Type 2 (New Projects that are yet to be commercially operationalized)

The list of all the deviations & modifications along with the detailed reasons / rationale for modifications is attached herewith at Annexure-H.

The draft bid documents (RFQ, RFP & PPA) incorporating the above deviations is attached herewith at Annexure-I.

18) In accordance with the Ministry of Power Guidelines, the Petitioner has filed the present petition for approval of bidding documents and the deviations to the Guidelines for initiating the tender process.

19) It is humbly submitted that Hon'ble Commission may accord approval to the Draft Bidding Documents along with the proposed deviations as well as modifications in order to enable the Petitioner to initiate the process of inviting tender.

PRAYER

The Petitioner most respectfully prays to the Hon'ble Commission;

a) To admit this Petition.

b) To approve the deviations from Guidelines dated 06.03.2019 including modifications as proposed by Petitioner as per details stated in the present petition

c) To approve the Draft Bidding Document (RFQ, RFP & PSA) annexed with the Petition.

d) To condone any inadvertent omissions / errors /shortcomings and permit the petitioner to make minor addition / change /modification /alter this filing and make further submissions as may be required at a future date

e) To crave relief for filing any further submissions

f) Pass any other Order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case, to avoid further delay and in the interest of justice.

Date:08**.2.2022**

Place: Vadodara

DECLARATION

Declaration that subject matter of the Petition has not been raised by the Petitioner before any other competent forum and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.

Gujarat Urja Vikas Nigam Limited
PETITIONER

Date:.2.2022
Place: Vadodara

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION, GANDHINAGAR

Filing No:
Case No:

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 FOR LONG TERM PROCUREMENT OF ELECTRICITY FROM THERMAL POWER STATIONS SET UP ON DESIGN, BUILD, FINANCE, OWN AND OPERATE (DBFOO) BASIS AND SOURCING FUEL AS PROVIDED UNDER MODEL BIDDING DOCUMENTS INCLUDING ALLOCATION OF COAL UNDER B (I), B (III) AND B (IV) OF SHAKTI POLICY.

PETITIONER

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

Sr. No. 2541
Date : 8/2/2022

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.

NOTARY * H. J. ZALA AREA : BARODA DIST. (GUJ. STATE) REG. NO. 6250/2008 * GOVT. OF INDIA

DEPONENT

Date: 08.02.2022
Place: Vadodara

My Commission Expires on 04/07/2023

Solemnly Affirmed/Declared
Sworn Before me by Mathur

H. J. ZALA
NOTARY (Govt. of India)

Annexure - A

No. FU-2/2018-IPC (Vol-I)
Government of India
Ministry of Power
***

New Delhi, dated 03.05.2018

OFFICE MEMORANDUM

Sub:- Aggregate Power requirement of Group of States for undertaking Tariff based Competitive Bidding for Long Term and Medium Term Procurement of Power under "SHAKTI" Scheme, declared by GoI, MoC – reg.

The undersigned is directed to refer to Govt. of Gujarat's letter No. GUV-12-2017-2203-K dated 15.01.2018 (copy enclosed) on the subject mentioned above.

2. In this regard, it is stated that the matter has been examined in consultation with CEA.

3. Gujarat, in its letter no. GUV-12-2017-2203-K dated 15.01.2018, has expressed the requirement for allocation of coal linkage under SHAKTI B (iv) for capacity of 4000 MW on an annual basis. In its earlier letter no. GUV-12-2017-2203-K dated 22.11.2017; GUVNL had required coal linkage for capacity of 3000 MW under the Para B (iv) of SHAKTI Policy. But in the present letter, it has expressed the requirement for coal linkage for an additional capacity of 1,000 MW, asserting the uncertainty about commissioning of 2nd UMPP in Gujarat state.

4 On comparing the Peak Demand and Total Energy Requirement details provided by GUVNL with the estimates given in the 19th Electric Power Survey (EPS), it is observed that estimated peak demand and total energy requirement projections of GUVNL are in accordance with the estimated details given in 19th EPS.

5. According to estimates of Availability-Demand given by GUVNL, there is a deficit of about 2,000 MW by December 2022. However, Gujarat intends to replace the 2000 MW capacity of its idle gas based capacity operatable only on costlier SPOT RLNG. Therefore, a request has been made by GUVNL for considering about 4000 MW of net demand-supply gap.

6. Considering the 80% availability of the tied up capacity to meet the projected demand and exclusion of 2,000 MW costlier spot gas based capacity, a capacity shortfall of around 4,000 MW in the year 2022-23 seems justified and therefore Gujarat State may be recommended for tariff based bidding for 4000 MW capacity under Para B (iv) of Power Policy.

7. According to 'UDAY State/DISCOM Quarterly Performance Ranking (as on 31.12.2017)' available on website of "UDAY" scheme, state of Gujarat is having 1st rank.

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8. As per Norms for Coal Consumption in TPPs given by CEA on 25.01.2017 and considering all thermal capacity agreement for 4000 MW as super critical units only, the annual requirement of coal for 4000 MW capacity comes to 19.712 MTPA for G13 grade of coal.

9. In view of the above, Ministry of Coal is requested to assign a coal quantity of 19.712 MTPA (according to the G13 grade) to Gujarat State under SHAKTI policy Para B (iv), for getting 4000 MW power through tariff-based competitive bidding.

10. This issues with the approval of Secretary (Power).

Enclosed: as above

(S. Majumdar)
Under Secretary to the Govt. of India
Tel: 2335 6938

Ministry of Coal,
(Shri R.K. Sinha, Joint Secretary),
Shastri Bhawan,
New Delhi

Copy to:

Government of Gujarat,
(Shri K.H. Chorera, Officer on Special Duty (Power)),
Energy & Petrochemicals Department,
Block No.5, 5th Floor, Sachivalaya.,
Gandhinagar - 382010.

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Annexure - B

IMMEDIATE

File No.23014/1/2019-CLD
Government of India
Ministry of Coal
<<>>

Shastri Bhawan, New Delhi,
Dated the 16th August, 2019

To

1. The Chairman-cum-Managing Director,
Coal India Limited, Coal Bhawan,
Premise No-04 MAR, Plot No-AF-III,Action Area-1A,
Newtown,Rajarhat,Kolkata-700156

2. The Chairman-cum-Managing Director,
Singareni Collieries Company Limited,
18, Red Hills, Khairatabad PO, Hyderabad,
Telangana.

Subject: Meeting of the Standing Linkage Committee (Long-Term) for Power Sector – SLC/LT No. 1/2019.

Sir,

I am directed to forward herewith the approved minutes of the meeting of the SLC (LT) for Power Sector held on 24.06.2019 **to consider the requests for coal linkages** to Central / State Sector Power Plants **and to review the status of existing coal** linkages/LoAs & other related matters.

Enclosure as above

Yours faithfully,

Sujeet Kumar 16/8/19
(Sujeet Kumar)
Under Secretary to the Govt. of India

Copy to -

1. Additional Secretary, Ministry of Coal	Chairperson
2. Principal Advisor (Energy), NITI Aayog, Yojana Bhawan New Delhi.	Member
3. Joint Secretary (Coal), Ministry of Coal	Member
4. Advisor (Projects), Ministry of Coal	Member
5. Joint Secretary (Thermal), Ministry of Power, Shram Shakti Bhawan, New Delhi	Member
6. Joint Secretary (Ports), Ministry of Shipping, Transport Bhawan, New Delhi	Member
7. Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi	Member

8.	Joint Secretary, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi	Member
9.	Executive Director, Coal, Railway Board, Room No. 261, Rail Bhawan, New Delhi	Member
10	Director (Marketing), Coal India Limited.	Member
11	CMD's BCCL, CCL, ECL, MCL, NCL, SECL & WCL	Members
12	Chairman-cum-Managing Director, Central Mine Planning & Design Instt Ltd., Gondwana Place, Kanke Road, Ranchi.	Member
13	Chairman, Central Electricity Authority, Sewa Bhawan, RK Puram, New Delhi	Member
14	Chairman, NTPC, Scope Complex, Lodhi Road, New Delhi-110003	Member
15	Nominated Authority, Ministry of Coal	
16	Joint Secretary, CBA-I Section, Ministry of Coal	

Copy to:
(i) Coal Controller, Coal Controller Organization, Kolkata
(ii) Director (Technical), CIL
(iii) GM (S&M), CIL, Kolkata
(iv) CGM (CP), CIL, Kolkata
(v) GM (S&M), CIL, Delhi.

Copy also to –

1. PS to Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to Additional Secretary (Coal)
4. PPS to Joint Secretary (LA)

Copy also to - NIC, Ministry of Coal with the request to upload it in the website of Ministry of Coal for information of all concerned.

Minutes of the meeting of Standing Linkage Committee (Long Term) for Power Sector held on 24.06.2019

S. No.	Issue	Summary of Discussions	Recommendations with reasons
Confirmation of the Minutes of the SLC (LT) meeting held on 21.12.2018.		There were no comments from any side.	Minutes of the Meeting of the SLC (LT) held on 21.12.2018 are confirmed.
Agenda Item No. 1: Long term coal linkage for North Chennai Thermal Power Station Stage-III (1 X 800 MW) and Uppur Super Critical Thermal Power Project (2 X 800 MW) of TANGEDCO under Para B (i) of SHAKTI Policy, 2017	Ministry of Power vide O.M dated 25.03.2019 have requested to grant long term coal linkage for North Chennai Thermal Power Station Stage-III (1 X 800 MW) and Uppur Super Critical Thermal Power Project (2 X 800 MW) of TANGEDCO under Para B (i) of SHAKTI Policy, 2017, based on use of blended coal consisting of 50% imported coal and 50% indigenous coal. CEA has informed Ministry of Power that the above two projects of TANGEDCO have no coal tie ups and has recommended long term coal linkage for these projects under B (i) of SHAKTI Policy, 2017	The Project Proponent (PP) informed that North Chennai Thermal Power Station (Stage III) unit of 800 MW is expected to be commissioned by March, 2020. Further, the 1st unit of Uppur Super Critical Thermal Power Project 800 MW is expected to be commissioned by March, 2022 and the 2nd unit of 800 MW by June, 2022. The PP also informed that there is no coal block for these 3 units. Ministry of Power recommended grant of linkage to these Thermal Power Plants of TANGEDCO. PP stated that the linkage is required only for 50% of the installed capacity. SCCL confirmed the availability of 2 MTPA of coal of G-15 grade from SCCL. Balance 2 MTPA of G-5 grade coal was confirmed by	The SLC (LT) deliberated the requirement of TANGEDCO as per the provisions of para B(i) of SHAKTI policy and recommended for grant of coal linkage for 50% of the installed capacity of 3 units of 2400 MW from SCCL (2 MT of G 15 grade) and balance quantity from CIL, as per coal availability for linkage confirmed by SCCL & CIL.

Syed Kumar 6/8/19

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	based on use of blended coal. As per the information from CBA-I Section, North Chennai Thermal Power Station Stage-III (1 X 800 MW) and Uppur Super Critical Thermal Power Project (2 X 800 MW) of TANGEDCO are not linked with the Chandrabila coal block allocated to TANGEDCO. Ministry of Power vide O.M dated 20.05.2019 was requested to indicate the time period from which the coal supplies are to be made from Coal India Limited under a regular B (i) linkage of SHAKTI Policy, 2017 for North Chennai Thermal Power Station Stage-III (1 X 800 MW) and Uppur Super Critical Thermal Power Project (2 X 800 MW) of TANGEDCO. Coal India Limited was also	CIL to be available from Eastern Coalfields Limited. CIL also stated that coal from MCL is not available. The PP stated that TANGEDCO was interested in getting coal linkage from Mahanadi Coalfields Limited. The PP also informed that development of Chandrabila coal block allocated to TANGEDCO (not for these power plants) is getting delayed due to forest clearance related issues.	

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	requested *vide* letter dated 20.05.2019 to work out the coal availability and also exact figures of coal balance at trigger level commitments and full ACQ commitments under different Fuel Supply Agreements (including Non-Regulated Sector FSAs). Ministry of Power *vide* OM dated 18.06.2019 has informed that expected date of commissioning of North Chennai Thermal Power Station Stage-III (1 X 800 MW) is December, 2019. Further, the expected date of commissioning of Unit 1 and Unit 2 of Uppur Super Critical Thermal Power Project (2 X 800 MW) is April, 2020 and October, 2020 respectively. Ministry of Power has further stated that the time period from which coal supplies are to		

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	be made to these plants by Coal India Limited may be considered as per the expected date of commissioning of plants. Response from Coal India Limited is awaited.		
Agenda Item No. 2: Grant of Bridge Linkage to the TPPs of TANGEDCO	TANGEDCO *vide* letters dated 14.02.2019 requested Bridge Linkage for the following units: a) Ennore Thermal Power Station Expansion project, 1 x 660 MW b)Udangudi Thermal Power Project Stage-I, 2 x 660 MW c)Ennore SEZ Supercritical Thermal Power Project, 2 x 660 MW TANGEDCO has stated that Chandrabila coal block was allotted to TANGEDCO on 24.02.2016. The expected date of commissioning of	The Project Proponent informed that Chandrabila coal block allocated to it is scheduled to start operation in 2023-24 and the delay in its operationalization was due to issues related to forest clearance and dumping of overburden. CBA-I Section informed that the development of this coal block, which has been allotted under the MM (DR) Act, has slipped by at least 2 years as of now. The PP has requested the grant of Bridge Linkage up to 2023-24. It was also informed by the PP that the first unit is expected to be commissioned in 2021 and that no clearance or any other approval is held up for want of Bridge Linkage. Ministry of Power had recommended Bridge	Based on the deliberations, SLC (LT) deferred the item.

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	Ennore TPS & Udangudi TPP is 2021-22 and expected date of commissioning of Ennore SEZ STPP is 2020-21. Due to constraints in obtaining coal linkage at the time of conceiving the projects, the boilers were designed for utilizing indigenous coal for 50% of PLF. The balance requirement will be met through imported coal. It has been requested to approve linkage for 50% PLF. The balance requirement will be met through imported coal. Requirement of TPPs at 50% PLF is as under: Ennore TPS Expansion (660 MW) is 1.885 MTPA Udangudi TPP (Stage-I, 2 x 660 MW) is 3.647 MTPA Ennore SEZ STPP (2 x 660	Linkage for 50% of the 3300 MW capacity.	

Jayeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	MW) is 3.682 MTPA **Comments of CBA-II Section:** No coal block is allocated to TANGEDCO under the provisions of CMSP Act, 2015. **Comments of Ministry of Power:** MoP recommended MoC to accord Bridge Linkage based on use of blended coal consisting 50% imported coal and 50% indigenous coal. Comments of Nominated Authority and CBA-I Section are awaited.		
Agenda item No. 3: Grant of Bridge Linkage to Ghatampur TPP (3 x 660 MW) of Neyveli Uttar Pradesh Power Limited	Neyveli Uttar Pradesh Power Limited submitted an application regarding bridge linkage to Ghatampur Thermal Power Station (GTPP) of NUPPL. NUPPL has stated that	The Project Proponent informed that Pachwara South coal block was allocated on 22.02.2017. It was also informed by the PP that coal production from Talabira II & III coal blocks is likely to start from 2019-20, with an expected production of about 2 MTPA. The PP informed that the 1st unit	The Committee noted that production from Talabira II & III coal blocks has come up and can be further ramped up by NLCIL. It was, therefore, decided to defer the item.

Jujeet kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
(NUPPL).	Pachwara South Coal block was allotted to NUPPL vide allotment order dated 03.10.2016. NUPPL has entered into Coal Block Development and Production agreement (CBDPA) with Nominated Authority (NA) on 22.02.2017. As per CBDPA, timeline for completion of exploration and preparation of GR is 21.12.2018. NLCIL requested NA for extending the timeline for completion of exploration and preparation of GR by one year from 21.12.2018 explaining the reasons due to non-conducive atmosphere prevailing at site. Actual production of coal will take more time from the commencement of mine excavation in May, 2022.	of the Power plant is likely to be commissioned in November, 2020, the 2nd unit by April, 2021 and 3rd unit by December, 2022.	

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	It has been requested to grant Bridge Linkage to GTPP for three years i.e. for the year 2020-21, 2021-22, 2022-23. **Comments of CBA-II Section:** No coal block is allocated to NUPPL under the provisions of CMSP Act, 2015. Comments of Ministry of Power, Nominated Authority and CBA-I Section are awaited.		
Agenda item No. 4: Extension of Bridge Linkage of DVC Mejia TPS Unit#7 & 8 and Chandrapura Unit#8	Damodar Valley Corporation (DVC) vide letter no. 24.01.2019 requested for extension of validity of Bridge Linkage allocated to DVC Mejia TPS U # 7 & 8 and Chandrapura TPS U # 8 against allotment of Tubed coal block to DVC. DVC has informed that Bridge linkage of	The Project Proponent informed that Tubed coal block, which is linked to these three units, was scheduled to start production from June, 2020. Ministry of Power stated that the extension of Bridge Linkage has been recommended after verifying issues related to the development of coal block by DVC and the same has also been recommended by CEA. The Nominated Authority informed	After deliberation, SLC (LT) recommended the extension of Bridge Linkage to the 3 units of DVC for a period of 1 year. Further, taking the view of Nominated Authority into account, SLC (LT) recommended to reduce the existing quantity of Bridge Linkage by 1% for this financial year provided the delay in

Jugal Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
(NUPPL).	Pachwara South Coal block was allotted to NUPPL vide allotment order dated 03.10.2016. NUPPL has entered into Coal Block Development and Production agreement (CBDPA) with Nominated Authority (NA) on 22.02.2017. As per CBDPA, timeline for completion of exploration and preparation of GR is 21.12.2018. NLCIL requested NA for extending the timeline for completion of exploration and preparation of GR by one year from 21.12.2018 explaining the reasons due to non-conducive atmosphere prevailing at site. Actual production of coal will take more time from the commencement of mine excavation in May, 2022.	of the Power plant is likely to be commissioned in November, 2020, the 2nd unit by April, 2021 and 3rd unit by December, 2022.	

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	It has been requested to grant Bridge Linkage to GTPP for three years i.e. for the year 2020-21, 2021-22, 2022-23. **Comments of CBA-II Section:** No coal block is allocated to NUPPL under the provisions of CMSP Act, 2015. Comments of Ministry of Power, Nominated Authority and CBA-I Section are awaited.		
Agenda item No. 4: Extension of Bridge Linkage of DVC Mejia TPS Unit#7 & 8 and Chandrapura Unit#8	Damodar Valley Corporation (DVC) vide letter no. 24.01.2019 requested for extension of validity of Bridge Linkage allocated to DVC Mejia TPS U # 7 & 8 and Chandrapura TPS U # 8 against allotment of Tubed coal block to DVC. DVC has informed that Bridge linkage of	The Project Proponent informed that Tubed coal block, which is linked to these three units, was scheduled to start production from June, 2020. Ministry of Power stated that the extension of Bridge Linkage has been recommended after verifying issues related to the development of coal block by DVC and the same has also been recommended by CEA. The Nominated Authority informed	After deliberation, SLC (LT) recommended the extension of Bridge Linkage to the 3 units of DVC for a period of 1 year. Further, taking the view of Nominated Authority into account, SLC (LT) recommended to reduce the existing quantity of Bridge Linkage by 1% for this financial year provided the delay in

Jugal Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	Chandrapura TPS will expire on 07.06.2019 and for Mejia, linkage will expire on 07.06.2019 (BCCL) & 31.03.2020 (ECL). As per the allotment agreement, scheduled start of mining operation for Tubed coal mine is 44 months from the allotment date (07.10.2016) which is May 2020. DVC tried to expedite the work and intimated that start of mining operation is March'2019 and start of coal production is August'19. DVC is unable to adhere to the above date. Forest Clearance Stage-I is pending with Principal Chief Conservator of Forests. The presentation of Environment Clearance can only be held after getting formal Forest clearance Stage-I.	that Khagra Joydev coal block which has also been allocated to DVC was to start production from June, 2015 and was supposed to produce 3 MTPA coal. The Nominated Authority expressed that the Bridge Linkage of the Thermal Power Plant of the 3 units may be extended for 1 year but after deducting 3 MTPA coal from the Bridge Linkage capacity as the DVC block was required to produce3 MTPA.	operationalization of the coal block to which these three units are linked is attributable to the PP, allottee of the coal block. This situation may be reviewed in the next year.

Jugeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	Compensation payable for acquisition of land is yet to be finalized by District Authority. The above mentioned issues are beyond the control of DVC, it may not be feasible to commence production and dispatch of coal from Tubed coal mines to EUPs within the validity period of existing Bridge Linkages. DVC has requested to extend the validity of Bridge Linkage for a further period of 1 year. **Ministry of Power:** MoP vide OM dated 30.04.2019 requested MoC to consider request of DVC to extend Bridge Linkage allocated to Mejia TPS U # 7 & 8 and Chandrapura TPS U # 8 for 5 years. Comments of Nominated		

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	Authority and CBA-I Section are awaited.		
Agenda Item No. 5: Extension of Bridge Linkage for Barauni Stage-II (2 x 250 MW)	NTPC Limited *vide* letter dated 16.05.2019 requested extension of Bridge Linkage for Barauni Stage II (2 x 250 MW). NTPC Limited has stated that SLC (LT) in its meeting held on 09.08.2018 decided to transfer Bridge Linkage for Barauni Stage-II (2 x 250 MW) of NTPC in the event of NTPC taking over Badam coal block. NTPC has taken over the assets of Barauni Thermal Power Station (BTPS) (Stage-I, 2 x 110 MW, Stage-II, 2 x 250 MW). Further, Nominated Authority *vide* letter dated 03.04.2019 has conveyed "In principle approval of MoC for transfer of Badam coal block to NTPC." Subsequent to approval of	The Project Proponent informed that Barauni Power Plant has been acquired by NTPC from the Government of Bihar and the application for transfer of coal block has also been made to the Nominated Authority in the Ministry of Coal. The PP informed that COD of unit 1 of Barauni Stage-II is scheduled for August, 2019. The Nominated Authority stated that the 11 mines allocated to NTPC were scheduled to produce 13 MT coal in 2018-19 whereas actual coal production was about 7.53 MT only. Ministry of Power stated that the grant of Bridge Linkage to NTPC against Badam coal block should not be linked to operationalization of other coal blocks by NTPC.	Based on the recommendations of Ministry of Power and also on the fact that the commissioning of the unit is scheduled in August, 2019, SLC (LT) recommended for allocation of Bridge Linkage to the unit from Coal India Limited for a period of 1 year after the formal allotment of the coal block is issued in favour of NTPC by the Nominated Authority. Further, taking the view of Nominated Authority into account, SLC (LT) recommended to reduce the existing quantity of Bridge Linkage by 1% for this financial year provided the delay in operationalization of the coal block to which these three units are linked is attributable to the PP, allottee of the coal block.

Sujeet Kumar

S. No.	Issue	Summary of Discussions	Recommendations with reasons
	Nominated Authority, NTPC is completing further formalities. Bridge Linkages with CCL and ECL against the Badam coal block expired on 30.08.2018 and 31.03.2019. COD of Unit 1 of Barauni Stage-II is targeted in Aug'19. NTPC has requested for extension of Bridge Linkage of Barauni Stage II (2 x 250 MW) till the commencement of coal production from Badam block. Comments of NA & CBA-II Section are awaited.		This situation may be reviewed in the next year.

Sujeet Kumar

With the permission of Chair, the following issue which was not listed in the agenda was also discussed.

<table>
<tr><th>Sl. No.</th><th>Issue</th><th>Summary of Discussion</th><th>Recommendations with reasons</th></tr>
<tr>
<td>Additional Agenda Item No. 1:
Coal Linkage under B (iv) of SHAKTI Policy</td>
<td>Ministry of Power have requested coal linkage under B (iv) of SHAKTI Policy, 2017 for the States of Gujarat, Uttar Pradesh and Madhya Pradesh. The requests are summarized as under:
<table>
<tr><th>State</th><th>Quantity of Coal (in MT)</th><th>Capacity (in MW)</th><th>Requirement coming up from year</th></tr>
<tr><td>Gujarat</td><td>19.712 (as per G13 grade of coal)</td><td>4000</td><td>2022-23</td></tr>
<tr><td>Uttar Pradesh</td><td>-</td><td>1600</td><td>2025-26</td></tr>
<tr><td>Madhya Pradesh</td><td>-</td><td>3000</td><td>2026-27</td></tr>
</table>
Coal India Limited have indicated coal availability under B (iv) of SHAKTI Policy, 2017 for these States from various coal subsidiaries.
SLC (LT) to take a view on the matter.</td>
<td>The Additional Chief Secretary, Madhya Pradesh, stated that the requirement of Madhya Pradesh is for 2640 MW instead of 3000 MW and that the State Government of Madhya Pradesh is awaiting a formal letter from the coal company earmarking the linkage in favour of the State Government. He also informed that the Standard Bidding Documents has been finalized.
Ministry of Power also recommended that earmarking of coal linkage may be done by the coal company.</td>
<td>SLC (LT) recommended for grant of linkages from Coal India Limited under Para B (iv) of SHAKTI policy to the States of Gujarat, Uttar Pradesh and Madhya Pradesh. CIL shall intimate the earmarked linkage with description to the respective State Governments with information to Ministry of Coal and Ministry of Power. The tripartite agreements in terms of LoA/FSA may be entered into between concerned coal company, State Government and successful bidder, as may be the case. This information shall also be furnished to Ministry of Coal and Ministry of Power. SLC (LT) also recommended</td>
</tr>
</table>

Sujeet Kumar

			that in case the tariff based bidding gets delayed, then the same shall be informed by the concerned State Government to coal company, Ministry of Coal and Ministry of Power.
Additional Agenda Item No. 2: Coal Linkage under B (v) of SHAKTI Policy	Ministry of Power *vide* O.M dated 24.01.2019 had requested to earmark around 10 MT/Annum coal under para B (v) of SHAKTI Policy, 2017 for a period of three years so that the bidding agency can undertake tariff based competitive bidding for the Pilot Scheme-II for procurement of 2500 MW power by pre-declaring the coal linkage with description. CIL has indicated the subsidiary-wise coal sources along with the quantity and grades of coal that can be offered under para B (v).	Ministry of Power has requested for coal linkage under para B (v) of SHAKTI policy. Ministry of Power further recommended that earmarking of coal linkage may be done by the coal company.	SLC (LT) deliberated the request and recommended for grant of linkage from CIL under para B (v) of SHAKTI policy. CIL shall intimate the earmarked linkage with description to Ministry of Power with information to Ministry of Coal. SLC (LT) also recommended that in case the tariff based bidding gets delayed, then the same shall be informed by Ministry of Power to Ministry of Coal and to CIL.

Jyoti Kumar

In addition to the above items on the agenda which were discussed during the meeting, a presentation was made by Coal India Limited on the coal balance scenario based on the existing and projected demand of coal vis-à-vis availability as per the production programme. The presentation is at **Annexure**.

Jayeet Kumar

Annexure - C

(Annexure - C)

Details of anticipated demand-supply scenario of GUVNL / DISCOMs

Year	Conventional Capacity available	Demand @ 7% growth p.a incl. AG load	Capacity required (at 85%)	Non Solar	Solar	RE during peak		Total available RE during peak	Capacity on SPOT Gas	Net Conv + RE	(Deficit) after excl. SPOT gas capacity
A	B	C	C / 0.85	D	E	F=D*7%	G=E*70%	H=F+G			
Dec-21	19099	17370	20435	4331	3007	303	2105	2408	-2400	19107	-1328
2021-22	20999	19620	23082	4331	4096	303	2867	3170	-2400	21769	-1313
2022-23	20843	22568	26551	5498	6871	385	4810	5195	-2244	23794	-2757
2023-24	20003	23851	28060	7024	11471	492	8030	8521	-2244	26280	-1779
2024-25	19593	25223	29674	8040	13371	563	9360	9923	-2244	27272	-2402

Annexure - D

No. 23/17/2013-R&R (Vol-VI)
Government of India
Ministry of Power
***

Shram Shakti Bhawan, Rafi Marg,
New Delhi, the 05th March, 2019

To

1. The Chairperson, Central Electricity Authority, Sewa Bhavan, R. K. Puram, New Delhi.
2. The Secretary, Central Electricity Regulatory Commission (CERC)/FOR, Chanderlok Building, Janpath, New Delhi.
3. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs.
4. Secretaries of all State Electricity Regulatory Commissions/JERCs
5. Chairman/CMDs of all PSUs under administrative control of Ministry of Power.
6. CMDs/MDs of Discoms/Gencos of all State Governments.
7. DG, Association of Power Producers (APP), New Delhi

Subject: Guidelines and Model Bidding Documents (MBDs) for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy - Reg

Sir/Madam,

I am directed to say that the Model Bidding Documents for procurement of electricity by Distribution Licensees from thermal power generating stations constructed and operated on Design, Build, Finance, Own and Operate (DBFOO) basis, through competitive bidding process were issued under the provisions of Section 63 of the Electricity Act, 2003 on 8th November, 2013. The Guidelines in this regard were also issued on 9th November, 2013. These Guidelines were amended on 16th April 2015. These Guidelines and Model Bidding Documents were further amended on 5th May 2015.

2. Coal linkages Allocation Policy for Power Sector known as 'Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India' (**SHAKTI Policy**) has been issued by the Ministry of Coal on 22nd May 2017.

3. In order to facilitate the use of coal as per Para B (I), B(III) and B(IV) of SHAKTI Policy and it introduce e-bidding process for procurement of power under long term, Ministry of Power is issuing the revised bidding documents comprising of the Model Request for Qualification-DBFOO (the "**MRFQ-DBFOO**"), the Model Request for Proposals- DBFOO (the "**MRFP - DBFOO**") and the Model Power Supply Agreement-DBFOO (the "**MPSA-DBFOO**") (collectively, the "**Model Bidding Documents - DBFOO**"), for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents-DBFOO including allocation of coal under B (I, III and IV) of Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI) Policy. The 'Model Bidding Documents – DBFOO' are enclosed herewith. The Guidelines in this regard are being issued separately.

4. The link for the e-Bidding Portal shall be made available at the website of PFC Consulting Limited (www.pfcclindia.com) and shall also be available on the website of Ministry of Power (www.powermin.nic.in).

5. The soft copy of the Model Bidding Documents- DBFOO is available at the website of Ministry of Power i.e. www.powermin.nic.in under "Current Notices".

Encl: As above

Yours faithfully,

(Debranjan Chattopadhyay)
Under Secretary to Govt. of India
Tele No. 2373 0265

Copy to:

1. All JSs of Ministry of Power/JS&FA & Economic Adviser, Ministry of Power
2. All Directors/DSs of Ministry of Power

Copy for information to: PS to MoSP(I/C) for Power, & NRE, PPS to Secy.(P), PPS to AS(SNS), PS to CE(RR &OM), PS to Dir(R&R)

Copy to: In-charge, NIC Cell for uploading on MOP's website under "Current Notices".

4. मॉडल बोली दस्तावेजों से कोई विचलन उपयुक्त आयोग के पूर्व अनुमोदन से ही किया जाएगा। बशर्ते कि मॉडल बोली दस्तावेजों में अभिव्यक्त रूप से अनुमति दिए गए किसी परियोजना विशेष संशोधनों का अर्थ मॉडल बोली दस्तावेजों से विचलन के रूप में नहीं लगाया जाएगा।

5. 08 नवम्बर, 2013 को जारी मॉडल बोली दस्तावेजों और उनमें समय-समय पर किए गए संशोधनों सहित 09 नवम्बर, 2013 को जारी 'डिजाइन, निर्माण, वित्त, स्वामित्व और प्रचालन (डीबीएफओओ) आधार पर स्थापित ताप विद्युत स्टेशनों से विद्युत की अधिप्राप्ति के लिए समय-समय पर यथा संशोधित दिशा-निर्देश' एतद्वारा निरस्त किया जाते हैं।

बशर्ते कि इस तारीख से पूर्व हस्ताक्षर किया गया कोई भी करार या की गई कोई भी कार्रवाई 2005/2013/2015 के उक्त दिशा-निर्देशों के ऐसे निरसन द्वारा प्रभावित नहीं होगी और इसके अंतर्गत निरसित दिशा-निर्देशों द्वारा शासित होती रहेंगी।

घनश्याम प्रसाद, मुख्य अभियंता

MINISTRY OF POWER

RESOLUTION

New Delhi, the 6th March, 2019

Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy.

No. 23/17/2013-R&R(Vol-VI) Part 4.—Whereas the Central Government is engaged in creating an enabling policy and regulatory environment for the orderly growth of generation of electricity in accordance with the provisions of the Electricity Act, 2003 (the "Act");

Whereas it is incumbent upon the Central Government, State Governments, Electricity Regulatory Commissions and the distribution licensees to promote competition in the procurement of electricity through competitive and transparent processes;

Whereas the Central Government has evolved a standard contractual framework for long term procurement of electricity by the distribution licensees from power producers who agree to construct and operate thermal power generating stations on a 'Design, Build, Finance, Own and Operate ("DBFOO") basis;

Whereas, the Central Government had, vide its letter No. 23/17/2011-R&R(Vol-V) dated 8th November, 2013, issued the Model Bidding Documents comprising the Model Request for Qualification (the "MRFQ"), the Model Request for Proposals (the "MRFP") and the Model Power Supply Agreement (the "MPSA") (collectively, the "Model Bidding Documents") to be adopted by distribution licensees for procurement of electricity from the power producers through a process of open and transparent competitive bidding based on offer of the lowest tariff from thermal power generating stations constructed and operated on DBFOO basis. The Guidelines were issued on 9th November 2013 and subsequent amendments were issued on 16th April 2015 and 5th May 2015.

Ministry of Coal, vide its letter No. 23011/15/2016-CPD/CLD, dated 22nd May 2017, has introduced the policy guidelines for allocation of Coal linkages to Power Sector - New More Transparent Coal Allocation Policy for Power Sector, 2017- SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) (referred as the "SHAKTI Policy").

Based on above and to introduce e-bidding process for procurement of power under long term, the Central Government has, vide its letter No. 23/17/2013-R&R(Vol-VI) dated 5th March, 2109 issued the Model Bidding Documents comprising the Model Request for Qualification - DBFOO (the "MRFQ-DBFOO"), the Model Request for Proposals - DBFOO (the "MRFP - DBFOO") and the Model Power Supply Agreement - DBFOO (the "MPSA- DBFOO") (collectively, the "Model Bidding Documents - DBFOO"), to facilitate the use of coal as per para B (I), B(III) and B(IV) of SHAKTI Policy , to be adopted by distribution licensees for procurement of electricity from the aforesaid power producers through a process of open and transparent competitive bidding based on offer of the lowest tariff from thermal power generating stations constructed and operated on DBFOO basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I, III and IV) of SHAKTI Policy; through an electronic platform (DEEP e-Bidding portal) developed by PFC Consulting Limited .

The link for the DEEP e-Bidding portal is available on the website of Ministry of Power (**www.powermin.nic.in**) and PFC Consulting Limited (**www.pfcclindia.com**).

Now, therefore, in exercise of the powers conferred under section 63 of the Electricity Act, 2003, the Central Government hereby notifies these guidelines to be known as the **'Guidelines for Procurement of Electricity from Thermal Power Stations set up on DBFOO Basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI) Policy (the "Guidelines").**

These Guidelines shall come into effect from the date hereof subject to the following terms and conditions:

1. The terms and conditions specified in the Model Bidding Documents-DBFOO referred to hereinabove shall, by reference, form part of these Guidelines and shall be treated as such.

2. The application of these Guidelines shall be restricted to projects constructed and operated in accordance with a Power Supply Agreement signed for Supply of electricity for a period of 7 years and above upto a period of 25 years from the Date of Commencement of supply of Power with provision of extension of 5 years at the option of either party in accordance with the Power Supply Agreement.

3. The tariff determined through the bidding process based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.

4. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

5. The 'Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis' issued on 9th November 2013, as amended from time to time, including the Model Bidding Documents issued on 8th November 2013 and amended from time to time thereunder, are hereby repealed.

Provided, however, that any agreements signed or actions taken prior to the date hereof shall not be affected by such repeal of the said Guidelines of 2005/2013/2015 and shall continue to be governed by the Guidelines repealed hereunder.

GHANSHYAM PRASAD, Chief Engineer

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and Published by the Controller of Publications, Delhi-110054.

Annexure - E

GUJARAT URJA VIKAS NIGAM LIMITED
Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007
CIN U40109GJ2004SGC045195
Tele. No. : 0265-2310582 to 86 (PBX)
Fax : 0265-2344543, 2337918

Ref. No.: GUVNL : GM (Comm.): 927
Date : 24.08.2021
26

To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT One
GIFT City, Gandhinagar

Fax: 079 2360 2054/55

Sub: Tender for procurement of 3000 MW power on long term basis through tariff based competitive bidding process as per Ministry of Power Guidelines dated 06.3.2019 – Reg.

Sir,

Gujarat Urja Vikas Nigam Ltd, for & on behalf of its subsidiary Distribution Companies has been tying up power from various conventional & renewable sources from time to time taking into consideration the growth in energy demand in order to ensure uninterrupted power supply to consumers of State.

As on 31.03.2021, GUVNL is receiving power from 18453 MW Conventional Capacity and 6483 MW from Renewable sources under long term basis. It is to mention that presently the peak power demand of State DISCOMs has reached upto 17,000 MW. Moreover, State is implementing Kisan Suryodaya Yojana wherein it is planned to supply power to Agriculture sector during day period only in phased manner. As per the anticipated demand-supply scenario, the peak demand of State DISCOMs is likely to reach upto 25,586 MW by 2025.

It is to apprise that around 3610 MW coal capacity based capacity tied up by GUVNL has not materialized / discontinued due to various reasons. Further, considerable thermal capacity of State GENCo. (GSECL) have been decommissioned during last few years. At present, GSECL is having total installed capacity of 5160 MW from Coal & Lignite source out of which 2785 MW capacity is near to completion of its useful life.

GUVNL is tying up considerable capacity from Renewable Capacity like Wind & Solar through tariff based competitive bidding. However, Renewable generation being infirm in nature, the availability of adequate thermal capacity to match with the continuously varying renewable generation is inevitable to have in

place diversified generation portfolio and avoid purchase of costlier power from alternate sources or rely on short term market.

It is to inform that based on the Govt. of Gujarat's request, Ministry of Coal, Govt. of India has allocated coal linkage equivalent to 16.75 MT (Grade 11 coal) to Gujarat State DISCOMs under Para B (iv) of SHAKTI Scheme for which capacity has to be tied up by GUVNL through tariff based competitive bidding. As per the details conveyed by Coal India, the supply of coal is envisaged to tentatively commence by 2022-23.

In accordance with the framework laid under National Tariff Policy mandating tie up of adequate capacity by DISCOMs on long term basis, in order to utilize the allocated linkage coal, GUVNL is in the process of releasing draft Bid Documents (RFQ, RFP & PSA) for procurement of 3000 MW power on long term basis i.e. 15 years period for stakeholders consultation in accordance with Ministry of Power Guidelines dated 06.03.2019.

It is kindly conveyed that in accordance with the Hon'ble GERC Guidelines for Procurement of Power by Distribution Licensees (2/2013), GUVNL shall file a Petition before Hon'ble Commission for seeking approval of deviation, bid documents and quantum after incorporating relevant suggestions / comments from the stakeholders.

In view of above, it is requested to kindly apprise the Hon'ble Commission regarding preliminary activities initiated by GUVNL for stakeholders consultation for inviting bids for long term power procurement, for and behalf of its Subsidiary Distribution Companies.

Thanking you.

Yours faithfully,

(K. P. Jangid)
General Manager (Comm.)

Annexure - F

GUJARAT URJA VIKAS NIGAM LIMITED

Sardar Patel Vidyut Bhavan, Race Course, Vadodara 390007
Phone: 0265-2334751 www.guvnl.com

NOTICE REGARDING TENDER

Gujarat Urja Vikas Nigam Limited intends to invite bids for procurement of 3000 MW power on long term basis through Tariff based Competitive Bidding process as per Ministry of Power Guidelines dated 06-03-2019 for Procurement of electricity from Thermal Power Stations set up on DBFOO Basis and sourcing coal allocated under SHAKTI Policy. The draft of tender documents (RfQ, RfP and PSA) shall be available at **www.mstcecommerce.com** & **www.guvnl.com** from 26-08-2021 for stakeholders' consultation. The stakeholders may submit their queries / comments on the draft tender documents to GUVNL on or before 13.09.2021.

Date: 25/08/2021 General Manager (Commerce)

Livemint & Hindustan Times dated 25/08/2021

ગુજરાત ઊર્જા વિકાસ નિગમ લિમિટેડ

સરદાર પટેલ વિદ્યુતભવન, રેસકોર્સ, વડોદરા – ૩૯૦૦૦૭
PBX: ૦૨૬૫–૨૩૩૪૭૫૧, વેબસાઈટ:www.guvnl.com

ટેન્ડર બાબતે વિજ્ઞપ્તિ

ગુજરાત ઊર્જા વિકાસ નિગમ લિમિટેડ(GUVNL) દ્વારા મિનિસ્ટ્રી ઓફ પાવરની તા.૦૬.૦૩.૨૦૧૯ ની Design, Build, Finance, Own અને Operate basis મુજબ સ્થપાયેલ થર્મલ વીજ મથકોમાંથી અને SHAKTI Policy અંતર્ગત Allocated કોલસાના વપરાશ અન્વયે લાંબાગાળા વીજ ખરીદી માટેની માર્ગદર્શિકા અનુસાર ૩૦૦૦ MW વીજ ખરીદી માટેના બીડ આમંત્રિત કરવાની પ્રક્રિયા હાથ ધરાયેલ છે.તે અન્વયેના ડ્રાફ્ટ ટેન્ડર ડોકયુમેન્ટસ (RfQ, RfP & PSA) www.mstcecommerce.com અને www.guvnl.com વેબસાઈટ પર સ્ટેકહોલ્ડર કન્સલટેશન માટે તારીખ ૨૬.૦૮.૨૦૨૧ થી ઉપલબ્ધ રહેશે.આ ડ્રાફ્ટ ટેન્ડર ડોકયુમેન્ટસ અંગે Queries/ Comments GUVNL ને તા.૧૩.૦૯.૨૦૨૧ સુધીમાં મોકલવાના રહેશે.

તા. ૨૫/૦૮/૨૦૨૧ જનરલ મેનેજર (કોમર્સ)

Gujarat Samachar dated 25/08/2021

Annexure - G

GUVNL TENDER FOR PROCUREMENT OF 3000 MW POWER FOR 15 YEARS

DEEP Portal Event No.: GUVNL/Long Term/Coal from CIL/21-22/ET/RFQ 31 & RFP 32

CLARIFICATIONS RELATED TO QUERIES REGARDING BIDDING DOCUMENT

<table>
<tr><th>Sr.</th><th>Clause No.</th><th>As per GUVNL Draft</th><th>Query / Suggestion</th><th>Reply / Clarification</th></tr>
<tr><td>1.</td><td>1.1 – RFQ</td><td>1.1 Background
Brief particulars of the Project are as follows:
<table><tr><th>Capacity Required at Delivery Point (in MW)</th><th>Minimum Capacity not less than 10% (ten percent) of Capacity Required (in MW)</th><th>Period when supply must commence</th></tr><tr><td>3000 MW</td><td>300 MW</td><td>Sep 2023 (exact supply commencement month would be indicated prior to bid submission)</td></tr></table></td><td>Various Bidders have requested to revised the Minimum bid capacity to 20 MW / 100 MW / 200 MW – to enable smaller / partial untied capacity from existing power plants to participate

If minimum capacity is reduced, various operational sub-critical units with untied capacity would be able to participate</td><td>As per the Model Bid Documents (MBD) of MOP, minimum capacity requirement is 25% of capacity required.

GUVNL has already modified the same to 10% to enable Projects with smaller sized units to participate under the tender.

No change. Kindly refer the final bidding documents.</td></tr>
<tr><td>2.</td><td>1.1.1 – RFQ</td><td>.....the Utility has decided to procure electricity on a long term basis from Power Station (the "Project") through Public-Private Partnership (the "PPP") on Design, Build, Finance, Own and Operate (the "DBFOO") basis by sourcing fuel Linkage Coal from Coal India / its subsidiaries arranged by Utility pursuant to allocation under para B (iv) of SHAKTI Scheme of Govt. of India.....</td><td>It is requested that Power Projects allocated coal linkages prior to SHAKTI Scheme shall also be allowed to bid.

It is requested to clarify whether the Bidders having Coal linkage from CIL are allowed to source that coal for supplying contracted power in view of the fact that coal provided by Utility under SHAKTI may be at a larger distance or costlier as compared to already available Linkage coal.</td><td>The bids are being invited by GUVNL in order to utilize the coal allocated under SHAKTI Scheme Para B (iv) by Govt. of India.

The source of coal being the coal arranged by Utility, the bids are being solicited and would be evaluated for the same. Bidders are requested to kindly refer the bid documents.</td></tr>
</table>

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
3.	1.1.1 - RFQ	GUVNL solicits bids from the following types of Projects: Type 1: Projects / Units that are already commercially operationalized on or after 1st January 2013 Type 2: New Projects that are yet to be commercially operationalized	As per the GUVNL Bid Documents, the contract period is envisaged to be 15 years. (from supply commencement date i.e. around Sep-2023) Under Type 1 projects, units having commercial operation date after 1.1.2013 have been allowed. It is requested that the operating life of a thermal power plant is more than 25 years. Accordingly, it is requested that there shall not be any insistence regarding the COD of unit for operational power plant.	The operational units are being allowed taking into consideration the useful life of 25 years of coal based power plants. Accordingly, no change – as per GUVNL bid documents.
4.	1.2.9 – RFQ	The Selected Bidder shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility....	The mandatory requirement of surrender of existing LoA/FSA may be relaxed Bidders may be given the choice of selecting between their existing LoA/FSA coal or allocated coal linkage arranged by the Utility As bidder may be participating only for part capacity of a unit, fuel under existing LoA/FSA with the Bidder would be required for balance capacity of unit. Therefore, it should not be mandatory to surrender the LoA / FSA. In case the existing linkage LOA/FSA holders have fuel assurances from nearer mines or from the same subsidiaries as being arranged by the utility the bidders should be allowed to continue the coal sourcing from the existing LOA/FSA	The requirement / condition of surrendering of existing LoA / FSA is as per the Model Bidding Documents. The tender document provides for surrender of **proportionate** quantity of existing LoA / FSA. No change. As per GUVNL bidding documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
5.	1.1.1 – RFQ	Period when supply must commence: Sep 2023 (exact supply commencement month would be indicated prior to bid submission)	There should be flexibility to the Suppliers with regard to commencement of power supply under the PPA in view of any ongoing medium / short term commitments.	The tender is being invited by GUVNL for utilization of coal being allocated under the SHAKTI Scheme Based on the intimation regarding coal supply schedule by CIL, GUVNL would pre-indicate the tentative date from which supply has to be commenced.
6.	1.1.1 – RFQ	Type 1: Projects/Units that are already commercially operationalized on or after 1st January 2013 Type 2: New Projects that are yet to be commercially operationalized.	Bidder requests that relevant portions in RFQ, RFP and PSA document be clearly marked regarding non applicability of few articles or portions thereof depending on whether a project falls under Type 1 or Type 2 category. (viz. Clause 2.3.1 of RFP, Article 5.2.2, Article 10, 11,12,13,14 of PSA are not applicable for Type 1 projects)	Necessary clarification provided with regard to applicability of provisions to both categories of Projects. Kindly refer the GUVNL Bid Documents
7.	1.2.1 – RFQ	The Utility has adopted a two-stage bidding process (collectively referred to as the "Bidding Process") for selection of the Bidder **for award of the Project.**	As per definition of the Project " "Project" means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;" Necessary clarification may be issued in this regard	Kindly refer Article 2 - Scope of the Project along with the Definition of Project No Change. As per GUVNL bidding documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
8.	1.2.1 – RFQ	"The Government of India has issued guidelines (see Appendix-V) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process."	There is no "process of disinvestment" involved in this bidding process. Bidder requests to clarify how these guidelines are applicable here and if it is mandatory for every bidder to submit appendix-v or if it is required in some particular cases only.	The provisions are self-explanatory. Kindly refer GUVNL Bid documents.
9.	1.2.4 – RFQ	In terms of the RFP-DBFOO, a Bidder will be required to deposit, along with its Bid, a Bid security of Rs. 5 lakh (Rupees five lakh) per MW of maximum capacity offered by the Bidder (the "Bid Security"), refundable no later than 120 (One Hundred Twenty) days from the Bid Due Date, except in the case of the Successful Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO	In view of Office Memorandum (OM) dated 12th Nov 2020 issued by Ministry of Finance, Government of India wherein Ministry of Finance has directed that: No provisions regarding Bid Security should be kept in the Bid Documents in future and only provision for Bid Security Declaration should be kept in the Bid Documents. As per the OM, such provisions shall be applicable to all tenders issued till 31.12.2021 It is requested that provision related to Bid Security shall be deleted and replaced by Bid Security Declaration.	As non-adherence / non-compliance to tender participation terms may affect the consumers' interest, the Bid Security is essential to maintain sanctity of tendering process. Bid Security provision is as per the Model Bidding Documents of Ministry of Power. No Change. As per GUVNL Bidding Documents.
10.	1.2.5 – RFQ	Generally, the Bidder with the lowest landed Tariff (Lowest Bidder) shall be the selected Bidder… ……..Further, it is clarified that any single Bidder cannot quote part capacity from different stations	Supplier may have ownership for multiple power stations. It may be clarified whether such Supplier can submit separate bids from each power project i.e. more than one power station. If allowed, whether a separate application will have to be filed for each station?	Kindly refer to clause 2.2.1 of RFQ & 2.1.1 of RFP regarding condition for only 1 bid from a Project, conflict of interest and qualification conditions regarding bidder submitting bid individually or as a Consortium.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
			It may be clarified whether a Supplier can quote aggregated capacity from different units / projects under a single bid.	No. Kindly refer GUVNL Bid Documents.
11.	1.2.8 – RFQ	For the purposes of bidding hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the "Tariff"). The element of coal transportation and transit losses may vary from case to case and shall also form part of the Fuel Charge by way of adjustment.	It is requested to explain the meaning of adjustment in case of element of coal transportation and transit losses along with illustration for bidders located in different locations. Further, also clarify how the evaluation will be done as the coal transportation and transmission losses will vary from one bidder to bidder, also it will be different at the time of bid submission and at the time of payment. It may be clarified whether the cost of coal transportation, coal washery and transit losses will be directly pass through throughout the PPA tenure	Kindly refer Clause 3.5.2 of RFP – Bid Parameters RFP Appendix – I Clause – 33 – components of tariff to be quoted while submitting the bid PSA Clause 22.2 – determination of Fuel Charge under the PPA from time to time and modality for adjustment vis-à-vis bid submitted by the bidder The mechanism / framework for adjustment of coal transportation charges, coal washery charges and transit losses vis-à-vis bid submitted by bidders is provided under the Tender Documents. Kindly refer the relevant provisions.
12.	1.2.8 (a) – RFQ	.....The bid for the project shall, therefore, comprise the fixed charge and fuel charge, which shall be specified separately, and the bidder seeking the lowest Tariff shall be the selected bidder. The Base Fixed Charge shall not be more than 70% of the Tariff and the Base Fuel Charge shall not be more than 50% of the Tariff....	Base Fuel Charge will depend upon distance between coal mine location and respective power plant. Restricting the Base Fuel Charge to 50% of the Tariff may not be feasible for non-pit head plants as the transportation cost could be higher. In view of above, the conditions with regard to restriction of Base Fuel charge upto 50% may be relaxed / deleted.	The same is as per Model Bidding Documents. No change. As per GUVNL Bid Documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
13.	2.1.14. (vi) - RFQ	"Explanation ..... A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the PSA-DBFOO."	It is requested to specify the legal, financial or technical adviser of the utility in relation to the project	GUVNL has appointed Mercados Energy Markets India Pvt. Ltd. as a Consultant for the Bid.
14.	2.2 - RFQ	2.2 Eligibility of Applicants: 2.2.2....(B) Financial Capacity: The Applicant shall have a minimum Net Worth (the "Financial Capacity") equivalent to Rs. 1,50,00,000/- (Rupees one crore and fifty lakh) per MW of capacity offered by the Applicant) at the preceding financial year.	It is requested to clarify whether the minimum Net Worth Criteria is applicable for existing projects or for new projects. It is requested to reduce the eligibility condition for financial capacity to Rs. 1 Cr per MW instead of Rs. 1.5 Cr / MW There are many stressed assets in India due to projects stalled at various stages of construction. There have been instances of non-completion / inability of lowest bidder to complete the project. To avoid the bid process being jeopardized, it is requested to add following condition regarding Eligibility: *"Bidder(s) and/or Affiliates should not have been referred to NCLT or classified as Stressed Asset/NPA by lenders/RBI"* *Further Bidders and/or its Affiliates accounts with the lenders must be in "Standard" Category."*	Financial Capacity / Net Worth criteria would be applicable to all the Applicants. Kindly refer clause 2.2.2 of RFQ. No change. As per GUVNL Bid documents. In order to assess the eligibility of applicant for pre-qualification, Technical Capacity & Financial Capacity would be taken into consideration as per the GUVNL Bidding Documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
15.	RFQ Clause 2.2	**Eligibility of Applicants** 2.2.1. For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply: (c) An Applicant shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process....	Bidder understands that different power stations, under the same group company can be allowed to participate in the Bidding process. For example: Power Station X owned by ABC Ltd. and Power Station Y also owned by ABC Ltd. will both be allowed to participate in the Bidding Process as separate applicants. Hence, Bidder requests to confirm that the referred provision shall not apply to such case.	Kindly refer to clause 2.2.1 of RFQ & 2.1.1 of RFP regarding condition for only 1 bid from a Project, conflict of interest and qualification conditions regarding bidder submitting bid individually or as a Consortium. In such case, the Applicant shall be eligible to submit only 1 bid from a project. Kindly refer GUVNL Bid Documents for further clarification.
16.	RFQ Clause 2.2.3	O&M Experience: The Applicant shall either enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the requisite experience or undertake O&M through qualified and experienced staff of its own.	It may be clarified whether any documents / details are to be submitted by the Bidder RFQ/RFP stage towards requirement for O&M Experience in accordance with Clause 2.2.3 of RFQ.	At the time of submission of application at Pre-Qualification stage, the details with regard to compliance/undertaking for compliance is to be submitted in accordance with the O&M requirement stipulated under the tender documents. Kindly refer Point 19 - Appendix I of RFQ, definition regards O&M related aspects and Article 15 of PPA.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
17.	2.2.4 - RFQ	..... ii. certificate(s) from statutory auditors of the Applicant or its Associates specifying the Net Worth of the Applicant, 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 2.2.4 (ii). For the purposes of this RFQ – DBFOO, net worth (the **"Net Worth"**) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.	With regard to certificate from Statutory Auditors, it is requested that in case certificates for last financial year are not available, certificates from previous financial years be allowed Various equity-like instruments that may have been used by a Bidder/ Project Developer for the Project for reasons of financial flexibility are not included in the Net Worth definition. It is requested to also consider such instruments under Net Worth.	Kindly refer Clause 2.2.12 of the RFQ. No Change. As per GUVNL bidding documents.
18.	2.2.6 - RFQ	Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 1956/2013 (the "SPV"), to execute the PSA-DBFOO and implement the Project.	Since, operational capacity is allowed to participate, bidder as a single entity may be quoting capacity from one 1 unit out of total 4 units and therefore mandatory requirement to form an appropriate Special Purpose Vehicle (SPV) may be waived. Kindly clarify the requirement/ compliance in case the selected bidder / applicant is already an SPV. In such case, it shall not be mandatory for the later merging into another entity or merging another entity with itself.	The provision is self explanatory. No change. As per GUVNL Bidding documents.
19.	2.7.2(c) - RFQ	Utility considers that the implementation of the Award and/or PSA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and/or PSA under this RFP will have any impact of implication on the pending litigation or otherwise disputes with the bidder/supplier.	It is requested to delete this clause as it is not in the Model Bidding Documents.	At present various litigations are pending due to non-fulfilment of contractual obligations by Generators / Traders which are sub-judice. Allowing such applicants to participate may compromise / dilute the stand taken by GUVNL before regulatory

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
				bodies and judicial authorities. No Change. As per GUVNL bidding documents.
20.	2.2.8 - RFQ	An Applicant including any Consortium Member or Associate should, in the last 3 (three) year, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate.....	It is requested to clarify whether the termination of Letter of Intent (LoI) by a DISCOM for procurement of power, without levying any penalty will be considered as termination of Contract under this clause.	The provision is self explanatory. Kindly refer the Bid Documents.
21.	2.12.2 – RFQ 2.13.2(vii) – RFQ	The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this RFQ - DBFOO) and clearly marked as "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of such Application and documents, which shall be marked as "COPY". The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail. .....2 (two) soft copies of the Application on a Compact Disc (CD); and....	It is requested that soft copy be allowed to provide in pen drive also apart from in CD.	The suggestion is accepted. The data provided in the pen drive shall be protected.
22.	2.13.2 (viii) - RFQ	In case of Project / Unit operational as on Bid Due Date, the detailed with regard to Power Project, Commissioning, Generation during last 3 years, fuel availability if any, capacity tied up and merchant capacity available.	The details regarding generation during past 3 years will not add any value in evaluation. Fuel is being arranged by the Utility as per provisions of Para B (iv) of the SHAKTI Policy. It is suggested that details regarding generation, fuel availability should not be sought.	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
23.	3.3.7 – RFQ	.....The Selected Bidder shall surrender the proportionate quantity of any exiting Letter of Assurance / Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance / Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance / fuel Supply Agreement arranged by the Utility.	The bid document should allow the flexibility to the Applicant to bid with Fuel from any source. In case of an Applicant having an existing FSA / linkage tie-up for the plant, the bidder shall be allowed an option to submit the bid / quote based on the linkage available instead of SHAKTI coal of Utility.	The bids are being invited by GUVNL in order to utilize the coal allocated under SHAKTI Scheme Para B (iv) by Govt. of India. The source of coal being the coal arranged by Utility, the bids are being solicited and would be evaluated for the same. Bidders are requested to kindly refer the bid documents.
24.	5.1 - RFQ	A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ - DBFOO document shall be allowed to participate in the Pre- Application conference. Applicants who have downloaded the RFQ - DBFOO document from the Utility's website (www.***) should submit a Demand Draft for the amount specified in Clause 1.2.1 towards the cost of RFQ - DBFOO process through their representative attending the conference.	It is understood that GUVNL will be separately intimating the date of registration and process for submission of bids for Qualification Stage after approval of Bid Documents by Hon'ble GERC. It is requested that RFQ fee should be collected from bidders only after final document approval by GERC.	GUVNL will separately intimate the opening of registration for Qualification stage after approval of Bid Documents by Hon'ble GERC.
25.	APPENDIX-I - RFQ	12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court. 13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.	It may be noted that mere investigation (or lodging of FIR) is not disqualification under any law even for contesting the election, until & unless the person is convicted by a Court. It is requested that Point No. 12 & 13 may be modified as follows: 12. "I/We further certify to declare that no member of the individual bidder/Consortium has been convicted for any offence(s) under IPC for which the minimum period of imprisonment is two years or more."	The provision is as per Model Bidding Documents notified by Ministry of Power, Govt. of India. No change. As per the Bidding Documents.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
			13. Deleted	
26.	Appendix I, (17) - RFQ	The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ - DBFOO document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ - DBFOO, are also enclosed.	The bidders who are not participating as consortium are not required to submit the power of attorney for Lead Member of consortium. Accordingly Bidder requests Sr. No. 17 kindly be modified as suggested herein.	Kindly refer Clause 2.2.5 or 2.2.6 (c) of RFQ. PoA whichever applicable is to be submitted: Appendix II – PoA for signing of Application and Bid Appendix III – PoA for Lead Member of Consortium Kindly refer the Bid Documents
27.	APPEND IX-I Annexure -IV of the RFQ	Certificate from the Statutory Auditor regarding PPP projects	Bidder requests the word 'PPP' shall be replaced by 'Eligible.'	The Certificate is to be submitted in case the Applicant is claiming experience under Categories 1 & 2 as per Clause 3.2.1 of RFQ. No Change. As per GUVNL bidding documents.
28.	RFQ Appendix I Annexure IV (Instructions – 13)	**Certificate from the Statutory Auditor regarding PPP projects** ... We further certify that the total estimated capital cost of the project is Rs cr. (Rupees .....crore), of which Rs. ... cr. (Rupees ..... crore) of capital expenditure was incurred during the past five financial years as per year- wise details noted below: ...	The second paragraph does not distinguish fully between projects that are already constructed and projects that are still under construction. It is requested to modify as under: *...We further certify that the project cost/total estimated capital cost of the project is Rs cr. (Rupees....crore), of which Rs. ... cr. (Rupees..... crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:*	As per the Bid Documents, Explanatory notes may be attached thereof by the Bidder in case of requirement for highlight any specific aspects related thereto.

Sr.	Clause No.	As per GUVNL Draft	Query / Suggestion	Reply / Clarification
29.	RFQ Appendix I Annexure VI Clause 3. & 4	3. Quantum of Power Contracted with other purchaser, if any (in MW) 4. Details of surplus capacity (in MW):	In this section, whether bidder required to submit details of Quantum of Power Contracted with other purchaser under medium term or long term only. Similarly, details of surplus capacity are to be provided for the period from Scheduled Supply Commencement Date and shall be computed with reference to capacity tied up (if any) under medium / long term tenders. Bidder requests for Confirmation.	Under this section, the Applicant is required to specify the quantum / capacity already tied up from installed capacity as on the date of application under long / medium / short term basis including tenure. Under this section, the Applicant is required to specify the surplus quantum being available w.e.f Supply Commencement Date indicated by GUVNL in RFQ in reference to details at Sr. 2 & 3 after fulfilling any committed capacity under long / medium / short term basis.
30.	RFQ: General Query	General Query	Bidder requests GUVNL to specify if the documents at RFQ stage be submitted online at DEEP Portal or physically at GUVNL's office.	Kindly refer Clause 2.13 of RFQ. The documents at RFQ stage for qualification are to be submitted in hard copies to GUVNL as well as to be uploaded on the DEEP e-bidding Portal.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
1.	1.2.2 - RFP	All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of 500 per MW for the maximum capacity for which the Applicant is willing to bid, to PFC Consulting Limited (PFCCL).	Bidder requests GUVNL to provide details of PFCCL Bank Account for deposit of e-bidding fees	Details will be provided upon opening of registration.
2.	1.2.5 - RFP	A Bidder is required to deposit, along with its Bid, a bid security of Rs 5 lakh (Rupees five lakh) per MW of capacity offered....	The total quantum proposed under the tender is around 3000 MW Considering the huge quantum under bid, it is requested to reduce the Bid Security amount by 50% i.e. Rs 2.5 lakh per MW of capacity offered by bidder	No Change. As per GUVNL Bidding Documents.
3.	1.2.8 - RFP	Generally, the lowest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP-DBFOO, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the capacity required as per clause 1.1 is not fully met by the Lowest Bidder	As per the existing provision, it will be a challenge for a bidder to match the Lowest Bidder Tariff since each & every Bidder has its own economics. In view of above, it is suggested that the L1 matching method may be replaced with bucket filling method	No Change. The methodology is as per the Model Bidding Documents of Ministry of Power.
4.	3.3.5 - RFP	After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Utility to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof.	Bidder requests GUVNL to replace Seven days by seven working days	No Change. As per GUVNL bidding documents.
	Appendix-I (33) - RFP		It is requested to allow variance in reagent costs for implementation of Flue Gas Desulphurisation ("FGD") system as pass-through items as per norms of CERC.	No Change. As per GUVNL bidding documents. The Bidder should consider PSA clauses 4.1.3 J, 5.10, 34.1.1 and modified clause

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			FGD installation will mandatorily take place for thermal power plants during this contract period in order to comply with new MOEF emission norms.	15.11 (as reproduced below) *".....For the avoidance of doubt, the Supplier should ensure that its power plant meets/shall comply with all the required environmental norms and that the Supplier has installed/shall install and operate all such equipment at its own cost as may be required as per timelines stipulated in such notifications, necessary to ensure compliance to notified norms/guidelines as on Bid Due Date."*
			It is requested to create a separate variable component for reagents consumed for FGD and allow the same as pass through normative consumption norms notified by CERC from time to time. The request is to insulate the Supplier from price variations of the reagent during the tenure of the PPA.	No change. As per GUVNL Bidding Documents. The quote shall be inclusive of any such applicable costs.
6.	Appendix-I (33) - RFP	33. ..... I/ We hereby submit the following Bid and offer, as on the Bid Due Date, in accordance with the provisions of the Power Supply Agreement and Clause 3.5 of this RFP-DBFOO- [A Tariff of Rs. ... and paise.....$ (Rupees ....and paise ....) per kWh comprising a) Fixed Charge of Rs. .... and paise .... $ ...	Since the bidder is already quoting these values in the DEEP Portal Hence Bidder requests that the values need not to be quoted here	Bid values may not be quoted while submitting the physical documents to GUVNL and shall be quoted only on e-bidding DEEP Portal.
7.	Appendix-I (33) - RFP	... I/ We hereby submit the following Bid and offer, as on the Bid Due Date, in accordance with the provisions of the Power Supply Agreement and Clause 3.5 of this RFP-DBFOO-[A	It is understood that Utility will provide Per kWh ISTS transmission charges by grossing up with 90% Normative Availability in respect of the Monthly transmission charges as provided by	**ISTS Transmission Charges:** GUVNL to pre-specify transmission charges in Rs./unit (ISTS network) to be quoted by Bidder while submitting the bid

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
		Tariff of Rs. ...and paise...(Rupees ....and paise....) per kWh comprising a) Fixed Charge of Rs. .... and paise .... (Rupees .... and paise....) per kWh b) Inter-State transmission charges of Rs.... Per kWh and inter-state transmission losses of ... Rs. per kWh...	NLDC/CERC, in order to avoid less recovery of transmission charges as paid by Supplier. The modality with regard to ISTS transmission charges may be clarified. Further, whether the ISTS charges are to be quoted at normative level or at 100% level The modality with regard to ISTS transmission losses may also be clarified.	online on DEEP Portal while variation thereafter shall be treated as pass through under Change in Law. Transmission Charges shall not be changed during reverse auction. The ISTS charges as notified by NLDC / CERC prevailing prior to the Bid Due Date shall be specified by GUVNL after grossing up the same at Normative Availability level i.e. 90%. **ISTS Transmission Losses:** GUVNL to pre-specify transmission losses (in %) (ISTS network) to be considered by Bidder while submitting the bid online (in Rs./unit) 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. It is to clarify that transmission charges & losses for the State wherein Generator is located, if any applicable, shall be on the account of Generator at all times.
8.	Appendix-I (33) - RFP	{I/we hereby submit that we would be sourcing the coal from coal linkage allocated vide Letter of Assurance /FSA dated (copy enclosed). The notified price as per Letter of Assurance /FSA is Rs. per MT and GCV of kCal/Kg.}$	It is requested to clarify what details are to be quoted / submitted by the Applicant while submitting the bid under RFP. It is requested to clarify whether the bidder can participate who does not have coal linkage allocated vide Letter of	Prior to bid submission, GUVNL will pre-disclose the details regarding coal viz. source of fuel, quality of coal etc. pursuant to receipt of the same from CIL / Subsidiaries.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			Assurance /FSA dated. In absence of coal linkage allocated vide Letter of Assurance /FSA dated, which document/undertaking is required.	Bidders would be required to submit their bid after taking above details into consideration.
			Bidder requests GUVNL to kindly mention the source of SHAKTI coal, which will be allocated to the bidders.	Kindly refer the "Additional clarification regarding submission of bid" under the Appendix-I of RFP and PSA Clause 22.2.: for further clarification. Kindly refer the clarification given in this document regarding the source of coal.
			Bidder requests to confirm that the bidders will have the option to source coal from nearest source of coal for the generating stations. ~~And also additionally the bidders should be allowed to continue the coal sourcing from the existing LOA/FSA.~~	No change. As per GUVNL Bidding documents.
9.	Appendix-I (33) - RFP	**Additional clarifications regarding submission of bid: Clause (vi)**	As the coal is being arranged by the Utility under the Para B (iv) of SHAKTI Scheme, it is likely that the coal may be allocated from basket of mines with different quantum, different GCV of coal and consequently different pricing. Further, each mine shall have different distance from the power station.	It is to clarify that for the coal allocated to GUVNL under SHAKTI Para B (iv), the Supplier would be required to sign FSA with CIL/ Subsidiaries as mentioned under the GUVNL Bidding Documents.
			In this regard, it may be clarified as to Coal Price / GCV would be considered and Fuel charge would be worked out.	Kindly refer Clause 22.2 – Fuel Charge & Clause 22.3 – Determination of GCV. The clauses are self-explanatory.
			The coal source i.e. coal mines shall be the same for all Bidders.	
			Consequently, the Ex-Mine Coal Cost & GCV of coal will also remain same for all Bidders. Thus, Bidder suggests that the	No change. As per GUVNL Bidding Documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			Utility pre-specify the ex-mine cost of coal and GCV to be considered by all Bidders while quoting the Fuel Charge. The same will be more transparent and will also be beneficial to the Utility in terms of Evaluation of Bids.	
	Appendix I -RFP	**New Clause to be added**	The suggested modification is as per standard format & practice followed by Banks. Bidder requests to add the following clause: Notwithstanding anything to the contrary contained herein- i Our liability under this Guarantee shall not exceed Rs. _ _ _ _ _ _ _ (Rupees _ _ _ _ _ _ _ _ _ _ _ _ _ _ only) This Bank Guarantee shall be valid up to [_ _ _ _ _ _ _] (being the date of expiry of the guarantee) iii. The beneficiary's right as well the Bank's liability under this Guarantee shall stand extinguished unless a written claim or demand is made under this Guarantee on or before [_ _ _ _ _ _ _] (being the date of expiry of claim period)	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
11.	Appen-III RFP & Append-II - RFQ	Know all men by these presents, We, ..., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the *** **Project proposed or being developed by the** *** **(the "Utility")**	Since project of power plant is already developed by bidder, hence Bidder requests to change the "*** Project proposed or being developed by the *** (the "Utility") " for the selection of bidder for long term power supply to utility.	Appropriate modification incorporated as under: *.....our Bid for the *** Project already commissioned / proposed or being developed by *** (name of the Bidder)*
12.	Appendix I -RFP	Details of the Allocated Coal Linkage	As per definition - "Allocated Coal Linkage" is Linkage Coal allocated to the Utility under SHAKTI Scheme of Govt. of India. As these details are to be provided by utility, Bidder requests this format to be deleted.	Under this format, the Details would be provided by GUVNL with respect to Source, Quality and notified Price of Coal prior to the bid submission due date. No change. As per GUVNL Bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
1.	PSA - Clause E – Part I	[The Utility has obtained the Letter of Assurance, dated [**] issued by [**] ("Coal Supplier") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("Letter of Assurance" appended herein as Annexure 1) for the purposes of the Contracted Capacity;]	Bidder requests GUVNL to provide the details of coal mine	Prior to bid submission, GUVNL will pre-disclose the details regarding coal viz. source of fuel, quality of coal, notified price of coal etc. pursuant to receipt of the same from CIL / Subsidiaries.
2.	1.3 - PSA	**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.	Since the power procurement is up to 3000 MW for 15 years, Bidder notices that it will have huge under-recovery pursuant to rounded up or rounded down to two decimals.	No Change. As per GUVNL bidding documents.
3.	2.2 – PSA – New clause	**New Clause 2.2 to be added**	Bidder understands that SBD does not provide for when the Agreement would be effective. For clarity and with a view of avoid disputes, the same has been expressly mentioned.	Following Definition added: 'Effective Date' means the date of signing of Power Supply Agreement.
4.	3.1.1 - PSA	**Supply Contract** Subject to and in accordance with the provisions of this Agreement, Applicable Laws.... for a period of [16] years	It is understood that the Contract Period for power supply is 15 years. However, under this clause, 16 years is mentioned. Kindly clarify the same.	It is to clarify that the Contract Period is 15 years from Supply Commencement Date as stated under the GUVNL Tender Documents. In the aforesaid clause, 16 years is tentative period from the Appointed date to cover the expected time period between the Appointed date and supply commencement date to enable Supplier to plan / schedule off-take of coal in co-ordination with GUVNL &

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
				CIL / subsidiaries for commencing power supply by stipulated date. The exact period under this clause would be appropriately modified at the time of signing of PPA.
5.	3.1.1 - PSA	**Supply Contract**	It is requested to retain the clause as per SBD, mentioned below; Provided that the Supplier shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [( )] years, upon issuing a notice to this effect to the Utility, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	No Change. As per GUVNL bidding documents.
6.	4.1.2 - PSA	"4.1.2. The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 60 (sixty) days from the date of this Agreement or on an earlier day acceptable to the Utility, by	It is suggested to modify this clause to provide flexibility to Supplier to submit Performance Guarantee in lieu of Performance Security.	No Change. As per GUVNL bidding documents.
7.	4.1.2 (a) - PSA	"(a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 23.1;"	It is suggested that it should be made as an obligation of the Utility instead of condition Precedent.	Kindly refer Clause 4.2 – Damages for delay by the Utility in case of non-fulfilment by Utility by the stipulated time period. Thus, no change. As per GUVNL Bidding Documents

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
8.	4.1.3 - PSA	Conditions Precedent required to be satisfied by the Supplier with reference to FSA	As per the draft document, one of the Supplier Obligations under conditions precedent is to execute FSA with CIL within 180 days from signing of PPA. Time available with the Supplier is only 120 i.e. 180 - 60 days (instead of 180 days as per model bidding document), which is not sufficient. It is requested that additional time period may be allowed to the Supplier for execution of FSA with CIL. For the above, it is suggested that timeline for Supplier should start only after receipt of consent by Procurer from CIL for execution of Fuel Supply Agreement.	As per Clause 4.1.2, one of the Conditions Precedent to be fulfilled by Utility is to procure consent of CIL for execution of FSA within 30 days of notice after 60 days from date of PPA. While as per Clause 4.1.3, one of the Conditions Precedent to be fulfilled by Supplier is to execute the FSA within 180 days from signing of PPA. As per above, adequate time period is available for signing of FSA since Utility is obliged to procure consent of CIL for FSA execution within given time. No Change. As per GUVNL bidding documents.
9.	4.1.3 - PSA	..... D. executed the Financing Agreements and delivered to the Utility 3 (three) true copies thereof, duly attested by a Director of the Supplier; E. delivered to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; F. acquired the real estate for the Power Station.....	The requirement with regard to submission of Financing Agreements, Financial Package Financial Model, real estate etc. may be waived for already Operational Projects as these details would not be relevant. Clause E may be modified as under: E. delivered to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, ~~which is acceptable to the Senior Lenders~~;	No Change. As per GUVNL bidding documents. The operational projects would be required to furnish the Certificate from Lenders regarding the updated financial position. Those projects acquired through NCLT route / CIRP route shall be required to submit all the financial details as required under the tender documents from Lenders for scenario after restructuring / acquisition, as the case may be.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
10.	4.1.3 (J) - PSA	In case of Type 1 projects... Undertaking of compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof. In case of Type 2 projects, submitted an Undertaking for compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof	Supplier can be made liable to comply all the norms, permits and guidelines as notified by Govt. of India only up to Bid Due Date. Any amendments, changes, revisions or compliance of new norms notified after Bid Due Date shall be eligible under Change in Law. Thus, necessary clarification in this regard may be issued by GUVNL. The compliance of revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof shall be done as per the schedule prescribed by Statutory Body/ Govt of India. At present, there has been some extension in the timelines. It is requested to provide the Undertaking format of compliance to all the norms, permits and guidelines as notified by Govt. of India.	Govt. of India has notified the revised environmental norms in 2015. Since, various thermal power plants could be at different level of compliance / installation / CAPEX towards new environment norms and any other norms notified till the bid submission date under this tender, in order to have uniformity, it is expected that Supplier at the time of bid diligently factors in the anticipated costs towards compliance to norms / regulations as notified on bid due date (irrespective of compliance timelines prescribed by Authorities). The same is essential to have uniformity as well as evaluation of bids. The draft of Undertaking to be submitted regarding compliance to prevailing norms, permits etc would be shared by GUVNL. Kindly refer PSA clauses 4.1.3 J, 5.10, 34.1.1 etc. for clarification
11.	4.1.3 (G) - PSA	"G. 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;"	It is requested to delete this requirement	The same is as per Model Bidding Documents. No Change. As per GUVNL bidding documents.
12.	4.2 & 4.3 - PSA	"4.2. Damages for delay by the Utility- calculated at the rate of 0.1% (zero point one per cent) of the Performance Security 4.3. Damages for delay by the Supplier- calculated at the rate of 0.3% (zero point three per cent) of the Performance	It is requested that the clause may be modified to make the damages for delay uniform for both Utility and Supplier.	The same is as per Model Bidding Documents. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
		Security"		
13.	4.5 - PSA	**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, before the 1st (first) anniversary of 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 Power Supply Agreement 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."	It is requested to modify the said provision and incorporate the following: The Non defaulting party should have the right to terminate in case the other party doesn't fulfil their obligations.	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
14.	5.1.4 - PSA	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 Contracted Capacity at Delivery Point over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto Delivery Point, and for any month or year.....	Bidder requests GUVNL to provide suitable illustration and calculation for ease of understanding of prospective bidders regarding calculation of Availability as per the Article 39 Definitions: "Delivery Point" for interstate and intra state projects intending to bid in this tender. It is requested that the Normative Availability shall be 85% as per standard industry practice instead of 90%	Contracted Capacity would be considered at Delivery Point i.e. GETCO periphery. Kindly refer Clause 5.1.4, 5.5, 5.6 & 18.2 and definitions of "Delivery Point" and "Contracted Capacity" No change. As per GUVNL Bid Documents.
15.	5.1.5 (a) - PSA	"Non-grant of long term open access shall be mutually decided by the Utility and Supplier"	It is requested that GUVNL may take the responsibility of providing the NoC from the SLDC and same should be included in Article 6 (Obligations of the Utility). Otherwise, the non grant of long Term Open Access shall be treated as Force Majeure under the PSA.	SLDC processes open access applications in accordance with prevailing Regulations & timelines. No Change. As per GUVNL bidding documents.
16.	5.1.5 (a) - PSA	...Supplier shall apply for grant of long-term open access for supply of Contracted Capacity	Since Transmission losses are changed on weekly basis & application is submitted to Powergrid at point of connection of generator. Hence after considering losses, bidder will apply for LTOA. In case of excess LTOA due to lower transmission losses after LTOA application submission. Bidder wants GUVNL to confirm whether it will take excess supply. Kindly clarify who shall be responsible for application of open access. What quantum to be considered for open access.	Supplier shall be responsible to avail open access taking into consideration the applicable transmission loss for supply of contracted capacity at Delivery Point. GUVNL shall be eligible to decide the mode of open access for flow of power and Supplier shall be required to make open access application accordingly on behalf of Utility. Kindly refer to the definitions of "Delivery Point" and "Contracted Capacity", and Clauses 5.5 and 5.6 regarding Transmission charges and Transmission loss.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
17.	5.2 - PSA	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. The Supplier shall submit to the Utility the drafts of all Project Agreements... liable for the same in any manner whatsoever. The Supplier shall procure that each... whatsoever from the Utility in the event of Termination or Suspension.	As per the PSA, the Project Agreements is defined as documents and agreement relating to fuel tie up under the arrangement. It is requested to clarify whether the FSA for SHAKTI coal would be tripartite FSA i.e whether Utility will be a party under FSA. If yes, then the requirement under Clause 5.2 regarding seeking / forwarding the documents / amendments related to FSA to Utility may be deleted as Utility is already a party to FSA. It is requested that the requirement for submission of such agreements may be waived off for already commissioned plants.	Model Bidding Documents provides that in case of the commissioned power plants, FSA shall be signed with the Supplier along with the execution of this PSA. In case of the likely to be commissioned power plants, a Letter of Assurance may be issued by CIL/SCCL to the Supplier and FSA shall be signed on commissioning of the power plant. GUVNL is yet to receive draft FSA from CIL. The same would be informed based on receiving draft FSA. No change. As per GUVNL Bidding documents.
18.	5.2.3 - PSA	The Supplier shall procure that each of the Fuel Supply Agreements, to the extent it provides for supply of Allocated Coal for the Contracted Capacity, contains provisions that entitle the Utility to step into such agreement, in its sole discretion, in substitution of the Supplier in the event of Termination or Suspension (the "Covenant")....	It is understood that such clause regarding step in to Agreement by Utility may not be acceptable to Coal Suppliers. Further, the compliance of this provision would be at the discretion of Coal Supplier and beyond the scope of the Supplier. It is requested that either this provision may be deleted from the PSA or GUVNL may take up the requirement with appropriate Authority for incorporation of such provision under the FSA.	No Change. As per GUVNL bidding documents and FSA with coal supplier.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
19.	5.3 - PSA	"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."	It is requested to modify clause as under: Obligations relating to change in ownership Bidder understands that the Supplier shall not, *for a period of five years from a appointed date*, undertake or permit any Change in Ownership, except with the prior written approval of the Utility.	Kindly refer Clause 2.3 of RFP, Clause 7.1 (k) of PSA with regard to warranties of the Supplier and Definition of Change in Ownership for further clarification. No Change. As per GUVNL bidding documents.
20.	5.7 – PSA	"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."	It is requested that any differential arising due to change in these charges after bid due date shall be borne by Utility The said charges are statutory in nature, therefore these charges should be paid by the Supplier but the same should be reimbursed by the Utility.	Bidder may submit their quote after considering all such prevailing charges. Further, any variation in such charges throughout the PSA tenure shall be borne / absorbed by the Supplier itself. No change. As per GUVNL Bidding Documents.
21.	5.10 – PSA	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 environmental norms as applicable / notified as on Bid Due Date shall be on account of the Supplier at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions.	It is requested to allow variance in Reagent costs due to implementation of Flue Gas Desulphurisation ("FGD") and NOx system as pass-through items as per norms of CERC regulation. This clause is in direct contradiction with the Change in Law Clause. It is highlight that due to compliance with new emission norms, FGD installation with an expenditure of Rs 30-45 lakhs/MW is likely to be incurred by plants within the next 1 to 2 years. This is going to increase the cost of supply. Hence the same shall be allowed to be pass through on pro-rata basis under this contract.	Bidder to submit their bid assuming / taking into consideration all such applicable costs. GUVNL shall not be liable / obliged in any manner to bear the same. It is clarified that only the Change in Law after the Bid Due Date (last date of bid submission) shall be considered, if eligible as per the provisions of PPA and subject to requisite approval as per PPA. Kindly refer the clarification under this document. No change. As per GUVNL Bidding Documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
22.	7.2 – PSA	(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;	The provision under Representation & Warranty for Supplier and for Utility is different. It is suggested that aforesaid clause (d) & (e) may be modified for making it uniform for Supplier & Utility.	The obligations and responsibilities of Utility & Supplier are pre-defined under the Tender Documents. The aforesaid provisions are as per the Model Bidding Documents of MOP. Accordingly, no change. As per GUVNL Bidding Documents.
23.	9.1 – PSA	The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.*** Crore (calculated @ Rs. 30 lakhs/MW) in the form set forth in Schedule-D (the "Performance Security").	As per Model Bidding Document, Performance Security shall be at most 20 lakhs/ MW if the requirement is 1000 MW or above. Since the requirement in the current tender is 3000 MW, it is requested that Performance Security must be kept @ Rs. 20 lakhs per MW or less	The amount of Performance Security to be provided by Supplier is in accordance with the Model Bidding Documents of MOP. No change. As per GUVNL Bidding documents.
24.	9.1.3 – PSA 4.1.3 – PSA	**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 60 (sixty) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof ..... **4.1.3:**The Conditions Precedent required to be satisfied by the Supplier within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled	There seems to be some mismatch in the timelines for complying with the Conditions Precedent by the Supplier. It is requested align the mismatch in number of days. It is requested that 180 days shall be allowed for both cases to Supplier to fulfil the Condition Precedent, without any damages thereof.	The overall timelines for meeting all the Conditions Precedent is 180 days. The timelines stipulated under Clause 4.1.3 (180 days) is the comprehensive timelines by which Supplier should have complied with all the Conditions Precedent as specified therein viz. PS, Substitution Agreement, FSA, legal opinion etc. Kindly refer Clause 9.1.3 – submission of PS within 60 days of PSA No change. As per GUVNL Bidding Documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
25.	9.3 – PSA	The Performance Security shall remain in force and effect until expiry of 3 (three) months after COD,	It is requested to clarify whether those plants which have already achieved COD shall be required to submit the Performance Security or can directly submit the Performance Guarantee after signing of PSA	Kindly refer Footnote – Clause 2.2.2 (B) regarding COD, Article 13 & 14 for Commercial Operation Date under this Tender Document. The same shall not be considered with the earlier COD of operational power plant / unit. Since, all categories of projects would be required to achieve the COD after compliance to the conditions stipulated under the Tender Document – PS is to be submitted by all selected Supplier within 60 days of signing PSA with 2 years validity No Change. As per GUVNL bidding documents.
26.	11.2.2 – PSA	In the event that the Supplier fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-E, unless such failure has occurred due to Force Majeure or for reasons attributable to the Utility, it shall pay Damages to the Utility in a sum calculated at the rate of 0.2%...	In case the Supplier provides power supply from an alternate source, the Bidder requests the Utility not to terminate the Agreement	No Change. As per GUVNL bidding documents. The provisions are self-explanatory.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
27.	11.2.3 – PSA	Type 1 Projects shall be required to undertake.....For the avoidance of doubt, the Parties agree that in the event COD does not occur within 120 (one hundred and twenty) days from the Scheduled Supply Commencement Date specified under this agreement, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement.	It is requested that even the Type 1 projects i.e. Operational projects shall have the flexibility to supply power from alternate source in case of occurrence of any event/ circumstance that prevents commencement of power supply in accordance with the provision under the Agreement.	No Change. As per GUVNL bidding documents.
28.	13.2.2 – PSA	Upon completion of Construction Works, and the Supplier determining the Tests to be successful in accordance with the provisions of this Agreement, it shall forthwith issue to the Utility a certificate substantially in the form set forth in Schedule-G (the "Completion Certificate")." Tests in respect of Station Heat Rate shall be deemed to be successful only if the Tests establish that the Station Heat Rate is equal to or lower than the rate specified in the Specifications and Standards. Provided, however, that in the event the Tests establish that the actual Station Heat Rate exceeds the specified Station Heat Rate by upto 2% (two per cent) thereof, the Tests shall be deemed to be successful as if the Power Station has achieved the specified Station Heat Rate. For avoidance of doubt, it is to clarify that this Clause shall be applicable for both Type 1 and Type 2 projects.	The requirement of completion certificate in case of project for which COD is already achieved, shall be removed. The existing test results should suffice the requirement It is requested that Type 1 i.e. projects that are already commissioned should be exempted from such re-testing / re-certification for compliance of COD under the PSA. It is to mention that that is not possible to modify/change the SHR of existing plants to a very large extent. Accordingly, it is suggested that the requirement for SHR tests / compliance by operational units may be done away with. The reason being in case of actual SHR being determined to be higher than specified SHR (2350 kcal/kwh), there is heavy penalty in terms of reduction in Base Fixed Charge. As mentioned in MBD, 2% may be	The concessional coal is being allocated to Utility under the SHAKTI scheme of Govt. of India. In case of high SHR, the specific fuel consumption increases. Model Bidding Documents provides for adherence to SHR norms by all type of projects for the purpose of promoting efficiency, transparency and competitiveness. No change. As per the GUVNL Bidding Documents. Kindly refer Footnote – Clause 2.2.2 (B) regarding COD, Article 13 & 14 for Commercial Operation Date under this Tender Document. The same shall not be considered with the earlier COD of operational power plant / unit.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			substituted by 10% for Power Station who has achieved COD prior to Dec 2016. It is requested to clarify how COD would be declared for the projects already under operation as on bid due date. Accordingly, it is suggested to modify the above clause.	All categories of projects would be required to achieve the COD after compliance to the conditions stipulated under the Tender Document.
29.	14.1.1 – PSA	..... if the Power Station is substantially completed but COD is delayed for reasons attributable to the Utility, 15% (fifteen per cent) of the Fixed Charge shall be due and payable hereunder as if COD has occurred for the Power Station or any Unit thereof, as the case may be, in addition to the extension of Concession Period under and in accordance with the provisions of this Agreement....	In case of delay in achieving COD within the required timelines, heavy penalty is imposed under PSA on the Supplier. However, if the COD is delayed due to reasons attributable to Utility, the Supplier should be immune to such huge risk and be entitled to receive full capacity charges to cover its debt repayment and interest payment obligations and other fixed payment obligations. It is requested that in case any delay in achievement of COD due to reasons attributable to Utility, the Supplier be paid full (100%) of the Fixed Charges as if COD has occurred.	The provision is as per Model Bidding Documents and is self explanatory. No Change. As per GUVNL bidding documents.
30.	PSA	-	**New Clause suggestion:** It is requested to incorporate a provision enabling Utility to avail power (if required) at any time prior to the Scheduled Completion Date at the same terms and conditions of PSA. This shall provide greater flexibility to the Utility to plan its power procurement.	The commencement of power supply under the PSA is based on supply of Coal by CIL under SHAKTI allocation. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
31.	14.2 – PSA	Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61st (sixty first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.	Damages should not be applicable in case the Contracted Capacity is supplied through an alternate source. It is requested to modify the clause as suggested.	The applicability of damages under Clause 14.2 is subject to applicability of provision under Clause 11.2. No change. As per GUVNL Bidding Documents.
32.	15.7.2 – PSA	Upon receiving the permission pursuant to Clause 15.7.1, the Supplier shall be entitled to shut down or de-commission the designated Unit for the period specified therein, and in the event of any delay in re-commissioning such Unit, the Supplier shall pay Damages to the Utility calculated at the rate of 2% (two per cent) of the Average Daily Fixed Charge for each day of delay until the Unit has been re-commissioned for generation.	As per PSA, Supplier is required to maintain Normative Availability in order to claim full Fixed Charges. In case of failure to maintain the same, Fixed Charges are proportionately reduced. Hence, the penalty provision in said Clause 15.7.2 is leading to double penalty on the Supplier in terms of already reduced fixed charges plus the added penalty. Hence, it is requested to remove the said penalty provision.	No Change. As per GUVNL bidding documents.
33.	15.9 – PSA	**Damages for breach of maintenance obligations:** In the event that the Supplier fails to repair or rectify any defect or deficiency which causes reduction in Availability, it shall be deemed to be in breach of this Agreement...	As per PSA provisions, the Supplier is required to maintain Normative Availability in order to claim full Fixed Charges. In case of failure to maintain the same, Fixed Charges are proportionately reduced. Hence, the penalty provision in said Clause 15.9 is not required since the obligation of O&M and ensuring availability of plant is that of Supplier and in case of failure to do so, already fixed charges are being reduced.It is requested to remove this clause	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
34.	15.11 – PSA	The Supplier shall not carry out any **material modifications to the Power Station save and except where such modifications are necessary for the Power Station to operate in conformity with the Specifications and Standards, Maintenance Requirements and Applicable Laws; provided that the Supplier shall notify the Utility/Utility's Engineer of the proposed modifications**	Under the DBFOO model, ownership of the plant is that of Supplier. During the operations, several & regular modifications are required which are largely operational in nature. It would be cumbersome for Supplier & Utility to seek approval for each modification. This would also lead to increased administrative burden on Utility. Hence, it is requested to delete this clause.	No change. As per GUVNL Bidding Documents.
		For the avoidance of doubt, the Supplier should ensure that its power plant meets all the required environmental norms and has installed all such equipment necessary to ensure compliance **to such notified norms/guidelines as on Bid Due Date.**	It is to mention that Govt. of India has extended the timelines for compliance to revised environmental norms and such compliance may not be required to be complied as on Bid Due Date. It is suggested to modify the clause as under: *"....For the avoidance of doubt, the Supplier should ensure that its power plant meets all the required environmental norms and has installed all such equipment necessary to ensure compliance to such notified norms/guidelines* ***as applicable from time to time"***	Kindly refer the Clause 4.1.3, 5.10 & 34.1.1 with regard to requirements / compliance conditions for environment norms and clarification issued under this document regarding the same.
35.	16.1 – PSA	**Monthly status report**	Under DBFOO model, ownership of the plant is that of Supplier. Supplier obliged to supply power as per the PSA and comply with the operational conditions. Thus, the requirement for submission of Monthly Report to Utility may be deleted.	No change. As per bidding documents.
	16.2 –	**Inspection**...	The requirement for mandatory	No change. As per bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
	PSA		inspection every 6 months by Utility may be deleted.	
	16.3 – PSA	**Remedial Measures...**	This clause may be deleted.	No change. As per bidding documents
36.	17.1 – PSA	**Key Performance Indicators**	Key Performance Indicator is the Availability. In any case, Availability is being submitted in Monthly Invoices raised by the Supplier. Accordingly, this provision may be deleted to avoid duplication in information submission.	
	17.2- PSA	**Coal receipt & consumption**	Since the FSA would be tripartite agreement wherein Utility / State Govt. would be a party, there is no requirement for such report.	No change. As per the GUVNL Bidding Document.
	17.3 – PSA	**Monthly status report**	This requirement may be deleted.	
	17.4 – PSA	**ISO Certification**	Under the DBFOO model, the prerogative of ISO Certification shall be of Supplier. It is requested to delete the provision.	

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
37.	18.2 – PSA	Contracted Capacity Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *** MW to the Utility as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement. For avoidance of doubt, the Contracted Capacity shall be the net capacity to be made available at the Delivery Point after taking into account auxiliary consumption, all applicable intra-state and inter-state transmission losses applicable up to the Delivery Point.	Bidder requests to modify the clause as: Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *** MW ***at Delivery point*** to the Utility as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement. For avoidance of doubt, the Contracted Capacity shall be the net capacity to be made available at the Delivery Point after taking into account auxiliary consumption, all applicable intra-state and inter-state transmission losses applicable up to the Delivery Point.	"Delivery Point" word added under this clause. Kindly refer the final Bid Documents.
38.	18.3 – PSA	Committed Capacity: The Parties expressly acknowledge and undertake that the Contracted Capacity hereunder along with similar capacity contracted between the Supplier and other Distribution Licensees for supply of electricity in accordance with the provisions of Section 62 or 63 of the Act, as the case may be..."	It is requested that reference of contracted capacities with other Distribution Licensees may be removed/deleted as not relevant.	The same is essential to have the details regarding committed capacity, installed capacity and merchant capacity. No Change. As per GUVNL bidding documents.
39.	18.5.1 – PSA	Sale of unutilized Committed Capacity In the event that any part of the entitlement of the Utility to the Contracted Capacity is not utilised by the Utility or its nominees, the same shall be deemed to be Committed Capacity, but only for the period when it is not being utilised or is not scheduled for utilisation by the Utility.....	It is requested that the provision related to sale of unutilized committed capacity to be removed/deleted. It is also requested to modify the provision for the unutilized contracted capacity with the Utility	Under the proposed arrangement, the concessional fuel is to be allocated by Utility under SHAKTI scheme. Thus, the aforesaid provision is necessary as per MBD for governing the sale of power from committed capacity. No change. As per GUVNL Bidding Documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
40.	18.6 – PSA	**Substitute Supply** In the event the Availability of the Power Station is reduced on account of Scheduled Maintenance, Unscheduled Maintenance 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..... 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 2.2.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge."	It is observed that this is a deviation from the Model Bidding Documents. The substitute supply source shall not be evaluated at the discretion of Utility for considering the eligibility to performance the supply obligation of Supplier under substitution. Thus, it is requested to delete this clause. In case Utility denies supply of power from substitute supply offered by Supplier, there should be no penalty imposed on supplier for such non availability and same shall be considered as compliance for the purpose of determination of availability and payment of fixed charge. It is requested to clarify who shall bear additional charges like Open Access, RDLC/SLDC charges etc. if power is supplied from alternate source	No change. As per GUVNL Bidding Documents. No change. As per GUVNL Bidding Documents. The supply being under the provision of the PSA, any additional charges towards Open Access, RLDC / SLDC charges etc. shall have to be borne by the Supplier only and Utility will not be liable for any additional cost implication thereof.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
41.	19 – PSA	Utility's Engineer	Under the DBFOO model, the ownership of the power plant is with the Supplier. The Supplier's principal obligation is to commission the power plant within the required timeline and supply power at Normative Availability to the Utility during the operations period. Hence, there is no requirement of Utility Engineer **at-least for commissioned projects (i.e. Type-1 projects)**. In any case, the Supplier is required to provide regular reports / updates to the Utility including estimation of delay in COD (if any) – this ensures that the Utility is well aware and updated at all times. It is therefore requested that the provision of Utility Engineer be removed.	No Change. As per GUVNL bidding documents.
42.	20-PSA	Financial Close	The conditions with regard to compliance to the Financial close, submission of financial package etc. may be deleted for Type 1 i.e. operational projects.	Kindly refer the clarification issued under this document. No Change. As per GUVNL bidding documents.
43.	20.1.1 - PSA	In case, of Type 2 project, the Supplier hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement	As per the RFP the supply commencement should be from around Sep 2023, in view of this it is understood that the project should be on ground and should be ready to achieve COD. Therefore it is requested that this clause may not be relevant for operational clause.	No Change. As per GUVNL bidding documents.
44.	21.2.2 - PSA	In the event the Completion Certificate specifies a Station Heat Rate that is lower than the Station Heat Rate specified in Schedule-C, the Initial Fixed Charge shall be increased such that for every improvement of 1% (one per cent) as	It is requested to confirm whether this clause would be applicable to the plants that are already commissioned Bidder requests GUVNL to clarify that in	Yes. Kindly refer the clarification provided in this document regarding COD, SHR & tests. The provision is regarding increase of

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
		compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be increased by 1.5% (one point five per cent) thereof. Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such increase shall be restricted to 1% (one per cent).	case of multiple sources of fuel (fuel received from different mines), will this restriction apply when all the fuel is sourced from mines within 100 km.	Initial Fixed Charge in case of improvement of SHR under Completion Certificate as compared to pre-specified under Schedule-C. The provision is self-explanatory.
45.	21.2.3 - PSA	In the event the actual Station Heat Rate is higher than the Station Heat Rate specified in the Completion Certificate the Initial Fixed Charge shall be decreased such that for every increase of 1% (one per cent) as compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be decreased by 2% (two per cent) thereof. Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such decrease shall be restricted to 1.5% (one point five per cent).	As per the PSA, Supplier would be penalized for the higher SHR by way of lower Fuel Charge payment and therefore Fixed Charge should not be reduced. The same will lead to double penalty due to higher SHR.	No Change. As per GUVNL bidding documents.
46.	21.3 - PSA	The Base Fixed Charge determined for each Accounting Year in accordance with the provisions of Clause 21.2 shall be revised annually to reflect 30% (thirty 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 (the "Indexed Fixed Charge").	It is requested that the 30% variation in WPI indexation with Fixed Charge may be replaced with 100% variation in WPI	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
47.	21.4.1 - PSA	Subject to the provisions of this Clause 21.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 21.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year.	As per PSA, the Supplier is required to achieve Normative Availability on Annual basis. Hence, it is requested that monthly payable Capacity Charges should be calculated based on Cumulative Availability during corresponding Accounting Year as same practice has been adopted under the CERC (Terms and Conditions of Tariff) Regulations. In line with above suggestion, definition of Cumulative Availability is required to be added in Definition section for clarity.	The availability on monthly basis shall be worked out in reference to cumulative availability vis-à-vis normative availability during the accounting year which would be reconciled at the end of year as per the provisions of PSA. Kindly refer the revised Bid Documents.
48.	21.4.2 - PSA	Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2 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 70% (seventy per cent) of the Non-Availability hereunder.	Fuel is being arranged by the Utility as per provisions of Para B (iv) of the SHAKTI Policy in the present project. Hence, with fuel being arranged by the Utility, Availability should not be linked to Fuel Stocks. Hence, it is requested to delete this clause. Since, Fuel has been allocated by Utility and Fuel Supplied would not be under reasonable control of Supplier, instead of 70%, 100% Fixed charge should be paid by the Utility in the event of deemed availability for shortfall in fuel.	As per MBD, Supplier is party to the FSA for coal allocation by CIL under SHAKTI scheme. Kindly refer Clause 22.7 & 22.11 of PSA for further clarification. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
49.	21.4.3 - PSA	In the event that any shortfall in supply of electricity to the Utility occurs after operationalization of long term open access, 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 21.5.3 while the Non-Availability arising, due to deficiency in CTU network, 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	As Transmission System & Open Access is not under reasonable control of the Supplier, instead of considering 50% of non-availability, 100% fixed charge should be paid. The availability of CTU network is not under control of the Supplier. Accordingly, the availability of Power Station should not be linked to the transmission deficiency as transmission deficiency of CTU network is beyond the control of Supplier and is the sole responsibility of the CTUIL. Hence the Supplier should be entitled to full Fixed Charge recovery in case of deficiency in transmission beyond Point of Grid Connection since it is beyond the Supplier's control.	No change. The same is in accordance with Model Bidding Documents. The deemed availability for the purpose of fixed cost as per this clause shall be considered only on account of deficiency in CTU network subject to the conditions stated under PPA and not on account of deficiency in other than CTU transmission network. Kindly refer the GUVNL Bid Documents.
50.	21.5.5 - PSA	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 "Misdeclaration") shall be deemed to have occurred.....	It is requested to clarify in details such events of "Mis-Declaration". It may be clearly mentioned which events are included or excluded from "Mis-declaration".	Kindly refer the Clause 21.5.5 along with 24.4 & 21.5.6 of the PSA for necessary clarification.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
51.	21.6.1 - PSA	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.	Since the actual dispatch will depend on availability declared by Supplier and requirement of Buyer, actual dispatch may be less even though the supplier has made the plant 100% available for the Utility. It is suggested that Incentive shall be payable on declared Availability rather than on the actual dispatch of power.	As per MBD, Incentive is payable for energy being dispatched above the Normative Availability. CERC Terms & Conditions of Tariff Regulations 2019-24 also provides for incentive linked to dispatch. Accordingly, no change. As per GUVNL Bid Documents.
52.	21.6.3 - PSA	The Parties expressly agree that within 30 (thirty) days of the **close of every Accounting Year, 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.	In this context, it is to mention that without adjustment of fixed charges, the incentive or damages cannot be adjusted. Therefore, it is requested that fixed charges, incentive / damages, as the case may be, shall be calculated for the moth and adjusted during the monthly bill only.	Provision is self explanatory. Availability as well as Incentive / Damages shall be worked out and paid / adjusted on Monthly Basis and shall be trued up at the end of Accounting Year Kindly refer Clause 21.6 of PSA for further clarification No Change. As per GUVNL bidding documents.
53.	21.9.2 - PSA	The Tariff payable by the Utility under this Article 21 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.....	It is requested to clarify herein that any other taxes up to the point of supply if applicable shall be passed on to the Utility	Kindly refer Clause 5.8, 21.9 & 34 of PSA, Definition of Tax and other provisions of bid with regard to tariff to be quoted and parameters to be taken into consideration for the same. No Change. As per GUVNL bidding documents

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
54.	21.10 – PSA	Commencing from the month following the month in which COD occurs, the Supplier shall, upon issuance of Regional Energy Account (REA) / State Energy Account (SEA) certifying the availability and energy scheduled for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the "Monthly Invoice")....."	It is requested to kindly include provision for submission of provisional invoice also on the last day of the month and to retain the final monthly invoice provision.	No Change. As per GUVNL bidding documents.
55.	21.10.1 - PSA	In case, the Monthly Invoice is raised through email, it shall be ensured that the original invoice is received by the Utility within 3 working days from the date of invoice raised. In case of non-receipt of original invoice as per above timelines, the date of receipt of Invoice shall stand revised to the date of receipt of original invoice by Utility	Bidder requests that Email received from valid email ID of the Supplier shall be considered as officially delivered document. Further, there are generating stations located all over India, some may be located in remote locations also. It may not be practically possible for such power stations to ensure hard copies reach the Utility Office within 3 working days. Hence it is requested that the due date for payment shall not be linked to receipt of hard copies by the Utility.	The requirement for submission of hard copy for the Invoice raised via email shall be as per the GUVNL Bidding Documents. Taking into consideration the requests received, the timelines for receiving hard copy by GUVNL has been revised from 3 working days to 5 working days. Kindly refer the final bid documents.
56.	21.10.3 - PSA	The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (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"**).	Kindly define Supplementary Bill under the PSA for clarity. It may also be clarified that Payment Due Date shall also be applicable to the Supplementary Bill.	Supplementary Bill / Invoice shall mean a bill / invoice other than a Monthly Invoice raised in accordance with PSA. It is to clarify that the Payment Due Date of 30 days as per PSA shall also be applicable for Supplementary Bill / Invoice. Kindly refer final bid documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
57.	21.11-PSA	**Disputed Amounts** 21.11.1. 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....."	Bidder requests to include the following provision: In case of dispute, the Utility shall pay at least 50% of the disputed amounts to the supplier. The same may adjusted based on final decision on the disputed matter. Payment disputes should not adversely affect the debt repayment obligations of the Supplier. Hence even in case of payment disputes, sufficient payments need to be made by the Utility to ensure Supplier meets its debt service obligations as well as payment to Fuel Supplier.	Kindly refer Clause 21.11 regarding Disputed Amounts and payment thereof. No Change. As per GUVNL bidding documents.
58.	21.12 - PSA	The Parties expressly agree that in the event the Utility pays the Tariff 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 Tariff by way of discount for early payment.	It is requested that the discount and terms as per the SBD may be retained. Clarification may be issued that Discount / Rebate shall not be applicable towards payment of Supplementary Bills / Change in Law claim.	No Change. As per GUVNL bidding documents. Appropriate clarifications with regard to Supplementary Invoice and Payment Due Date incorporated in the Tender documents. Kindly refer the final bid documents.
59.	21.13-PSA	Adjustment of Transmission Charges based on Availability: In the case where the actual availability of the Supplier at Delivery Point is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of actual applicable transmission charge for the	Whether Supplier obliged to bear the cost of actual applicable transmission charges even though machine is under outage due to technical reasons. It is requested to add a mirror clause, wherein it is clarified that in the case off-take of power by Utility during the month is less than Normative Availability than Utility shall bear applicable Transmission Charges. As suggested, the Availability should be computed based in Cumulative Availability and hence the referred provision should	It is to clarify that the obligations towards transmission charges is of the Supplier. (Clause 5.9 & 21.13 of PSA) As per present mechanism notified by CERC / NLDC, the charges towards MTOA / LTA are billed directly to the Utility (Buyer) on monthly basis. In case, the availability declared by the Supplier is less than Normative Availability during the month, the transmission charges burden for the

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			only be applicable for cases where cumulative availability falls below Normative Availability. Hence the suggested modifications to the clause may please be carried out It is requested to clarify the adjustment with an illustration.	energy (in KWH) to the extent of shortfall from Normative Availability shall have to be borne by Supplier / adjusted from the Energy Invoices. Illustration: If Normative Availability : 90% Actual Availability : 45% Transmission Charges for the month : 0.56 paise/unit Obligation of Supplier: (90%-45%) Kwh x 0.56 paise /unit
60.	21.14 - PSA	New Clause	Clause regarding Provisional Monthly Invoice should be added: Provisional Monthly Invoice is beneficial for Utility as well as end consumes as it results in decrease in power purchase cost.	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
61.	22 - PSA	**Fuel Charge** **General comment on Fuel Charge computation**	It may be noted that the present tender is unique in the sense that the Coal is to be arranged by the Utility under the provisions of Para B (iv) of SHAKTI Policy. The presently drafted Fuel Charge provisions do not ensure complete recovery of Fuel Cost incurred by the Supplier and are hence contrary to the SBD principle of 'Fuel cost as Pass-through'. Further, with the coal being arranged by Utility under the SHAKTI Policy, there is a high possibility of the coal coming from a basket of mines located at different regions and different quantum's and also having different GCV and different distances for transportation. Accordingly, it is suggested that the Fuel Charge provisions be modified to make them on a Weighted Average basis.	Kindly refer the clarification given this document regarding the computation as well as adjustment in Fuel Charge from time to time taking into consideration the landed cost of fuel, GCV of fuel, SHR, railway transportation etc. in accordance with the provision of PSA. Kindly refer the GUVNL bid documents for necessary clarification.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
62.	22.1.1 - PSA	The heat energy input, in kCal, required for generation and supply of 1 (one) kWh of electricity at the Point of Grid Connection, after accounting for auxiliary consumption and transmission losses, if any, as determined by Tests and specified in the Provisional Certificate or Completion Certificate, as the case may be, shall be the net station heat rate of the Power Station (the "Station Heat Rate" or "SHR"). Provided that the SHR shall be adjusted from time to time in accordance with the provisions of Clause 24.4, to account for any reduction in Despatch. Provided further that the aforesaid SHR shall be deemed to be increased by 0.15% (zero point one five per cent) per annum on each successive anniversary of COD and the number so arrived at shall be the applicable SHR for that year. For the avoidance of doubt and by way of illustration, the Parties expressly agree that if Tests determine that the Station Heat Rate at the Point of Grid Connection is say [2350] kCal per kWh, it shall be assumed that such Station Heat Rate has been derived after accounting for auxiliary consumption and transmission losses	In case of already commissioned plants where Multiple packages were awarded during construction stage, such construction certificate (as per Clause 22.1.1) giving tested SHR at point of Grid connection may be not be available. In such case, it is requested that SHR during COD may be declared by the Supplier subject to the condition that the SHR and auxiliary power declared must not exceed the applicable normative SHR & Auxiliary power allowed by CERC during the year that COD was achieved. Suitable variation in the actual heat rate for payment of fuel charges should be considered. Further, this may be aligned to the prevailing CERC norms for allowing degradation in SHR. It is also requested that increase in SHR shall be considered 0.25% instead of 0.15% Under this clause, the SHR is to be pre-specified by Utility while inviting the bid. In the draft bid document, SHR has been pre-specified as 2350 kcal / kwh after accounting for Auxiliary consumption and transmission losses. SHR (at point of grid connection) of 2350 kcal/kWh is not achievable even by the super critical units. It is requested that SHR may be increased to 2500 Kcal/Kwh to enable participation from sub critical units and provide level playing field.	Kindly refer Footnote – Clause 2.2.2 (B) regarding COD, Article 13 & 14 for Commercial Operation Date under this Tender Document. The same shall not be considered with the earlier COD of operational power plant / unit. All categories of projects would be required to achieve the COD towards compliance to the conditions stipulated under the Tender Document. Kindly refer the appropriate clarification in this document. PSA provides for 0.15% deemed increase in SHR for each successive anniversary of COD. Accordingly, no change as per GUVNL Bid Documents. Taking into consideration the requests and to encourage participation, the SHR is proposed to be increased to 2450 Kcal / kwh. (Refer Schedule-C) Kindly refer the final bid documents for necessary clarification.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
63.	22.1.1 - PSA	The heat energy input..... For the avoidance of doubt and by way of illustration, the Parties expressly agree that if Tests determine that the Station Heat Rate at the Point of Grid Connection is say [2350] kCal per kWh, it shall be assumed that such Station Heat Rate has been derived after accounting for auxiliary consumption and transmission losses.	It is requested to clarify that in the case of actual SHR being determined to be higher (say 2400) than 2350 kCal/ kWh, the Initial Fixed Charges shall be reduced in accordance with provisions of Clause 21.2.3. However, whether the Fuel Charge shall be payable in accordance with the SHR specified in completion certificate only (i.e., 2400) or at pre-specified SHR. Necessary clarification in this regard may be issued.	Kindly refer Clause 13.2.2 – tests shall be deemed to successful only when tests establish that SHR is lower than or equal to pre-specified SHR, subject to 2% variation as allowed in accordance with PSA. Kindly refer Clause 22.2.2 & 22.12.1 regarding the parameters to be referred for working out the Landed Cost of Fuel under the PSA. The provisions are self explanatory.
64.	22.1.1 - PSA	.....Provided further that the aforesaid SHR shall be deemed to be increased by 0.15% (zero point one five per cent) per annum on each successive anniversary of COD and the number so arrived at shall be the applicable SHR for that year.	The Turbine performance deteriorates with ageing during the operating cycle of the plant, which in turn adversely affects the cycle operating heat rate. The average heat rate deviation factor for ageing, accordingly, is of the order of 1.74% (39 kCal/kWh) for the 500 MW units commissioned before 2009 and 2.7% (62 kCal/kWh) for the 200 MW units. As per experience, it is possible to recover only 70% of heat rate deviation after capital overhaul. The loss shall be as per the average life of the unit. Therefore, it is requested to consider 0.5% degradation in Heat Rate due to Ageing due to 0.15% per annum.	Kindly refer the clarification in this document regarding SHR, Fuel Charge and adjustment in Fuel Charge due to SHR. No change. As per GUVNL Bidding Documents.
65.	22.2.1 - PSA	**Existing Clause covers only freight payable to Indian Railways**	Plants located near to coal mines / coal handling sidings transport the coal directly through road as the 1st slab of railway is for 100 km distance which makes it uneconomical to transport the coal through railway for minor distances.	PSA provides for freight payable as lower of actual or as per Indian Railways for computation of the transportation cost of coal. Kindly refer the final bid documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
66.	22.2.3 - PSA	The cost of Fuel forming part of the Landed Fuel Cost shall be determined in accordance with the following explanation: *Explanation*: (a) For the Allocated Coal supplied by CIL/SCCL through Letter of Assurance/ FSA arranged by the Utility, the price of Fuel shall be deemed to be the lower of, (i) the indicative price of Fuel which shall be computed from the Fuel Charge, as specified in the Bid; and (ii) 101% (one hundred and one per cent) of the price payable by the Supplier to CIL, and in case of Additional Fuel Supply Arrangement for domestic Fuel, the price thereof shall be the lower of, (i) the current price of similar Fuel sold by CIL through e-auction or any substitute thereof;	It is to mention that E-auction price is not available in public domain for generation information. In such case, how would be the reference cost considered. It is requested to clarify as to how current price of similar Fuel sold by CIL through e-auction will be made available every month for the purpose of determining Landed Fuel Cost. It is requested to clarify whether the Landed cost would be determined on simple average basis or weighted average basis.	The detail for e-auction price would be relevant in the case fuel is being procured under AFSA as per the provision of PSA. The relevant details may be sought from CIL from time to time, if required. As clarified above. Kindly refer the Clause 22.2 including 22.2.2 and 22.2.3 for mechanism for working out the Landed Cost of Fuel from time to time under the PSA.
67.	22.2.4 - PSA	"The total cost of transportation of domestic Fuel, forming part of the Landed Fuel Cost, shall be the lower of, (a) [110% (one hundred and ten per cent)] of the freight payable to the Indian Railways for transportation by rail, and (b) the actual cost of transportation. For the avoidance of doubt, the Parties agree that the amount specified 59 in Clause 22.2.1 is equivalent to or less than the aforesaid 110%...	Bidder requests GUVNL to clarify the cost of transportation computation for bidders transporting coal under road mode. Bidder suggests GUVNL to consider CIL guidelines for surface transportation for deciding such charges.	PSA provides for freight payable as lower of actual or as per Indian Railways for computation of the transportation cost of coal. Kindly refer the final bid documents

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
68.	22.2.6 - PSA	... The Supplier represents and warrants that the aforesaid amount has been derived from the washing rate of Rs (Rupees) per tonne as on the Bid Date and the washing charge specified in Clause 22.2.1 shall be revised only in proportion to the increase in the average CIL cost of Rs. .... (Rupees ....) per tonne as compared to the rate specified hereinabove. For avoidance of doubt, it is clarified that in the event, Cost of Washing is not separately quoted by the Supplier then the no amount towards Cost of Washing shall qualify under Change in law during the term of this Agreement...	MoEF vide its notification dated 21st May, 2020, has permitted thermal power plants to use unwashed coal. At present, washing of coal is not mandatory. Therefore, it should not be mandatory to quote the Cost of Washing while submitting the Bid. However, in case, the washing of coal is mandated in future, then the same shall be qualified under Change in Law. It is required to modify the clause accordingly.	The referred notification is with regard to withdrawal of mandatory condition regarding washing of coal. The discretion of washing may be based on the distance of power plant from the source of coal mine and type of machinery/ equipments. It is requested to appropriately quote the washing charge while submitting the bid. Kindly refer clause 22.2.6 for further clarification. Bidders may quote accordingly or submit NIL while submitting this bid. No Change. As per GUVNL bidding documents.
69.	22.3 – PSA 22.3.1	**Determination of GCV** The weighted average of the GCV of Fuel received during any month at the Power Station shall be reckoned as the average GCV (the "Average GCV") for the purposes of this Article 22 and shall, subject to the provisions of Clause 22.2.2, apply for computing the applicable element of the Landed Fuel Cost and the Fuel Charge payable for the use of such Fuel. For the avoidance of doubt, the Average GCV hereunder shall be computed separately for Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, for the purposes of determining the Fuel Charge."	It is requested that GCV of fuel shall be considered on As Received at plant in accordance with CERC Tariff Regulations 2019-24. It is suggested that GCV on As Received Basis (ARB) shall be computed based on appropriate moisture correction formula in addition to 85-120kcal/kg reduction in GCV based on CEA Norms for determination of Fuel Charge. It is requested that Clause 22.3.2 may be suitably modified for allowing moisture adjustment in GCV and computation of	No change as per the GUVNL Bidding Documents. The provisions with regard to GCV determination and computation of Landed Fuel Cost as well as Fuel Charge in case of variation of GCV vis-à-vis GCV mentioned under FSA has already been specified under PSA. It is to clarify that upto 85 kcal/kg loss in GCV on account of variation during storage at generating station shall be allowed. Kindly refer the final bidding documents. Kindly refer the final bid documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
	22.3.2	Subject to the provisions of Clause 22.3.7, the Average GCV of Fuel shall be determined in accordance with the certification and classification provided by the supplier of Fuel in accordance with the provisions of the FSA. For the avoidance of doubt, the Parties expressly agree that in the event the certification provided by the supplier of Fuel refers to a band of GCV, the mean value of such band shall be reckoned as the GCV for purposes hereof. The Parties further agree that the Average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge, save and except as provided in Clause 22.3.7."	ARB by allowing 85-120 kcal/kg variation towards storage. Since, the DBFOO envisaged Fuel Cost as pass through, the working of GCV (ARB) measured for fuel received at Power Station will serve the purpose of full pass through of Fuel Charge.	
70.	22.3.2 - PSA	Subject to the provisions of Clause 22.3.7, the Average GCV of Fuel shall be determined in accordance with the certification and classification provided by the supplier of Fuel in accordance with the provisions of the FSA. For the avoidance of doubt, the Parties expressly agree that in the event the certification provided by the supplier of Fuel refers to a band of GCV, the mean value of such band shall be reckoned as the GCV for purposes hereof. The Parties further agree that the Average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge, save and except as provided in Clause 22.3.7.	With regard to computation of GCV for the purpose of Fuel Cost working, it is requested to clarify the following: Whether the GCV shall be determined based on the loading end or unloading end results by third party agency appointed as per the FSA. It is suggested that in case no sampling is done for any rake then the average results for that month shall be used. GCV determined by the loading end third party shall be corrected for total moisture as per third party findings, to calculate the GCV ARB. Whether any GCV variation (at unloading point) due to heat loss during storage at	Kindly refer the above clarification with regard to GCV working and computation of Fuel Charge.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
			generating station will be considered by the Utility as allowed to generators under CERC Generation Tariff Regulation'2019 (i.e. Weighted Average Gross calorific value of coal as received less 85 Kcal/Kg).	
71.	22.3.5 – PSA	"The Fuel received at the Power Station shall be stored in stacks, in quantities of about 5 (five) tonnes each or a multiple thereof, not exceeding 100 (one hundred) tonnes, and numbered in a manner that can correlate the stacks with the samples drawn in accordance with the provisions of Clause 22.3.3. For the avoidance of doubt, the Parties agree that the Supplier may, with prior consent of the Utility, substitute the storage and stacking methodology in such manner as may conform with Good Industry Practice."	Stacking in such a way is a difficult proposition and is not practical as sometimes coal unloaded from Wagons in Plant CHP is directly transferred / used for Power generation. It is requested to delete the aforesaid clause.	No Change. As per GUVNL bidding documents.
72.	22.4.1 – PSA	Prior to the Appointed Date, the Supplier shall have executed an agreement with a supplier of Fuel for supply of Fuel sufficient for generating electricity at no less than 55% (fifty five per cent) of the Contracted Capacity during each month for a period of at least 15 (fifteen) years commencing from Scheduled Supply Commencement Date	It is requested to confirm whether the assured fuel supply under FSA being arranged by Utility will be for 100% of contracted capacity. Normative Availability under PSA is 90%. Accordingly, it is requested that FSA should be executed for at-least such quantum. It is requested to revise the Normative Availability level to 85% considering the 55% coal quantity criteria under FSA.	It is to clarify that 55% is the indicated Minimum Annual Quantity of Fuel under FSA as per the MBD, MOP. The same would be as per the FSA of CIL as per the prevailing norms for allocation of coal. No change. As per the Bid Documents.
73.	22.5 (b) - PSA	the FSA shall specify the grade of Fuel comprising GCV and ash content, which shall not be changed materially without mutual consent of the Supplier and the supplier of Fuel	Whether the details of Ash Content would be provide under the FSA. What would be the treatment in case the Ash Content is not specified under FSA.	The same would be as per the FSA of CIL as per the prevailing norms for allocation of coal.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
74.	22.5 - PSA	**Terms of FSA:** .....(f) the right of the supplier of Fuel to terminate the FSA for a material breach thereof by the Supplier shall be subject to the Utility's rights to substitute the Supplier and cure the breach; (g) the Supplier shall have the right and obligation to assign all its rights, interests and obligations under the FSA in favour of the Utility with the consent of the supplier of Fuel in accordance with the terms and conditions specified in the FSA; and (h) upon occurrence of a Supplier Default under this Agreement, the Utility shall, without any further approval or consent of the Supplier, have the right to assign or seek assignment of the FSA to its nominee in accordance with the terms and conditions specified in the FSA, and upon the Utility exercising its right hereunder, the Supplier shall cease to have any right or title to procure Allocated Coal from the supplier of Fuel.	It is to mention that all these clauses are not practical and requested to remove them. FSA signed by the Bidder is integral part of its Project and assigning of the same is not possible as per the Financing Agreement of Lenders	No change. As per GUVNL Bidding Documents. The clause 22.5 of PSA shall be aligned to the extent of operational aspect specified under the FSA. All other terms & conditions including assignment of FSA in favour of Utility shall continue to be applicable. Kindly refer Clause 22.4.1, 31.5, 32.1.1 (a), 33.1.2 etc for further clarification. Kindly refer final bid documents.
75.	22.6.1 - PSA	"Upon the Supplier meeting its obligations for and in respect of the supply of electricity to the Utility as part of the Contracted Capacity, it may generate electricity from Allocated Coal, with prior consent of Utility, which Utility may deny in its sole discretion, for sale thereof to Buyers subject to payment of Revenue Share to the Utility, in an amount equal to the higher of, (a) Fixed Charge and (b) 30% (thirty per cent) of the gross sale revenue accrued from Buyers for each kWh of electricity sold to any Buyer.....	It is requested to modify the revenue sharing as under: .....an amount equal to the higher of, (a) **50% of Fixed Charge and** (b) 30% (thirty per cent) of the gross sale revenue accrued from Buyers for each kWh of electricity sold to any Buyer.....	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
76.	22.7 - PSA	The Supplier shall at all times maintain a minimum stock of Allocated Coal and Fuel from AFSA, if any, which is sufficient for full production of electricity from Contracted Capacity for supply thereof to the Utility for a continuous period of 7 (seven) days (the "**Minimum Fuel Stock**").	Fuel is being arranged by Utility as per provisions of Para B (iv) of the SHAKTI Policy in the present project. Hence, with fuel being arranged by the Utility, the requirement of maintaining Minimum Fuel Stock may kindly be deleted. Considering the coal supply situation and overall domestic coal availability, it is requested to revise the Minimum Fuel Stock requirement to 3 days' coal. Unavailability should not be considered on the basis of fuel stock. Since the supplier can still produce and deliver its contracted capacity of power to the Utility, such unavailability shall only be considered if the supplier unable to deliver such contracted capacity. It is requested to clarify whether the Minimum Fuel Stock comprises of coal available under AFSA also.	FSA would be signed with CIL by Supplier. The obligation of maintaining adequate fuel stock as well ensuring availability is on the Supplier. Accordingly, no change. As per the Bidding documents. No Change. As per GUVNL bidding documents. Kindly refer the above clarification. Kindly refer Clause 22.7 regarding fuel stock and Clause 22.9 regarding concurrence of Utility and approval of Hon'ble Gujarat Electricity Regulatory Commission for fuel procurement under AFSA
77.	22.8.2 - PSA	In the event of any Fuel Shortage hereunder, the Fixed Charge payable for and in respect of any Non-Availability arising as a result thereof shall be equal to 70% (seventy per cent) of the Fixed Charge computed in accordance with the provisions of Clause 21.4.2.	It is requested to kindly allow recovery of full Fixed Charge in case of Fuel Shortage of Linkage coal from CIL as the availability of coal is not under the reasonable control of the Supplier and fuel is being arrangement by Utility under the SHAKTI scheme.	No Change. As per GUVNL bidding documents

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
78.	22.9 - PSA	In the event of Fuel Shortage, the Supplier shall make best efforts to identify, as soon as may be possible, additional source(s) of fuel supply and transportation to meet such Fuel Shortage (the **"Additional Fuel Supply Arrangement"** or **"AFSA"**).....	It would be highly time consuming process to seek approval of the Appropriate Commission for approval of AFSA. Since it is a commercial decision, approval of the Utility should be sufficient.	No Change. As per GUVNL bidding documents.
9.	22.10.2 - PSA	In the event the Supplier fails to procure Fuel under an AFSA, or such AFSA is not approved in full or part by the Utility or the Commission, as the case may be, the Fixed Charge payable for and in respect of any Non-Availability as a result thereof shall be equal to 70% Fixed Charge computed in accordance with the provisions of Clause 21.4.2	It is to mention that Fuel is the responsibility of the Utility under SHAKTI B (iv). Hence Supplier cannot be held liable to assume risks related to shortfall / shortage in fuel. Denial by the Utility for the approval of the AFSA cannot be a ground to reduce fixed charge recovery of the Seller.	It is the obligation of the Supplier to demonstrate that AFSA is based on best prices available for supply and transportation of such fuel. The above would be subject to due approval of the Hon'ble GERC. No change. As per GUVNL Bidding Documents.
80.	22.12.2 - PSA	In the event the statements provided under Clause 22.11 during the course of any quarter establish that the actual SHR is better than the SHR specified in the Completion Certificate and the difference between the actual SHR and specified SHR exceeds 1% (one per cent) of the specified SHR, the specified SHR shall be reduced by one-half of such difference and the SHR so determined shall be the specified SHR of the Power Station for purposes of this Agreement, including for determination of the Fuel Charge under this Article 22. For the avoidance of doubt and by way of illustration, if the specified SHR of the Power Station is 2,200 and the actual SHR is 2,160, the specified SHR shall be revised and fixed at 2,180.	As per this provision, if SHR improves for a quarter due to some external factors, reducing specified SHR is like penalizing the Supplier. Further, there is no provision for increase in specified SHR. Hence it is requested that this clause shall be deleted.	No change. As per GUVNL Bidding Documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
81.	23.2 - PSA	The Utility shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the 20% (twenty per cent) of the annual Capacity Charge (the "Minimum Monthly Payment") (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	Letter of Credit to be supplied 30 days prior to supply start date. COD has no relevance with the power supply under this agreement, as there are plants that have attained COD prior to this contract also LC shall be monthly revolving as billing is on monthly basis In addition to other points, LC shall be standby. LC amount should also cover Supplementary bill towards Change in Law along with Monthly Invoice LC should be allowed to be drawn in case of default in making payment of Monthly Invoice/Supplementary Bill.	Kindly refer Footnote – Clause 2.2.2 (B) regarding COD, Article 13 & 14 for Commercial Operation Date under this Tender Document. The COD under this agreement shall not be considered / confused with the earlier COD of operational power plant / unit. LC is monthly revolving – kindly refer Schedule L of PSA As per GUVNL Bidding Documents. As per GUVNL Bidding Documents. Kindly refer Clause 23.2.3 regarding invocation of Letter of Credit.
82.	23.2.3 - PSA	The Supplier may, in addition to the scheduling under Clause 24.1, supply electricity produced from the unutilised Contracted Capacity specified in Clause 18.5, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilised hereunder shall be deemed to be waived and shall not be payable by the Utility	It is requested to delete the referred clause as the Coal Linkage, Land, Water etc. is secured by Bidder and cost has already been incurred on the above, thus waiver of fixed charge and supply from unutilized contracted capacity is not acceptable.	The aforesaid clause is in reference to Clause 18.5 regarding Sale of Unutilized Committed Capacity. The provision is self-explanatory.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
83.	24.3 - PSA	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.	With regard to this provision, it is understood that overriding powers is only possible if the whole Project Capacity is dedicated to Utility. In case of sale of only part of the Installed Capacity this provision is not practical. There are other provisions that address such Defaults.	The clause refers to dispatch and scheduling regarding in respect to the Contracted Capacity. The clause is self-explanatory.
84.	24.4 - PSA	In the event the Utility Dispatches less than 2% (two per cent) of its entitlement in the Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 8 (eight) hours to the Supplier for reaching Availability equal to such entitlement in the Contracted Capacity and shall make an additional payment on account of increase in SHR computed in accordance with the provisions of Schedule-C for and in respect of different levels of generation during the course of ramping up. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within 8 (eight) hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 21.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to its entitlement in the Contracted Capacity.	It is requested to clarify as to how this Clause will operate in real time system management. For the purpose of Ramp-up, the provisions of Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 dated 06.04.2016 shall be applicable. The entire capacity is contracted with the Utility. Hence it would not be technically possible for the Utility to dispatch less than 2%. Moreover, as per CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 dated 06.04.2016, technical minimum is 55%. It is to highlight that for cold startup of a unit 8 hours time period is insufficient for ramp up.	Scheduling and Dispatch of units will be as per Article 24. This clause is to ensure ramping up of capacity by Supplier within a specified timeframe. Accordingly no Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
85.	24.5.2 - PSA	In case the Contracted Capacity of a Unit/Contracted Capacity as a whole is a part of the installed capacity of a power station; in the event of Availability from the Project in a Settlement Period being less than 100%, the capacity available to Utility for despatch shall be reduced proportionately. However, the Supplier has the option to offer more than such reduced capacity for despatch by Utility but not lower than such "Proportionate Availability". The Supplier shall prove such Proportionate Availability by using readings of meters at Generators for each Settlement Period and Energy Output of the Project up to Contracted Capacity.	This clause is not practical in case supplier is supplying power to multiple beneficiaries and multiple states/ region. Power scheduling is coordinated with SLDC/RLDC and thus any chance of unfair declaration by Supplier is not possible. In any case, Supplier will be paying damages if availability is below Normative level i.e.90%. Proportionate Availability will lead to huge financial implications to Supplier. Moreover, it is not possible to maintain Proportionate Availability in each time block. Additionally, Utility has also not specified Settlement Period. It is possible that Supplier will be liable for payment of huge penalty. Bidder requests to remove/delete the clause 24.5.2 and 24.5.3 as proportionate reduction in capacity in case plant availability is less than 100% is very onerous. Otherwise this clause may be suitably modified to incorporate the situation of disproportionate fuel supply for other PPAs vis-à-vis this PPA with GUVNL.	The clause has been incorporated in order to ensure supply of power by Supplier on proportionate basis under all the commitment and avoid practices for commercial gain. The clause becomes operative only in the instances the availability declared by the Supplier is less than 100% of contracted capacity. No Change. As per GUVNL bidding documents.
86.	27.2 - PSA	**Appointment of Auditors** ...	It is to mention that under the DBFOO model, the ownership of the plant is that of the Supplier. Moreover, accounts are audited by Statutory Auditors. Hence there is no requirement of Utility involvement in the same. Accordingly, the above provision may be deleted.	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
87.	28 - PSA	**Force Majeure**	The non-availability of Long Term Open Access due to non-availability of transmission corridor is not under reasonable control of Supplier; therefore it should be covered under the Force Majeure	Kindly refer the clarification given in this document. As per GUVNL bidding documents.
88.	28.7.1 (a) – PSA	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	For non-political event and indirect political event except for the insurable events, supplier should be compensated for loses through recovery of debt services and other fixed cost like salaries.	No Change. As per GUVNL bidding documents.
	28.7.1 (b) - PSA	upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be borne by the Supplier.	It is requested retain the clause as per SBD which provides for bearing of such costs by Utility as Political Force Majeure Event is beyond the control of Supplier. Utility being a government entity shall protect supplier against Political Event	No Change. As per GUVNL bidding documents.
89.	28.9 - PSA	In the event of Termination for Force Majeure Event, the Supplier shall cease to be entitled to the supply or production of Allocated Coal to the extent allocated or utilised for the Contracted Capacity, and the provisions of FSA to the extent thereof shall be held in abeyance until the use of such Allocated Coal for any other purpose, utility or buyer is authorized by the Central Government.	It is requested that as and when the force Majeure Event is over, the Project should be provided the authority to use fuel under FSA to generate power and meet its entire debt repayment obligation. In absence of FSA the project will turn into an NPA	The provision is with regard to termination of agreement pursuant to issuance of Termination Notice due to Force Majeure event. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
90.	28.9 - PSA	Omitted	Bidder requests to retain the clause of Relief for Unforeseen Events as per SBD. The purpose of the clause pertaining to Unforeseen Events is to protect both the Utility as well as the Supplier from the effects of such events which are not possible to predict in advance and hence their impact cannot be built into the bid. Looking to the disputes occurred under the old case 1 bidding documents, the new current SBD (DBFOO) was drafted to address on such issues. This Clause pertaining to unforeseen events was one such mechanism which is incorporated to address the issues in old case 1 bidding document.	Such provision may lead to dispute / litigation and consequential impact thereof including cost on both the parties. No Change. As per GUVNL bidding documents.
91.	PSA Article 29 29.2 – PSA	Compensation for breach of Agreement **Compensation for default by the Utility**	The applicability of this Article 29 is very wide exposing the Supplier as well as Utility to open risk. Moreover, the term material breach is not defined. It is requested to include the compensation for any kind of loss of tariff, revenues from sale of electricity to other Distribution Licensees and Buyers.	No Change. As per GUVNL bidding documents.
92.	30.1.2 – PSA	Omitted	It is requested to retain the clause as per MBD as under: *During the period of Suspension, the Utility shall pay to the Supplier 20% (twenty per cent) of the Fixed Charge due and payable to the Supplier for and in respect of the Contracted Capacity.*	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
93.	30.1– PSA 30.1.3 – PSA	**Suspension upon Supplier Default** .....During the period of Suspension hereunder, all rights and liabilities vested in the Supplier in accordance with the provisions of this Agreement shall continue to vest therein and the Supplier undertakes to indemnify and reimburse the Utility for all costs incurred during such period.	As per this provision during suspension period Supplier is already liable to pay damages to Utility under different scenarios. Accordingly, the above provision should be deleted since Utility is adequately protected.	No Change. As per GUVNL bidding documents.
94.	31.1– PSA 31.1.1 (f)	**Termination for Supplier Default** .....The supplier has failed to make any payment to the utility with in the period specified in this agreement :	It is requested to delete this clause.	No Change. As per GUVNL bidding documents.
95.	31.3 – PSA 31.3.1 31.3.2	**Termination Payment** Upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 1(one) year as if the Power Station had operated for such 1 (one) year from the date of Termination. Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 6 (six) months as if the Power Station had operated for such 6 (six) months from the date of Termination.	It is suggested that the termination payment by Supplier (under 31.3.1) should be in line with payment by Utility (under 31.3.2) It is requested to accordingly modify the Clause 31.3.2	The same is as per Model Bidding Documents. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
96.	34.1.1 – PSA	"Change in Law" means the occurrence of any of the following events after the Bid Due Date: (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Indian Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or..... ...For avoidance of doubt, it is clarified that Ministry of Environment & Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof has notified revised environment norms to be complied by thermal power plants...	With a view to avoid pro-longed disputes and litigations, it is proposed to make the Change in Law definition more comprehensive. For bringing more clarity, the clause may be modified to indicate that the Supplier is required to comply with all the norms, permits and guidelines as notified by Govt. of India up to Bid Due Date. Any amendments, changes, revisions or compliance of new norms notified after Bid Due Date shall be eligible under Change in Law.	The clause is self-explanatory. Kindly refer to provision / clarification with regard to compliance to revised Environmental norms under the GUVNL Bidding documents and under this document. No Change. As per GUVNL bidding documents.
97.	34.2.1 – PSA	While determining the consequence of Change in Law under this Article 34, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 34, the affected Party to the same economic position as if such Change in Law has not occurred.	The aforesaid clause is difference from the Model Bidding Documents. It is requested that for working out the Change in Law, increase in costs or reduction in net after-tax return or other financial burden for and in respect of Contracted Capacity on the Supplier shall be considered to restore the Supplier in same economic position. The methodology for placing the Supplier in same economic position by relying on Financial Model to establish Net Present Value of cash flow be used.	Cost reimbursement as well as tariff adjustment for arriving at Net Present Value may lead to complexity and dispute in methodology for calculation as operational projects and projects with committed / merchant capacity are allowed to participate under the tender. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
98.	34.2.1 (b) – PSA	Operation Period (From Supply commencement under this Agreement till term of PSA) "34.7 Carrying Cost on impact due to Change in Law: "36.4 Adjudication by the Commission "Schedule-J - Clause 5.3.5	It is requested to modify the mentioned clauses by including "Gujarat Electricity Regulatory Commission/Central Electricity Regulatory commission as the case may be" with regard to Appropriate Commission	No Change. As per GUVNL bidding documents.
99.	34.4.3 (b) – PSA	**New Clause suggested:** **Regarding payment for Change in Law**	Hon. Supreme Court in its order dated 29.10.2018 in C.A. No. 10188/2018, entitled affected party to receive payment equivalent to 50% of its claimed amount on account of Change in Law. It is suggested that payment of 50% of the amount would ensure that the Carrying Cost burden on the Utility is reduced.	Kindly refer clause 34.7 for further clarification. No Change. As per GUVNL bidding documents.
100	34.6 – PSA	**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	It is suggested that liability of Payment under Change in Law shall remain with the Utility. This Clause is not practical and shall be deleted.	The clause pertains to eligibility regarding reimbursement towards Change in Law for the energy supplied to Buyer(s). Kindly refer the definition of Buyer(s) in the PSA. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
101	34.7 – PSA	**Carrying Cost on impact due to Change in Law:** Notwithstanding anything to the contrary contained in this Agreement, the Supplier shall not in any manner be entitled to claim any amount towards carrying cost till the time Gujarat Electricity Regulatory Commission has determined and approved the impact due to Change in Law qualifying under this Agreement.	There is no such clause in the SBD document. It is not possible for the Supplier to predict future change in law events impacting cost of supply. Clause 34.7 is in contradiction to the clause no. 34.2.1. With such condition, the unaffected party will be encouraged to delay the process, which will have huge implication on cash flow of Supplier, leading liquidation of assets. It is requested to modify this provision to allow claim of carrying cost by the supplier from the date of the change in law event, as approved by the Appropriate Commission.	The provision has been incorporated to ensure timely filing and determination of Change in Law related impact and adjustments. No change. As per GUVNL Bidding Documents. No change. As per GUVNL Bidding Documents.
102	38.4.3 – PSA	All payments shall be first adjusted towards interest for Delayed Payments and thereafter, towards monthly charges, starting from the longest overdue bill.	It is suggested that a well-defined payment appropriation mechanism is necessary to avoid payment & billing disputes which ultimately lead to administrative and financial burden on the Utility. Accordingly, it is proposed that this provision be modified to ensure that payments are appropriated towards interest and carrying cost first to avoid further compounding.	No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
103	Def: read with Clause 4.4 - PSA	**Def:** "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; **4.4. Commencement of Contract Period** The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Contract Period. For the avoidance of doubt, the Parties agree that the Supplier may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Utility, and shall thereupon be entitled to commence or complete construction on the Project or supply electricity, as the case may be."	The Appointed date mentioned in the clause 4.4 of the PSA should be in line with the definition of Appointed date. Therefore the reference of the Financial closure shall be removed in clause 4.4	Kindly refer Clause 4.1.3 regarding Conditions Precedent to be satisfied by Supplier wherein Financial Closure is one of the conditions to be satisfied. The clauses are self-explanatory. No change. As per GUVNL Bidding Documents.
104	38.4.1 & 39.1 - Def – PSA	"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;	It is requested to align the Bank Rates defined under the Clause 38.4.1 and under the Definition section 39.1.	The Bank Rate has been suitably aligned. Kindly refer the final bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
105	39 – PSA	"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	Bidder proposes that Taxes should include GST. Moreover, Taxes are also levied on Fuel i.e. coal and the same should be covered.	The clause has been modified for incorporating GST under the definition.
106	Annex – I (Schedule-C):	Specifications and Standards for the Power Station Subject to the provisions of Paragraph 2 of this Annex-I, the Power Station shall conform with the provisions of Central Electricity Authority Technical Standards for construction of Electrical Plants and Electrical Lines) Regulations 2010 which shall be deemed to be the Specifications and Standards	Kindly clarify whether these specification and standards for the power station should be applicable only for the upcoming projects or for existing projects also. It is suggested that this should not be applicable to the power station that are in operations or commissioning stage for which BTG Orders were placed almost 5-10 years back.	CEA Regulations of 2010 is being referred under this Clause. All projects irrespective of commissioning status to conform with the aforesaid specified and standards of CEA. No Change. As per GUVNL bidding documents.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
107	Anex-III Schedule-C	**Increase in Station Heat Rate** 1. Subject to the provisions of Paragraph 2 of this Annex-III, in the event the Utility Dispatches the Power Station at a level lower than 85% (eighty-five per cent) of its entitlement in the Contracted Capacity, the SHR shall be deemed to be increased as specified below. ... 2. Notwithstanding anything to the contrary contained in this Annex-III, the benefit of an increase in SHR shall at all times be subject to an actual reduction in generation of electricity and in the event any reduction in Dispatch by the Utility is off-set by Dispatch to any other buyer, the benefit of an increase in SHR shall be computed only in respect of the remaining shortfall, if any.	It is suggested that SHR adjustment should be done on a 15 minute time block basis. To avoid ambiguity, the aforesaid provisions may kindly be modified to clarify that the SHR adjustment under this clause shall be done on 15 min time block basis.	No change. As per GUVNL Bidding Documents.
108	General query	Fuel GCV supplied not as per the FSA	There is a common issue among all the Generators that the GCV of the Fuel received is not as per the specifications of Fuel Supply Agreement Therefore, it is suggested that GCV should be checked at the power plant end i.e. As received basis which would be in line with CERC Norms and this GCV should be considered for Billing purpose. Moreover, in the event of deficit of coal arising out of poor coal GCV, additional Fuel procurement should be allowed and costs for the same should be pass through under the PSA.	Kindly refer the clarification provided in this document regarding GCV of fuel, computation of Landed cost of Fuel, Fuel charge working under the PSA and adjustment of price in case of variation in GCV with reference to FSA.

Sr.	Clause No.	Existing Provision	Query / Suggestion	Reply / Clarification
109	General query	Non-Operationalization of Long Term Open Access	There may be issue of transmission constraints due to pending / ongoing augmentation of Transmission Lines. There may be the instance when Long Term Open Access has been granted by CTU but the Transmission Line has not operationalized. It is requested to confirm whether Capacity Charge payment will be made by the Utility in case the plant is ready to dispatch and despite being Long Term Open Access granted the Open Access has not been operationalized. What would be the mechanism of flow of power in case of non-availability of long term open access.	It is to clarify that medium of open access i.e. whether short / medium / long term shall be the decided by GUVNL. GUVNL shall be eligible to decide the mode of open access for flow of power and Supplier shall be required to make open access application accordingly. Kindly refer the clarification provided under this document and GUVNL Bidding Documents. Kindly refer clarification regarding open access under this document and provision of GUVNL Bidding documents.

Note:

Aforesaid Clarifications are preliminary and subject to further modifications by GUVNL

Annexure - H

LIST: Deviations & Modifications in RFQ, RFP & PSA

<table>
<tr><th>Sr No.</th><th>Clause Ref (#)</th><th>As per Ministry of Power Model Bidding Documents dated 30.01.2019</th><th>Deviation / Modification undertaken by GUVNL</th><th>Rationale for modifications / deviations</th></tr>
<tr><td>1.</td><td>1.1.1 RFQ & RFP</td><td>Clause pertaining to "Background (1.1)"</td><td>GUVNL solicits bids from the following types of Projects:

Type 1: Projects / Units that are already commercially operationalised on or after 1st January 2013

Type 2: New Projects that are yet to be commercially operationalised</td><td>As the Power is envisaged tentatively from Sept-2023 (Coal supply by CIL), bids from Projects which are on the verge of commissioning or already commissioned (on or after Jan-2013) have been solicited.</td></tr>
<tr><td>2.</td><td>1.1.1 RFQ & RFP</td><td>
<table>
<tr><th>Capacity Required (in MW)</th><th>Minimum Capacity not less than 25% (twenty-five per cent)of Capacity Required (in MW)</th><th>Period when supply must commence</th></tr>
<tr><td>***</td><td>***</td><td>[36] months from Appointed Date</td></tr>
</table>
</td><td>
<table>
<tr><th>Capacity Required at Delivery Point (in MW)</th><th>Minimum Capacity not less than 10% (five per cent) of Capacity Required (in MW)</th><th>Period when supply must commence</th></tr>
<tr><td>3000 MW</td><td>300 MW</td><td>Sep 2023 (exact supply commencement month would be indicated prior to Bid Due Date)</td></tr>
</table>
</td><td>In order to enable small sized efficient units to participate and encourage competition.</td></tr>
</table>

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
3.	1.1.4 RFQ & RFP	All Applicants shall indicate the particulars of their power station in the form specified at Annex-VI of Appendix-I and at National e-Bidding Portal ("DEEP Portal") developed by PFC Consulting Ltd. Applicants may Bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 25% (twenty-five per cent) of such capacity. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.	All Applicants shall indicate the particulars of their power station in the form specified at Annex-VI of Appendix-I and at National e-Bidding Portal ("DEEP Portal") developed by PFC Consulting Ltd. Applicants may Bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 10% (ten per cent) of such capacity. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.	In order to enable small sized efficient units to participate and encourage competition.
4.	1.2.5 RFQ & 2.1.7 RFP	.....The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility[4]. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time.....	.....The Bidders will have an option to provide Bid Security in the form of ~~a demand draft or a~~ bank guarantee acceptable to the Utility *or deposited online through NEFT/IMPS/RTGS payment*. ~~The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time~~	NEFT/IMPS/RTGS payment have been added for the purpose of facilitation to the Bidders by enabling digital mode of payment. While the provision for submission of demand draft has been deleted considering limited validity and need for renewal within short time
5.	1.2.6 & 1.2.8 of RFQ and 1.2.7 of RFP	Generally, the Lowest Bidder shall be the selected Bidder..... The Project shall be awarded to the Bidder quoting the lowest Tariff.	Generally, the Bidder with the lowest landed Tariff (Lowest Bidder) shall be the selected Bidder The Project shall be awarded to the Bidder whose landed Tariff i.e. quoted Tariff along with applicable Transmission charges and losses, is the lowest Clarification added at Clause 1.2.7 of RFP:	The modification has been carried out to evaluate bids on landed cost basis i.e. after adding cost towards transmission of power for delivering Contracted Capacity at Delivery Point

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
			For the purpose of evaluation hereunder, the landed Tariff shall be worked out by adding Transmission charges & cost towards Transmission Loss for ISTS network, if applicable up to Delivery Point, as stated in this bid document.	
6.	2.2.1 (a) of RFQ	The Applicant for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project.	The Applicant for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project or supply power from commissioned or part commissioned projects.	The modifications has been carried out as projects / units already operationalized on or after 1.1.2013 are also eligible to participate
7.	2.7.2 (c) RFQ	"Right to accept or reject any or all Applications/ Bids "	Following criteria added at point (c): Utility considers that the implementation of the Award and / or PSA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and / or PSA 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.
8.	2.12.2 RFQ	The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this RFQ - DBFOO) and clearly marked as "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of such Application and documents, which shall be marked as "COPY". The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD). In the event of any discrepancy	The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this RFQ - DBFOO) and clearly marked as "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of such Application and documents, which shall be marked as "COPY". The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD) / Pen Drive. In the event of any	The modification has been carried out based on the suggestion provided by the Bidder.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		between the original and the copy, the original shall prevail.	discrepancy between the original and the copy, the original shall prevail.	
9.	2.13.2 (vii) (viii) RFQ	Clause regarding submission of Application: Each envelope shall contain (vii) 2 (two) soft copies of the Application on a Compact Disc (CD); and (viii) any other project-specific requirement that may be specified by the Utility	(vii) 2 (two) soft copies of the Application on a Compact Disc (CD)/Pen Drive; Following new provision added at point (viii): In case of Project / Unit operational as on Bid Due Date, the detailed with regard to Power Project, Commissioning, Generation during last 3 years, fuel availability if any, capacity tied up and merchant capacity available.	The modification has been carried out for seeking Additional details from operational projects at qualification stage for prudent evaluation of applications
10.	2.17.7 RFQ	If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Applicant.	If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Applicant. The Utility shall have discretion to seek any additional documents, details, certificates etc. for the purpose of eligibility as well as evaluation of the Applicant.	The Clause modified to provide clarity to the Bidders
11.	2.17.8 RFQ	Clause regarding eligibility of Application:	For avoidance of doubt, the Project shall be awarded to the Bidder whose landed Tariff i.e., quoted Tariff along with applicable Transmission charges and losses, is the lowest.	The modification has been carried out to evaluate bids on landed cost basis i.e. after adding cost towards transmission of power for delivering Contracted Capacity at Delivery Point

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
12.	Appendix- II RFQ & Appendix – III RFP	Power of Attorney for signing of Application and Bid ... as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our Bid for the *** Project proposed or being developed by the *** (the "Utility") including but not limited to signing and submission of all applications.	... as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our Bid for the *** Project already commissioned / proposed or being developed by the *** (the ~~"Utility"~~ "Bidder") including but not limited to signing and submission of all applications ...	Clause modified to provide clarity to the Bidders.
13.	2.1.7 RFP	The Bidder shall deposit a Bid Security as specified in Clause 1.2.4 of this RFP-DBFOO. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Utility, as per format at Appendix–II.	The Bidder shall deposit a Bid Security as specified in Clause 1.2.4 of this RFPDBFOO. The Bidder has the option to provide the Bid Security either ~~as a Demand Draft~~ through NEFT/IMPS/RTGS payment or in the form of a Bank Guarantee acceptable to the Utility, as per format at Appendix–II.	NEFT/IMPS/RTGS payment have been added for the purpose of facilitation to the Bidders by enabling digital mode of payment. While the submission of demand draft has been deleted considering limited validity and need for renewal
14.	2.1.15 of RFP	Clause regarding engagement of an advisor: .....this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to Application Due Date...	Clause modified as under: .....this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to Notice Inviting Tender released by Utility...	Modification carried out for ensuring prudent business practices
15.	2.8.1 RFP	Bidders requiring any clarification on the RFP-DBFOO may notify the Utility in writing by speed post/courier/special messenger and by e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.10.	Bidders requiring any clarification on the RFP-DBFOO may notify the Utility in writing by speed post/courier/~~special messenger~~ and by e-mail attaching the queries in Microsoft word file in accordance with Clause 1.2.10	Modification carried out for ensuring prudent business practices

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		The responses will be sent by e-mail. The Utility will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.	The clarifications will be placed on Utility website. The Utility will upload on its website all the queries and its responses thereto, without identifying the source of queries.	
16.	2.9.2 RFP	Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.	Any Addendum issued hereunder will be in writing ~~and shall be sent to all the Bidders~~.	Modification carried out for ensuring prudent business practices
17.	2.20.1 RFP	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 issued by a nationalised 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.....	2.20.1.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 issued by a nationalised bank, as per the list of Banks approved by Govt. of Gujarat vide Corrigendum no. EMD / 10/2021/ 7729/ DMO dated 28.06.2021 in favour of the Utility or as amended from time to time....	The clarification has been incorporated to inform bidders regarding list of Bank approved by Govt. of Gujarat for submission of Bank Guarantee has been added.
		In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.	~~In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.~~	In line with the same, the provision regarding issuance of Bank Guarantee by a foreign bank outside India deleted.
18.	2.20.2 RFP	Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India.....	~~Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India.....~~	The provision with regard to submission of Bid Security through DD is deleted as stated at Sr. (17 above.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
19.	3.3.1 RFP	Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the lowest Tariff offered to the Utility	Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the lowest landed Tariff offered to the Utility	The modification has been carried out to evaluate bids on landed cost basis i.e. after adding cost towards transmission of power for delivering Contracted Capacity at Delivery Point
20.	3.5.2 RFP	The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.	The Bid for the Project shall, therefore, comprise the Fixed Charge, Transmission Cost and Fuel Charge which shall be specified separately (as per Appendix-I of RFP), and the Bidder seeking the lowest Landed Tariff shall be the Selected Bidder.	The modification has been carried out to evaluate bids on landed cost basis i.e. after adding cost towards transmission of power for delivering Contracted Capacity at Delivery Point
21.	5.1 RFP	Clause pertaining to Pre-Bid Conference: A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.	A maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.	Modification carried out for ensuring prudent business practices
22.	Appendix I – RFP Sr. 7	I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Utility;	I/ We have examined and have no reservations to the Bidding Documents, including any Addendum / Clarifications issued by the Utility	The Clause modified to provide clarity to the Bidders
23.	Appendix I – RFP Sr. 17	I/We further acknowledge and agree that in the event such change in control occurs after signing of the PSA-DBFOO but prior to Financial Close of the Project, it would,	I/We further acknowledge and agree that in the event such change in control occurs after signing of the PSA-DBFOO but prior to Financial Close of the Project or timelines as provided under the Bid Documents, it would.....	The Clause modified to provide clarity to the Bidders

<table>
<tr><th>Sr No.</th><th>Clause Ref (#)</th><th>As per Ministry of Power Model Bidding Documents dated 30.01.2019</th><th>Deviation / Modification undertaken by GUVNL</th><th>Rationale for modifications / deviations</th></tr>
<tr><td>24.</td><td>Appendix I – RFP Sr. 23</td><td>I/ We offer a Capacity of ***MW from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQ-DBFOO</td><td>I/ We offer a Capacity of ***MW (at Delivery Point) from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQDBFOO</td><td>As per the commercial arrangement under the Bid Documents, Supplier is required to make available the Contracted Capacity at Delivery Point.

Accordingly, this modification has been carried out.</td></tr>
<tr><td>25.</td><td>Appendix I – RFP

Sr. 34</td><td>The clause provides for details of Bid Parameters to be quoted by the Bidder while submitting the RFP bid.

[A tariff comprising a Fixed Charge of Rs.... and paise .... $ per kWh (Rupees....and paise....) and a Fuel Charge comprising of (a) Rs. .... and paise .... $ per kWh (Rupees .... and paise ....) per kWh on account of cost of Fuel, (b) Rs. .... and paise .... $ per kWh (Rupees.... and paise ....) per kWh on account of transportation, (c) Rs. .... and paise .... $ (Rupees .... and paise ....) per kWh on account of washing, (d) Rs. .... and paise .... $ (Rupees .... and paise ....) per kWh on account of crushing charges, and (e) Rs. .... and paise ....$ (Rupees .... and paise ....) per kWh on account of Other Charges]

(the entire clause has not been reproduced here for sake of brevity)</td><td>Addition of Bid Format under RFP:

<table><tr><th>Bid parameters</th><th>Unit</th></tr><tr><td></td><td></td></tr><tr><td>(1) Fixed Charge for the base year</td><td>per kWh</td></tr><tr><td></td><td></td></tr><tr><td>(2) Fuel Charge = Sum of (a)+(b)+(c)</td><td></td></tr><tr><td>(a) Cost of Fuel</td><td>per kWh</td></tr><tr><td>(b) Cost of transportation</td><td>per kWh</td></tr><tr><td>(c) Cost of Washing</td><td>per kWh</td></tr><tr><td></td><td></td></tr><tr><td>(3) Transmission Cost = Sum of (a) + (b)</td><td></td></tr><tr><td>(a) ISTS Transmission Charges* (for Drawal State)</td><td>per kWh</td></tr></table></td><td>In order to provide clarity with regard to the components of bid to be quoted as well as sharing of various costs, an illustrative bid format has been added in the Bid Documents.

Additional clarification/ instructions with regard to submission of bids have also been incorporated.</td></tr>
</table>

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
			(b) ISTS Transmission Losses* (for Drawal State) — In % ISTS Transmission Losses (for Drawal State) — per kWh Total Tariff = Sum of (1)+ (2) + (3) — per kWh The additional clarifications incorporated are separately attached in this document.	
26.	1.2 (k) PSA	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 Power Station is situate are generally open for business	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	The Clause modified to provide clarity to the Bidders
27.	2.1 (a) PSA	[construction,] operation and maintenance of the Power Station in accordance with the provisions of this Agreement	Designing, engineering, financing, procurement, construction (in case of new Projects), operation and maintenance of the Power Station in accordance with the provisions of this Agreement	The Clause is modified to consider both Type-1 and Type-2 projects.
28.	3.1.1 (PSA)	Provided that the Utility shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [__(__)] years, upon issuing a notice to this effect to the Supplier, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	Provided that the Utility shall, at any time no earlier than 1 (one) year, but no later than 6 (six) months prior to completion of the aforesaid Contract Period of [__(__)] years, upon issuing a notice to this effect to the Supplier, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	The Contract Period envisaged under the tender is 15 years. Accordingly, the time period with regard to decision for extension has been reduced for aligning the same with contract period

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		Provided that the Supplier shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [__(___)] years, upon issuing a notice to this effect to the Utility, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	~~Provided that the Supplier shall, at any time no earlier than 1 (one) year, but no later than 6 (six) months prior to completion of the aforesaid Contract Period of [__(___)] years, upon issuing a notice to this effect to the Utility, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.~~	The fuel being arranged by Utility, the proposal of extension, if any, would be required to be initiated b Utility taking into consideration th power requirement & fuel availability and therefore the provision regarding entitlement of Supplier seeking extension in contract period has been deleted
29.	3.2 PSA	Extension of Contract Period .....in the event that extension of the Contract Period due to the Supplier in accordance with the provisions of this Agreement is not granted by the Utility for any reason, the Utility shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Supplier a lump sum amount computed in accordance with this Clause 3.2.2 in lieu of the Fixed Charge that would have been payable to the Supplier if the Contract Period were extended.....	The clause has been deleted	The provision is with regard to damages payable by Utility to Supplier on Lumpsum basis in case of non-extension of contract period. In the bid document, the contract period is pre-defined i.e. 15 years with option for extension upto 5 years. As the fuel is arranged by the Utility under SHAKTI Scheme, any extension would be contingent to coal availability, operational factors relevant at that time and power requirement of Utility. For the aforesaid reasons, the provision has been deleted
30.	4.1.3 (J) PSA	The Conditions Precedent required to be satisfied by the Supplier within a period of 180 (one hundred and eighty) days from the date of this Agreement:	The clause has been modified as under: J. in case of Type 1 projects commissioned as on Bid Due Date submitted evidence of the commissioning of the Power Station, including details of installed Capacity and the Station	Various operational projects a likely to participate. As t compliance met for environment norms could be different based on

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		(j) submitted evidence of the commissioning of the Power Station, including details of the Installed Capacity and the Station Heat Rate of the Power Station.	Heat Rate of Power Station and Undertaking of compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof. In case of Type 2 projects, submitted an Undertaking for compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including. revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof.	technology and CAPEX incurred, the tariff component to be quoted by any bidder would in a manner reflect the extent of cost incurred. In order to remove anomaly towards the same and to have parity in bids, the condition has been incorporated that the cost towards meeting the environment norms specified as on Bid Due Date shall have to borne by Bidders only and Utility shall not be liable for any cost implication
31.	5.1.4 PSA	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 [950 (nine hundred and fifty)] kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection.....	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 ~~[950 (nine hundred and fifty)] kWh per megawatt of~~ Contracted Capacity at Delivery Point over a period of one hour, after accounting for auxiliary consumption, and transmission losses.....	As per the commercial arrangement under the Bid Documents, Supplier is required to make available the Contracted Capacity at Delivery Point. Accordingly, this modification has been carried out.
32.	5.1.5 (a) PSA	The Supplier shall..... make, or cause to be made, necessary		

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws. Non-grant of long term open access shall be mutually decided by the Utility and Supplier shall apply for grant of long-term open access for Contracted Capacity;	The clause is modified as under: (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 including Open Access, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws. Supplier shall apply for grant of long-term open access for supply of Contracted Capacity. Non-grant of long term open access shall be mutually decided by the Utility and Supplier. In case of delay in grant of long-term open access on ISTS network by the CTU, the same may be considered for appropriate time period extension for fulfillment of supplier obligations under this clause, provided that such reasons for delay are not attributable to the Supplier;	The modification has bee undertaken to have clarity wi regard to obligation for open access for supplying contracted capacity at Delivery point and commercial aspects in case of delay in grant of long term open access by CTU.
33.	5.2.2 (a) PSA	Clause related to "Obligations relating to Project Agreements" No review and/ or observation of the Utility and/ or its failure to review and/ or convey its observations on any document shall relieve the Supplier of its obligations and liabilities under this Agreement in any manner nor shall the Utility be liable for the same in any manner whatsoever.	No review and/ or observation of the Utility and/ or its failure to review and/ or convey its observations on any document, shall not relieve the Supplier of its obligations and liabilities under this Agreement in any manner nor shall the Utility be liable for the same in any manner whatsoever	The Clause modified to provide clarity
34.	5.5 PSA	.....The Parties further agree that the obligation of the Supplier to pay the regulated charges for	.....The Parties further agree that the obligation of the Supplier to pay the regulated charges for	Clarification incorporated regarding the Transmission Charge component as on Bid Due Date and

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of 80% (eighty per cent) of Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter 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 80% (eighty per cent) of the Contracted Capacity, which charges shall at all times be due and payable by the Supplier.	transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Due Date for and in respect of Contracted Capacity to be made available at Delivery Point and any variation thereafter in Inter-State Transmission Charges as determined by National Load Despatch Centre in accordance with Regulation notified by Central Commission 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 Due Date shall be deemed to be Rs. ... (Rupees ...) for and in respect of the Contracted Capacity to be made available at Delivery Point, 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, as applicable from time to time, for the State where project is located shall be borne by the Supplier throughout the contract period. 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. Further, the transmission charges shall be adjusted under the monthly bill as per Article 21.13.	sharing of difference in the same thereafter. The term 80% has been deleted as no Open Capacity is permitted and hence charges towards entire Contracted Capacity (100%) are to be considered. Further, it has been clarified that intra-state transmission charge for the State wherein Project is located, as applicable, shall be borne by Supplier throughout the contract period. In case Transmission bill are raised on Utility as per CERC PoC framework and paid by Utility, the same being the obligation of Supplier, the clarity for mechanism for adjusting the same under Monthly Invoice has been incorporated.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
35.	5.6.1 PSA	The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.	The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses as notified by National Load Despatch Centre in accordance with the Regulation notified by the Central Commission 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, as applicable from time to time, for the State where project is located shall be borne by the Supplier throughout the contract period.	Clarification incorporated regarding the Transmission Losses as on Bid Due Date and sharing of difference in the same thereafter. Further, it has been clarified that intra-state transmission losses for the State wherein Project is located, as applicable shall be borne by Supplier throughout the contract period.
36.	5.6.2 PSA	.....The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1(one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000 (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.	~~The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1(one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000 (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.~~	The provision regarding adjustment of transmission losses through monthly invoice as per prevailing Tariff has been deleted since any variation in Inter-State Transmission losses after Bid Due Date shall be adjusted for purpose of working of tariff for relevant month for making payment in reference to scheduled energy at delivery point during the month.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
37.	5.8 PSA	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. For avoidance of doubt, it is clarified that the Tariff quoted should be inclusive of all Taxes, Duties, Cesses etc. as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law. ~~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.~~	As per Tender terms, Bidder required to quote tariff after taking into consideration all cost components applicable for generation of power. There shall not be any separate reimbursement towards taxes, duties etc. unless the same is qualifying under Change in Law (Article 34 of PSA)
38.	New 5.10 Clause PSA	New Clause 5.10 added:	It is to clarify that any impact on Tariff on account of compliance to environmental norms as applicable / notified as on Bid Due Date shall be on account of the Supplier at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions	The clause has been incorporated in line with the terms specified at Sr. 30 above.
39.	6.1.2 (c) & (e) PSA	(c) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Power Station; (e) undertake rehabilitation and resettlement of persons affected by construction of the Power Station and bear all costs and expense	(c) Clause Omitted (e) Clause Omitted	The provision has been deleted as not relevant in the present bid framework.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		in respect thereof, save and except as otherwise provided in this Agreement; and		
40.	6.1.3 PSA	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 Omitted	The provision has been deleted as not relevant in the present framework.
41.	7.1 (l) PSA	the selected Bidder and its Associates 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;	the selected Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing / operating the Project in accordance with this Agreement	Clause modified to consider both Type-1 and Type-2 Projects
42.	10.2.1 PSA	For the avoidance of doubt, it is agreed that the minimum width of the right of way to be acquired shall conform to the provisions of Schedule-A.	For the avoidance of doubt, it is agreed that the minimum width of the right of way to be acquired shall conform to the provisions of Schedule-A and Schedule-B	The Clause modified to provide clarity to the Bidders
43.	10.4 PSA	For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Supplier hereunder shall be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.	For the avoidance of doubt, it is agreed that any ~~Reasonable~~ expenses incurred by the Supplier hereunder shall not be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.	The Clause modified to provide clarity to the Bidders
44.	11.2.1 PSA	The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The [1,050th (one thousand and fiftieth)] day from	The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The [ ] day (to be indicated at the time of bid submission in	The clarification has been added f applicable compliance by projec which are operational.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		the Appointed Date shall be the scheduled date for completion of the Power Station (the "Scheduled Completion Date") ... The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C..... for completion of the Power Station (the "Scheduled Completion Date")	accordance with Scheduled Supply Commencement Date) from the Appointed Date shall be the scheduled date for completion of the Power Station (the "Scheduled Completion Date") Following clarification added: For projects which are already operational, the Supplier shall ensure conformity to the Specifications and Standards in addition to other compliance as required under this Agreement latest by Scheduled Supply Completion Date as per the Agreement.	
45.	11.2.3 PSA	Construction of the Power Station. The clause provides for achievement of construction milestones by projects and timely completion of project activities for commencement of power supply under the agreement. *The entire clause is not reproduced here for sake of brevity.*	New Clause 11.2.3 added: Type 1 Projects shall be required to undertake & ensure all necessary activities to commence supply of power in accordance with the timelines & obligation under this Agreement. In the event of delay, unless such failure has occurred due to reasons attributable to the Utility, the Supplier shall pay Damages to the Utility at the amount specified at Clause 14.2 of Article 14 of this Agreement. For the avoidance of doubt, the Parties agree that in the event COD does not occur within 120 (one hundred and twenty) days from the Scheduled Supply Commencement Date specified under this agreement, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement	The clause is provided for Type 1 projects (i.e. projects operational as on Bid Due Date) The provision incorporated to have in place consequential implication on Supplier (in line with the eventuality provided for under construction projects) in case of delay in commencement of power supply in accordance with the timelines provided under the Agreement.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
46.	13.2.1 PSA	Upon completion of Construction Works, and the Supplier determining the Tests to be successful in accordance with the provisions of this Agreement, it shall forthwith issue to the Utility a certificate substantially in the form set forth in Schedule-G (the "Completion Certificate").	Upon completion of Construction Works, and the Supplier determining the Tests to be successful in accordance with the provisions of this Agreement, it shall forthwith issue to the Utility a certificate substantially in the form set forth in Schedule-G (the "Completion Certificate"). For Projects which are already operational, the Supplier has to carry out new Tests in accordance with provisions of this Agreement and submit to the Utility, a new Completion Certificate in accordance with the timelines provided under this Agreement.	As per the bid framework Station Heat Rate would be pre-specified by Utility while inviting the bid. Since, operational projects are also allowed to participate; such projects are required to demonstrate compliance towards pre-specified SHR through new tests. The clause has been incorporated for the same.
47.	13.6 PSA	Phased Completion of Power Station	Clause deleted	The supply commencement date would be indicated under the bid documents to be released by Utility. Further, the supply of power is linked with supply of coal by Coal India under SHAKTI scheme. In view of above, the provision with regard to phased completion of power station is proposed to be deleted to avoid discrepancy & disputes.
48.	14.1.2 PSA	In the event COD is achieved prior to the Scheduled Completion Date, the Fixed Charge due and payable to the Supplier for the period prior to the Scheduled Completion Date shall be [70% (seventy per cent)] of the Base Fixed Charge specified in Clause 21.2.1. Provided, however, that no payment on account of Fixed Charge hereunder shall be due or payable for	Clause deleted	The supply of power under the Agreement i.e. Supply Commencement Date is pre-informed which is linked with supply of linkage coal under SHAKTI scheme by Coal India. Accordingly, the provision with

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		any period prior to [365 (three hundred and sixty five)] days from the Scheduled Completion Date.		regard to receiving early supply and payment of fixed cost thereof is proposed to be deleted.
49.	14.2 PSA	Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61st (sixty first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.	Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61st (sixty first) day after the Scheduled Completion Date / Scheduled Supply Commencement Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.	The clarification added for aligning fixed charge annual reduction as per Scheduled Supply Commencement Date
50.	15.1.1 (b) PSA	undertaking operation and maintenance of the Power Station in an efficient, coordinated and economical manner, in compliance with the Grid Code, Central Electricity Authority (Grid Standards) Regulations, 2010, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and Applicable Laws	undertaking operation and maintenance of the Power Station in an efficient, coordinated and economical manner, in compliance with the Grid Code, Central Electricity Authority (Grid Standards) Regulations, 2010, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, as amended from time to time and Applicable Laws;	The Clause is modified to consider amendments, if any, for the aforesaid regulations.
51.	15.3.1 PSA	The Maintenance Manual shall be revised and updated once every 3 (three) years.	The Maintenance Manual shall be revised and updated once every 3 (three) years. For Type 1 Projects, the maintenance manual shall be provided to the Utility within 90 days of signing the PSA - DBFOO.	The clause is modified to provide clarity for Type 1 projects.
52.	15.9 PSA	In the event that the Supplier fails to repair or rectify any defect or deficiency which causes reduction in Availability, it shall be deemed to be in breach of this Agreement and the Utility shall	In the event that the Supplier fails to repair or rectify any defect or deficiency which causes reduction in Availability, it shall be deemed to be in breach of this Agreement and the Utility shall	The provision added to provide clarity with regard to working of damages in accordance with Average Daily Fixed Charge to be worked out at Normative Availability.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, 2% (two per cent) of the Average Daily Fixed Charge or such smaller sum as the Utility may, in its discretion determine.....	be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, 2% (two per cent) of the Average Daily Fixed Charge (worked out at normative availability) or such smaller sum as the Utility may, in its discretion determine.....	
53.	15.11 PSA	Modifications to the Power Station	For the avoidance of doubt, the Supplier should ensure that its power plant meets/shall comply with all the required environmental norms and that the Supplier has installed/shall install and operate all such equipment at its own cost as may be required as per timelines stipulated in such notifications, necessary to ensure compliance to notified norms/guidelines as on Bid Due Date	The Clause modified to provide clarity to the Bidders
54.	Article 17	Key Performance Indicators	At clause 17.2 – KPI added for Coal Report: During the Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish a monthly report to the Utility stating in reasonable detail the (a) Coal requisition to M/s CIL / subsidiaries (b) Coal receipt by the Power Plant (c) Coal consumed (d) Coal Stock at the end of month, along with such other details as may be required by the Utility to demonstrate the coal procurement, storage & utilization in efficient manner and in adherence to prudent practices.	The linkage coal under SHAKTI scheme would be arranged & allocated by the Utility to the selected Supplier. Accordingly, the provision has been added to have in place a robust reporting mechanism with regard to coal procurement, storage & consumption.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
55.	18.2 PSA	Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *** MW to the Utility as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.	Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *** MW at Delivery Point to the Utility as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement. Clarification added under Clause 18.2: For avoidance of doubt, the Contracted Capacity shall be the net capacity to be made available at the Delivery Point after taking into account auxiliary consumption, all applicable intra-state and inter-state transmission losses as applicable, from time to time, up to the Delivery Point.	Clarification added to have clarity with regard to making available Contracted Capacity at Delivery Point.
56.	18.3 PSA	The Parties expressly acknowledge and undertake that the Contracted Capacity hereunder along with similar capacity contracted between the Supplier and other Distribution Licensees for supply of electricity in accordance with the provisions of Section 63 of the Act shall at all times be dedicated for production of electricity and supply thereof	The Parties expressly acknowledge and undertake that the Contracted Capacity hereunder along with similar capacity contracted between the Supplier and other Distribution Licensees for supply of electricity in accordance with the provisions of Section 62 or 63 of the Act, as the case may be, shall at all times be dedicated for production of electricity and supply thereof	Clarification added regarding committed capacity.
57.	18.4 PSA	The Parties expressly acknowledge and agree that save and except as provided in Clause 18.4.2, 20% of the Contracted Capacity and the Committed Capacity, as the case may be, shall	Clause deleted	Concessional fuel from Coal India would be arranged & allocated by Utility. Accordingly, concept of Open

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		be available to the Supplier for production and supply of electricity to any person, in accordance with Applicable Laws and this Agreement (the "Open Capacity".....		Capacity from Power Plant at the disposal of Supplier has been deleted in order to ensur availability of contracted capac with Utility and prudent use o concessional fuel.
58.	18.5.1 PSA	If such Contracted Capacity is not utilised for any Distribution Licensee hereunder, the Supplier may use the whole or part thereof as Open Capacity, provided that the use of Allocated Coal, if any, for production of electricity from such Open Capacity shall be governed by the provisions of Clause 22.6.	If such Contracted Capacity is not utilised for any Distribution Licensee hereunder, the Supplier may use the whole or part thereof as ~~Open~~ Merchant Capacity, provided that the use of Allocated Coal, if any, for production of electricity from such ~~Open~~ Merchant Capacity shall be governed by the provisions of Clause 22.6.	As "Open Capacity" is replaced by "Merchant Capacity", this Clause is modified accordingly.
59.	18.6 PSA	Substitute Supply: Clause provides for supply of electricity by Supplier from alternative source in the event of maintenance, force majeure etc. with consent of Utility, which shall be for the purpose of payment of Fixed Charge & Fuel Charge shall be deemed to be supply under this agreement. *(the entire clause has not be reiterated here for sake of brevity)*	Clarification added at Clause 18.6: 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 2.2.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.	The clause has been incorporated in line with the terms specified at Sr. 7 above. (right available with Utility to accept supply from alternative source from Project having litigations pending with Utility)
60.	18.7 PSA	Any generating capacity in excess of the Committed Capacity and forming part of the Installed Capacity shall be deemed to be merchant capacity (the "Merchant Capacity") which may be utilised by the Supplier in such manner as it deems fit, and the provisions of	Any generating capacity in excess of the Committed Capacity and forming part of the Installed Capacity shall be deemed to be merchant capacity (the "Merchant Capacity") ~~which may be utilised by the Supplier in such manner as it deems fit, and the provisions of this~~	As "Open Capacity" concept has been modified and replaced by "Merchant Capacity", this Clause modified accordingly.

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		this Agreement, save and except the provisions relating to Allocated Coal, shall not apply to such excess capacity. For the avoidance of doubt, use of Allocated Coal for Merchant capacity shall be governed by the provisions of Clause 22.6.	~~Agreement, save and except the provisions relating to Allocated Coal, shall not apply to such excess capacity~~. For the avoidance of doubt, it is to clarify that the use of Allocated Coal (by Utility) for Merchant capacity shall be governed by the provisions of Clause 22.6 and other terms as specified in this Agreement.	
61.	20.2.2 PSA	Upon Termination under Clause 20.2.1, the Utility shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages;	Upon Termination under Clause 20.2.1, the Utility shall be entitled to encash the Bid Security/ Performance Security, as the case may be, and appropriate the proceeds thereof as Damages;	Clause modified to provide clarity to the Bidders
62.	21.2.2 & 21.2.3 PSA	Provision regarding adjustment of Fixed Charge as per SHR specified in Completion Certificate..... .....Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such increase shall be restricted to 1% (one per cent) and if the Fuel is procured from overseas or from the open domestic market, such increase shall be the lower of, (a) 2.5% (two point five per cent) for every improvement of 1% (one per cent); and (b) actual costs.	.....Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such increase shall be restricted to 1% (one per cent) ~~and if the Fuel is procured from overseas or from the open domestic market, such increase shall be the lower of, (a) 2.5% (two point five per cent) for every improvement of 1% (one per cent); and (b) actual costs.~~	In the present tender, the source of coal is pre-decided i.e. linkage coal under SHAKTI scheme. Therefore, the aforesaid provision regarding coal procurement from overseas or from open domestic market has been deleted
63.	21.2.4 PSA 21.3 PSA	The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which **COD** occurs..... .....if (a) the Bid Date occurs in February 2015; (b) **COD** occurs in May 2019; and (c) WPI	21.2.4. The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which Scheduled Supply Commencement Date occurs .....if (a) the Bid Date occurs in February 2015; (b) **Scheduled Supply Commencement Date**	The clarification added for aligning fixed charge annual reduction as per Scheduled Supply Commencement Date The clarification added for aligning fixed charge annual revision as per

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.	occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.	Scheduled Supply Commencement Date
64.	21.4.3 PSA	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 21.5.3 and the Non-Availability arising as a consequence thereof.....	In the event that any shortfall in supply of electricity to the Utility occurs after operationalization of long term open access, 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 21.5.3 ~~and~~ while the Non-Availability arising, due to deficiency in CTU network, as a consequence thereof.....	The Clause modified to provide clarity to the Bidders with regard to deemed availability
65.	21.5.3 PSA	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	In the event that any shortfall in supply of electricity to the Utility occurs after operationalization of long term open access on account of any deficiency in transmission between the Point of Grid Connection and Delivery Point	The Clause modified to provide clarity in line with modification carried out at Sr. 64 above (Clause 21.4.3)
66.	21.9.1 & 21.9.2 PSA	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 21.9.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 21.9.2, 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 21.9.2, in accordance with Applicable Laws.	As per the Bid documents, Bidder is required to factor in all the cost component while submitting the bid and there shall not be separate reimbursement towards taxe duties etc. unless the same qualifying under Change in Law (Article 34 of PSA)

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		The Tariff and Incentives payable by the Utility under this Article 21 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 payable by the Utility under this Article 21 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. For avoidance of doubt, it is clarified that the Tariff quoted should be inclusive of all Taxes, Duties, Cesses etc. as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law.	
67.	21.10.1 PSA	Commencing from the month following the month in which COD occurs, the Supplier shall, for by the 5th (fifth) day of for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate 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 Fuel 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.	Commencing from the month following the month in which COD occurs, the Supplier shall, upon issuance of Regional Energy Account (REA) / State Energy Account (SEA) certifying the availability and energy scheduled for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate 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 Fuel 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. The Supplier may raise the Monthly Invoice through email (during office hours) / courier / hand delivery. In	The proposed modification to Billing mechanism is for providing clarification with regard to raising of invoice and payment due date.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
			case, the Monthly Invoice is raised through email, it shall be ensured that the original invoice is received by the Utility within 5 working days from the date of invoice raised. In case of non-receipt of original invoice as per above timelines, the date of receipt of Invoice shall stand revised to the date of receipt of original invoice by Utility. Either Party may raise an Invoice on the other Party (Supplementary Invoice) for payment / adjustment / recovery in accordance with the provisions of this Agreement.	
		21.10.2 The Supplier shall, with each Monthly Invoice submit..... (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6;	(j) adjustments, if any, on account of revision of the inter-state transmission charges referred to in Clause 5.5 and in accordance with Clause 21.13; (k) proportionate adjustment on account of inter-state transmission losses to be determined in accordance with Clause 5.6.... (m) Coal consumption & receipt statement in accordance with the provisions of Article 17.	The proposed modification is for clarification regarding adjustment in transmission charge & losses and submission of coal consumption statement as per the document.
		The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (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	The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (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	The proposed modification to Billing mechanism is for providing clarification with regard to Supplementary Invoice and Payment Due Date.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		disputed (the "Disputed Amounts").	disputed (the "Disputed Amounts"). The aforesaid Payment Due Date shall also be applicable for the Supplementary Invoice. It is to clarify that Date of receipt of Invoice shall be considered as T0 and Due Date for Payment shall be T0+30 days.	
68.	21.12	Discount for early Payment: The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.	The Parties expressly agree that in the event the Utility pays the Tariff 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 Tariff by way of discount for early payment. It is clarified that the Date of receipt of Invoice shall be considered as T0 and Due Date for Payment shall be T0 +7 days. In case the event of due date for payment including for early payment being a Bank Holiday / strike / Utility's Holiday, the next working day shall be considered as due date. It is to clarify that discount for early payment shall not be applicable on the Invoices raised on account of Change in Law relating to taxes, duties, cess etc.	The proposed modification is for providing clarification with regard to consideration of due date and eligibility towards discount for early payment. Further, the discount applicable for early payment has been revised in line with present practise for long term agreement.
69.	21.13	----	New Clause incorporated: 21.13. Adjustment of Transmission Charges based on Availability: In the case where the actual availability of the Supplier at Delivery Point is less than the	Transmission charge being sunk cost, in order to ensure that Supplier ensures availability of power from project, aforesaid provision has been incorporated as per which in case the availability of Supplier reduces below Normative

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
			Normative Availability during a month, then Supplier shall be obliged to bear the cost of actual applicable transmission charge for the respective month for shortfall i.e. difference between Normative Availability & Actual Availability.	Availability, the applicable transmission cost burden for such shortfall would be passed on to th Supplier.
70.	22.1.1 PSA		Note added for Clarification: Note: Conversion of fuel into electricity shall be computed on the basis of the Station Heat Rate which must conform to predetermined specifications. The agreement also provides for incentives in the form of an enhanced Fixed Charge if the Supplier is able to improve on the pre-specified Station Heat Rate for ensuring greater efficiency in the interest of saving fuel.	Clause added to provide clarity with regard to SHR consideration and working of incentives when the actual SHR is superior to pre-specified SHR.
71.	~~22.2.6~~	~~In the event washing of coal is required under Applicable Laws, the cost of washing shall be included in the Landed Fuel Cost and such.....~~	~~Clarification added:~~ ~~For avoidance of doubt, it is clarified that in the event, Cost of Washing is not separately quoted by the Supplier then the no amount towards Cost of Washing shall quality under Change in law during the term of this Agreement.~~	~~Cost of washing is one of the bid parameter. In the event, such cost component is not separately quoted while submitting the bid, the same shall not be eligible for reimbursement under Change in Law throughout the contract period.~~
72.	22.3.1	**Determination of GCV** The weighted average of the GCV of Fuel received during any month at the Power Station shall be reckoned as the average GCV (the "Average GCV") for the purposes of this Article 22	The weighted average of the GCV of Fuel received during any month at the Power Station less 85 Kcal/Kg on account of variation during storage at generating station shall be reckoned as the average GCV (the "Average GCV") for the purposes of this Article 22.....	The clause modified to allow for adjustment of GCV towards variation due to storage in line with CERC Tariff Regulations 2019-24.

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73.	22.4.3	The Fuel procured under the FSA shall be utilised by the Supplier for production of electricity to be supplied to the Utility as part of the Contracted Capacity and only the surplus, if any, may be used for Open Capacity, subject to the provisions of Clause 22.6.	The Fuel procured under the FSA shall be utilised by the Supplier for production of electricity to be supplied to the Utility as part of the Contracted Capacity and only the surplus, if any, may be used for ~~Open~~ Merchant Capacity, with prior consent of the Utility and subject to the provisions of Clause 22.6.	As "Open Capacity" is replaced by "Merchant Capacity", this Clause is modified accordingly.
74.	22.4.4	Upon expiry of the FSA, the Supplier shall make best efforts to renew the same or execute a substitute thereof, failing which the provisions of Clauses 22.9 and 22.10 shall apply.	Clause Deleted	The referred clause is not relevant as supply is based on domestic coal linkage to be allocated by Utility.
75.	22.5 (e)	Terms of FSA: ..... e. in the event the supplier of Fuel proposes to blend imported Fuel with domestic Fuel, the provisions of Sub-clause (b) above shall apply;	Clause Deleted	The referred clause is not relevant as supply is based on domestic coal linkage to be allocated by Utility.
76.	22.6.1	Upon the Supplier meeting its obligations for and in respect of the supply of electricity to the Utility as part of the Contracted Capacity, it may generate electricity from Allocated Coal for sale thereof to Buyers subject to payment of Revenue Share to the Utility	Upon the Supplier meeting its obligations for and in respect of the supply of electricity to the Utility as part of the Contracted Capacity, it may generate electricity from Allocated Coal, with prior consent of Utility, which Utility may deny in its sole discretion, for sale thereof to Buyers subject to payment of Revenue Share to the Utility	The Clause modified to provide clarity to the Bidders
77.	22.6.5	Use of allocated coal for Buyer (third party sale using concessional fuel): Payments for and in respect of Revenue Share for any month shall be due and payable by the Supplier within 7 (seven) days of the close of that month.	Clause modified as under: Payments for and in respect of Revenue Share for any month shall be due and payable by the Supplier within 7 (seven) days of the close of that month, failing which interest for the period of delay at the rate specified in Clause 38.4 of this	The clause pertains to sale of power by Supplier to other buyers by using the coal allocated by Utility & sharing of revenue with Utility. The clarification added that in the event

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			Agreement shall be applicable	the revenue share for such supply is not paid by 7 days of close of month, interest for delayed payment would be applicable.
78.	22.9	In the event of Fuel Shortage.....The Supplier shall notify the Utility of the details of the Landed Fuel Cost under the AFSA and provide such other information as the Utility may require, for demonstrating that the AFSA is based on best prices available for supply and transportation of such fuel. The Supplier shall, with the concurrence of the Utility submit the AFSA for review and approval of the Appropriate Commission.	In the event of Fuel Shortage..... The Supplier shall notify the Utility of the details of the Landed Fuel Cost under the AFSA and provide such other information as the Utility may require, for demonstrating that the AFSA is based on best prices available for supply and transportation of such fuel. The Supplier shall submit the AFSA for review and concurrence of the Utility. Thereafter, Utility shall submit the AFSA for review and approval of Gujarat Electricity Regulatory Commission.	The clause has been appropriately modified to provide clarification that AFSA shall be submitted for review & concurrence of Utility and Utility shall submit AFSA for approval of Gujarat Electricity Regulatory Commission.
79.	23.1.1	The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Utility"s total monthly Revenues are normally deposited (the "Default Escrow Bank"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 50% (fifty per cent) of the annual Capacity Charge (the "Maximum Monthly Payment") shall be routed every month through the Default Escrow Account in accordance with the provisions of	The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where Utility's Revenues are normally deposited (the "Default Escrow Bank"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 50% (fifty per cent) of the annual Capacity Charge (the "Maximum Monthly Payment") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 23.1 and the Default Escrow Agreement	In order to have uniformity with regard to the modality of creation of charge over revenues and operation of escrow account for discharge the liabilities arising out of secured obligation inter-se various projects, the format of Escrow Agreement & Hypothecation Deed have been revised by GUVNL. The modification under this clause is to align the provision accordingly.

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		this Clause 23.1 and the Default Escrow Agreement.		
80.	23.1.3	The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "Minimum Monthly Payment") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement	Clause Deleted.	The modification carried out for the reasons stated above at Sr. 79 regarding Escrow Agreement and Deed of Hypothecation.
81.	23.2.2	The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility"s total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.	~~The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility"s total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank.~~ All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.	The modification carried out for the reasons stated above at Sr. 79 & Sr 80 regarding Escrow Agreement and Deed of Hypothecation.
82.	23.2.3	In the event of Utility"s failure to pay the Monthly Invoice before the 27th 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 Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:		

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		(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 has remained unpaid.	(a) a copy of the Monthly Invoice which has remained unpaid (other than Disputed Amounts); 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 (excluding Disputed Amounts) has remained unpaid.	The clarification has been incorporated since the treatment of Disputed amounts is governed as per Clause 21.11 of PSA. Accordingly, the invocation of payment security mechanism shall be allowed beyond the specified date only for undisputed amounts.
83.	23.3.1	In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date.....	In the event the Supplier is unable to recover its Tariff (except Disputed Amounts) through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date.....	The clarification has been incorporated since the treatment of Disputed amounts is governed as per Clause 21.11 of PSA. Accordingly, the right of sale of power from contracted capacity under the Agreement could be allowed beyond the specified date only for undisputed amounts.
84.	23.4	For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.	For the avoidance of doubt, the Utility expressly agrees and undertakes ~~that 30% (thirty per cent) of its total monthly~~ Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.	The Clause modified in line with the terms of Escrow Agreement and Deed of Hypothecation
85.	24.1.3	Scheduling and supply of electricity from Open Capacity may be undertaken by the Supplier in such manner as it may determine in conformity with the Grid Code.	Scheduling and supply of electricity from ~~Open~~ Merchant Capacity may be undertaken by the Supplier in such manner as it may determine in conformity with the Grid Code & provisions of this Agreement.	As "Open Capacity" is replaced by "Merchant Capacity" and utilization of allocated fuel for merchant capacity is governed as per the provision of Agreement, this Clause is modified accordingly.

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86.	24.2.2	Subject to the provisions of the Applicable Laws, the Utility shall have the first right to Despatch, in the form of UI, any surplus electricity generated from the entitlement of the Utility in the Contracted Capacity by utilizing the Fuel procured under Clause 22.4, and 90% (ninety per cent) of the revenues accruing from such UI charges, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier.	Clause deleted	Clause deleted as power under UI / DSM cannot be scheduled to Utility as per prevailing CERC / Grid Code norms.
87.	24.5	--------	New Clause 24.5 added: The clause regarding obligation of the Supplier to ensure proportionate availability of power from the allocated capacity / project has been incorporated. The clause is separately attached herewith at the end of this document for reference.	The clause has been incorporated in line with the provisions of Standard Bidding Documents notified by Govt. of India in 2006-07 for Projects selected through competitive bidding. The same is to safeguard the interest of the Utility by ensuring proportionate availability of power.
88.	28.4 (a)	Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;	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. The same will safeguard the interest of the end consumers of the Utility.

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89.	28.7 PSA	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)..... (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.	Clause modified as under: (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 end consumers of Utility on account of Political Event.
	28.7.2	Notwithstanding anything contained in this Clause 28.7, 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 28.7.	The clause has been deleted	
90.	28.11	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	The provision regarding relief on account of unforeseen events may lead to dispute/ litigation and consequential impact thereof including cost. Accordingly, the same has been deleted.
91.	31.4	Notwithstanding anything to the contrary contained in this Agreement, the Utility may, at any time no earlier than 3 (three) years but no	Notwithstanding anything to the contrary contained in this Agreement, the Utility may, at any time no earlier than ~~3 (three)~~ 1 (one) year	The Clause modified to provide clarity to the Bidders

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		later than 2 (two) year prior to completion of the Contract period, by a notice issued to the Supplier in accordance with the Proviso of Clause 3.1.1, require an extension of the Contract Period as specified therein, and in the event of such extension, the Contract Period shall be deemed to be extended accordingly. Provided, however, that in the event an extension is not sought hereunder, the Utility shall pay to the Supplier the Termination Payment computed in accordance with the provisions of Clauses 31.3.2. For the avoidance of doubt, the Parties agree that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.1.1, shall apply mutatis mutandis to the extended Contract Period.	but no later than ~~2 (two) year~~ 6 (six) months prior to completion of the Contract period, by a notice issued to the Supplier in accordance with the Proviso of Clause 3.1.1, require an extension of the Contract Period as specified therein, and in the event of such extension, the Contract Period shall be deemed to be extended accordingly. ~~Provided, however, that in the event an extension is not sought hereunder, the Utility shall pay to the Supplier the Termination Payment computed in accordance with the provisions of Clauses 31.3.2.~~ For the avoidance of doubt, the Parties agree that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.1.1, shall apply mutatis mutandis to the extended Contract Period.	
92.	30.1.2 PSA	During the period of Suspension, the Utility shall pay to the Supplier 20% (twenty per cent) of the Fixed Charge due and payable to the Supplier for and in respect of the Contracted Capacity.	Clause deleted	The clause has been deleted to avoid implication on Utility during the period of suspension
93.	Article 34	Change in Law: 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	The clause has been incorporated in line with the provisions of Standard Bidding Documents notified by Govt. of India in 2006-07 for Projects	It is to mention that the Cost reimbursement as well as adjustment for arriving at Net

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		increase / reduction in costs or reduction / increase in net after-tax return or other financial burden, the aggregate financial effect of which 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. *(Relevant Clause not reproduced here entirely for sake of brevity)*	selected through competitive bidding.	Present Value may lead to complexity and dispute in methodology for calculation. The revised clause in line with Ministry of Power 2006-07 Standard Bidding documents; will simplify the cost adjustment / pass through after Bid Due Date and safeguard the interest of Supplier & Utility. Further, clarification has been added that Supplier shall not in any manner be entitled to claim any amount towards carrying cost till the time Gujarat Electricity Regulatory Commission has determined and approved the same
94.	36.3	Arbitration Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal	Clause deleted	In order to ensure adjudication of disputes under the contractual arrangement by Appropriate Commission i.e Hon'ble Gujarat Electricity Regulatory Commission, in accordance with the provisions of Electricity Act, the provision with regard to arbitration is proposed to be deleted.
	36.5	Adjudication by a tribunal: In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon	Clause deleted	As stated above, any dispute if not resolved amicably may be referred

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 36.3 and 36.4 respectively, be adjudicated upon by such tribunal or.....		to adjudication by Hon'ble Gujarat Electricity Regulatory Commission. Hence, the provision regarding adjudication by a tribunal is proposed to be deleted.
95.	38.4	Delayed Payments 38.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.	38.4.1.The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a base rate equal to 5% (five per cent) above the Bank Rate for the first month of delay, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. For avoidance of doubt, "Bank Rate" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:	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.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		38.4.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.	38.4.2.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 such rate shall not be more than 3 percent higher than the base rate at any time; Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years; 38.4.3.All payments shall be first adjusted towards interest for Delayed Payments and thereafter, towards monthly charges, starting from the longest overdue bill.	
96.	Article 39 Definitions	"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;	"Bank Rate" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify ;	The Clause modified in accordance with definition of base rate under Ministry of Power Electricity Late Payment Surcharge Rules 2021.
97.	Article 39 Definitions	"Change in Law" means the occurrence of any of the following after the Bid Date: (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the Bid Date; (d) a change in the interpretation or application of any Indian law by a judgement of a court of	"Change in Law" shall have the meaning as set forth in Article 34	Clause modified in line with proposed modification for change in definition of "Change in Law" as provided in Article 34 and modification for the same is provided at Sr. 93 above.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or (e) any change in the rates of any of the Taxes that have a direct effect on the Project;		
98.	Article 39 Definitions	"Delivery Point" means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility;	"Delivery Point" means (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	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
99.	Article 39 Def	DSM – New Definition added	"DSM" means the CERC Deviation Settlement Mechanism or its amendments thereof	Clause added to provide clarity on aspects of DSM.
100.	Article 39 Def	Effective Date – New Definition added	"Effective Date" means the date of signing of Power Supply Agreement	The Clause modified to provide clarity on the effective date of the PSA to the Bidders
101.	Article 39 Def	Expected Monthly Payment – New Definition added	"Expected Monthly Payment" shall have the meaning as set forth in Clause 23.1.1;	As "Minimum Monthly Payment" is replaced by "Expected Monthly Payment", this Clause is deleted. This Clause is added to provide clarity on monthly payment.

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
102.	Article 39 Def	"Minimum Monthly Payment" shall have the meaning as set forth in Clause 23.1.3;	Deleted.	As "Minimum Monthly Payment" is replaced by "Expected Monthly Payment", this Clause is deleted.
103.	Article 39 Def	"Open Capacity" shall have the meaning as set forth in clause 18.4.1;	Deleted	As "Open Capacity" is replaced l "Merchant Capacity", this Clause is deleted
104.	Article 39 Def	Revenue Share - Definition modified	"Revenue Share" means and refers to the share of revenue from Merchant Capacity to be paid by the Supplier to the Utility in accordance with the provisions of this Agreement;	Clause added to provide clarity on revenue sharing from Merchant capacity.
105.	Article 39 Def	Supplementary Invoice - New Definition added	"Supplementary Invoice" means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement.	The Clause added to provide clarity to the Bidders
106.	Article 39 Def	Scheduled Supply Commencement Date - New Definition added	Scheduled Supply Commencement Date shall be the date as specified by the Utility; from which the Supplier shall be required to commence supply of Contracted Capacity at Delivery Point on commercial basis in accordance with the provisions under this Agreement i.e. September-2023	Clause added to provide clarity regarding time limit for compliance of conditions by all the projects for commencing supply by this Date
107.	Article 39 Def	"**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 andforming 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	"**Taxes**" means any Indian taxes including excise duties, customs duties, goods & services tax, 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	The Clause modified to provide clarity to the Bidders

Sr No.	Clause Ref (#)	As per Ministry of Power Model Bidding Documents dated 30.01.2019	Deviation / Modification undertaken by GUVNL	Rationale for modifications / deviations
		doubt, Taxes shall not include taxes on corporate income;	avoidance of doubt, Taxes shall not include taxes on corporate income	
08.	Schedule – J	Default Escrow Agreement	Modified	The agreement has been modified in line with the present Escrow / Hypothecation Agreement of Utility with various Projects in accordance with Ministry of Power Standard Bidding Documents of 2006-07 in order to have uniformity in the terms of charge creation & operation of escrow account.
109.	Schedule – K	Deed of Hypothecation	Modified	The agreement has been modified in line with the present Escrow / Hypothecation Agreement of Utility with various Projects in accordance with Ministry of Power Standard Bidding Documents of 2006-07 in order to have uniformity in the terms of charge creation & operation of escrow account.

Additional Details for Sr. 13: Details added at Appendix – I of RFP – Sr. 34

Bid parameters	Unit	Rs and paise (in two decimals)
Fixed Charge for the base year ——— (1)	per kWh	
Fuel Charge = Sum of (a)+(b)+(c) ------- (2)		
(d) Cost of Fuel	Per kWh	
(e) Cost of Transportation	Per kWh	
(f) Cost of Washing	Per kWh	
Transmission Cost = Sum of (a) + (b)——— (3)		
(c) ISTS Transmission Charges* (for Drawal State)	Per kWh	
(d) ISTS Transmission Losses* (for Drawal State)	In %	
ISTS Transmission Losses (for Drawal State)	Per kWh	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

**To be pre-specified by Utility prior to bid submission date*

Additional clarifications regarding submission of bid:

i. Utility 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 adjusted in tariff as per the Bid Documents.

ii. Utility to pre-specify transmission losses (in %) (ISTS network) for the purpose of online bid submission by bidders on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre- specified by Utility.

iii. In the DEEP Portal bid field of "Cost of Fuel in Rs per Kwh", Bidder to input single figure after summing "Cost of Fuel" & "Cost of Washing". While both this components have to be separately quoted and submitted as per the Appendix-1 of the RFP (i.e. Letter comprising the Bid)

iv. Intra-State Transmission charges & losses for the host State (other than the state of Gujarat) wherein Generator / Bidder is located, if any applicable from time to time, shall be on the account of Generator / Bidder at all times during the contract tenure. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier at all times during the contract tenure. Bidders are advised to factor in such costs in the tariff. No separate reimbursement / adjustment shall be allowed under Contract.

v. For the Projects connected with Gujarat STU, the "Transmission Cost" Parameter under above Table shall be assumed as NIL.

vi. At Sr. 34 of Appendix I under RFP, following additional details are to be submitted:

Sr.	Particulars	Unit	Details
1	CIL's Notified Price of Coal	Rs./Tonne	
2	GCV of Coal	Kcal/kg	
3	Freight payable to Indian Railways for coal transportation (inclusive of taxes)	Rs./Tonne	
4	Distance considered for transportation of coal from mines to plant location	Kms.	

**Bidder to refer clause 22.2.1 & 22.2.4 of PSA*

Additional Details for Sr. 50 – Provision 24.5 added in PSA regarding Proportionate Availability

24.5. Proportionate Availability

24.5.1. The Supplier shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

24.5.2. In case the Contracted Capacity of a Unit/Contracted Capacity as a whole is a part of the installed capacity of a power station; in the event of Availability from the Project in a Settlement Period being less than 100%, the capacity available to Utility for despatch shall be reduced proportionately. However, the Supplier has the option to offer more than such reduced capacity for despatch by Utility but not lower than such "Proportionate Availability". The Supplier shall prove such Proportionate Availability by using readings of meters at Generators for each Settlement Period and Energy Output of the Project up to Contracted Capacity.

24.5.3. In case the Supplier fails to establish Utility's proportionate right as per provisions of this Agreement, the Supplier shall be liable to be penalised. Such penalty shall be higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoid 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. In case the Supplier is unable to maintain the schedule for ensuring proportionate availability due to restrictions imposed by Regulatory Authority, the Utility may, upon request of the Supplier relax the applicability of provisions of Proportionate Availability.

Annexure - I

Request for Qualification –

for

Power Supply Agreement

for

Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL)

Issued by:

Gujarat Urja Vikas Nigam Limited (GUVNL)

Sardar Patel Vidyut Bhawan, Race Course,

Vadodara, 390007

GLOSSARY

Allocated Coal Linkage	Linkage Coal allocated to the Utility under SHAKTI Scheme of Govt. of India
Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Bids	As defined in Clause 1.2.4
Bid Due Date	As defined in Clause 1.2.4
Bid Security	As defined in Clause 1.2.5
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.4
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
BOLT	Build, Own, Lease and Transfer
BOO	Build, Own and Operate
BOOT	Build, Own, Operate and Transfer
BOT	Build, Operate and Transfer
Capacity Required	As defined in Clause 1.1.1
CIL	As defined in Clause 1.2.9
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of India/State
Joint Bidding Agreement	As defined in Clause 2.2.6(g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.9
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
PSA-DBFOO	As defined in Clause 1.1.2
PPP	Public Private Partnership
Qualification	As defined in Clause 1.2.
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
Request for Proposals - DBFOOor RFP - DBFOO	As defined in Clause 1.2.1
Request for Qualification – DBFOO or RFQ - DBFOO	As defined in the Disclaimer
SPV	As defined in Clause 2.2.6
Supplier	As defined in Clause 1.1.2
Tariff	As defined in Clause 1.2.9
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capacity	As defined in Clause 2.2.2 (A)
Utility	As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

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DISCLAIMER

The information contained in this Request for Qualification-DBFOO (the "**RFQ-DBFOO**") document or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Utility or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ-DBFOO and such other terms and conditions subject to which such information is provided.

This RFQ-DBFOO is not an agreement and is neither an offer nor invitation by the Utility to the prospective Applicants or any other person. The purpose of this RFQ-DBFOO is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ-DBFOO (the "**Application**"). This RFQ-DBFOO includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ-DBFOO may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ-DBFOO. The assumptions, assessments, statements and information contained in this RFQ-DBFOO may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ-DBFOO and obtain independent advice from appropriate sources.

Information provided in this RFQ-DBFOO to the Applicant(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ-DBFOO or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ-DBFOO and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ-DBFOO or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

The Utility also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RFQ-DBFOO.

The Utility may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ.

The issue of this RFQ-DBFOO does not imply that the Utility is bound to select and pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Supplier, as the case may be, for the Project and the Utility reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Utility or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

***

Gujarat Urja Vikas Nigam Ltd.

1. INTRODUCTION[5]

1.1 Background

1.1.1. The Gujarat Urja Vikas Nigam Ltd. (the "**Utility**") is engaged in the business of bulk purchase and sale of electricity for & on behalf of its subsidiary four Distribution Companies namely Uttar Gujarat Vij Company Ltd. (UGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL). As part of this endeavor, the Utility, for and on behalf of its four electricity distribution companies , the Utility has decided to procure electricity on a long term basis from Power Station (the "**Project**") through Public-Private Partnership (the "**PPP**") on Design, Build, Finance, Own and Operate (the "**DBFOO**") basis by sourcing fuel Linkage Coal from Coal India / its subsidiaries arranged by Utility pursuant to allocation under para B (iv) of SHAKTI Scheme of Govt. of India, and has, therefore decided to carry out the Bidding Process for selection of a corporate entity(ies) as the Bidder(s) to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents.

GUVNL solicits bids from the following types of Projects:

Type 1: Projects / Units that are already commercially operationalized on or after 1st January 2013

Type 2: New Projects that are yet to be commercially operationalized

Brief particulars of the Project are as follows:

Capacity Required at Delivery Point (in MW)	**Minimum Capacity** not less than 10%(ten per cent)of Capacity Required **(in MW)**	**Period when supply must commence**
3000 MW	300 MW	Sep 2023 (exact supply commencement month would be indicated prior to Bid Due Date)

The Utility intends to pre-qualify suitable Applicants (the "**Bidders**") who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

---

[5] **Instructions for Applicants**

Note 1. The provisions in curly brackets shall be suitably modified by the Applicants after the RFQ - DBFOO is issued. (See Appendix-VIII)

Note 2: Blank spaces contain formats that are to be used by the Applicants after the RFQ- DBFOO is issued. (See Appendix-VIII)

Note 3: Footnotes marked "$" in the relevant Clauses of the RFQ-DBFOO are for guidance of the Applicants. In case of Appendices, the footnotes marked "$" or in other non-numerical characters shall be omitted by the Applicants while submitting their respective Applications. (See Appendix-VIII)

1.1.2. The Bidder(s) who are issued Letter of Award (LoA) (the "**Selected Bidder**(s)") shall accept the LoA (the "**Successful Bidder**"). The Successful Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the Power Supply Agreement-DBFOO (the "**Supplier**") shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the power station under and in accordance with the provisions of a long term agreement for supply of Electricity (the "**Power Supply Agreement- DBFOO**" or the "**PSA- DBFOO**") to be entered into between the Supplier and the Utility in the form provided by the Utility as part of the Bidding Documents pursuant hereto.

1.1.3. The scope of work will broadly include designing, financing, operation and maintenance of the Power Station and supply of power in accordance with the terms of the PSA.

1.1.4. All Applicants shall indicate the particulars of their power station in the form specified at Annex-VI of Appendix-I and at National e-Bidding Portal ("**DEEP Portal**") developed by PFC Consulting Ltd. Applicants may Bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 10% (ten per cent) of such capacity. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.

1.1.5. The Utility shall receive Applications pursuant to this RFQ - DBFOO in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Utility, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the "**Application Due Date**").

1.2. Brief description of Bidding Process

1.2.1. The Utility has adopted a two-stage bidding process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves qualification (the "**Qualification**") of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ - DBFOO (the "**Applicant**", which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to the Utility a sum of Rs. 30,000 (Rupees thirty thousand + 18% GST) (non-refundable) as the cost of the RFQ - DBFOO process & registration. At the end of this stage, the Utility will announce a list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "**Bid Stage**") comprising Request for Proposals (the "**Request for Proposals-DBFOO**" or "**RFP-DBFOO**").

Government of India has issued guidelines (see Appendix-V) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Utility shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-I.

1.2.2. All the Applicants would be able to participate in the e-Bidding events on making payment of the requisite fees of ₹500 per MW for the maximum capacity for

which the Applicant is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee shall be deposited through NEFT/IMPS/RTGS after adding the applicable taxes. After the completion of the Bidding Process, only Selected Bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest.

1.2.3. In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ - DBFOO. Only those Applicants that are pre-qualified by the Utility shall be invited to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to familiarise themselves with the terms of the Model PSA - DBFOO that will govern the structure of this Project. The said Model PSA - DBFOO has been notified by the Government of India under section 63 of the Electricity Act 2003 for tariff based bidding by the Utilities.

1.2.4. In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "**Bids**") in DEEP Portal in accordance with the RFP-DBFOO and other documents to be provided by the Utility (collectively the "**Bidding Documents**"). The Bidding Documents for the Project will be provided to every Bidder on payment of Rs. 300,000 (Rs. three lakh only) + 18% GST (non-refundable).The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2.5. In terms of the RFP-DBFOO, a Bidder will be required to deposit, along with its Bid, a Bid security of Rs. 5 lakh (Rupees five lakh) per MW of maximum capacity offered by the Bidder (the "**Bid Security**"), refundable no later than 120 (One Hundred Twenty) days from the Bid Due Date, except in the case of the Successful Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO. The Bidders will have an option to provide Bid Security in the form of a bank guarantee acceptable to the Utility or deposited online through NEFT/IMPS/RTGS payment[$]. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.6. Generally, the Bidder with the lowest landed Tariff (Lowest Bidder) shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP-DBFOO, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the capacity required as per clause 1.1.1 is not fully met by the Lowest Bidder. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be. Further, it is clarified that any

[$] The format for the bank guarantee has been published as part of the Model RFP-DBFOO document

single Bidder cannot quote part capacity from different stations.

1.2.7. During the Bid Stage, Bidders are requested to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.

1.2.8. As part of the Bidding Documents, the Utility will provide a draft PSA-DBFOO and other information pertaining/ relevant to the Project available with it.

1.2.9. Bids will be invited for the Project on the basis of a tariff to be offered by a Bidder for production and supply of electricity in accordance with the terms of the draft PSA-DBFOO forming part of the Bidding Documents. For the purposes of bidding hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the "**Tariff**"). The element of coal transportation and transit losses may vary from case to case and shall also form part of the Fuel Charge by way of adjustment. The contract period shall be pre-determined, and will be indicated in the draft PSA-DBFOO. The Project shall be awarded to the Bidder whose landed Tariff i.e., quoted Tariff along with applicable Transmission charges and losses, is the lowest.

Explanation

(a) **Bidder sourcing fuel from CIL**: Since the Bidder is expected to source coal from Linkage as per SHAKTI Policy from Coal India Limited (the "**CIL**") or a subsidiary thereof, the cost of Fuel which shall be included in the Fuel Charge shall be a "pass through" in accordance with the terms of the PSA- DBFOO. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder. The Base Fixed Charge shall not be more than 70% of the Tariff and the Base Fuel Charge shall not be more than 50% of the Tariff.

(b) Deleted.

(c) Deleted.

(d) Deleted.

1.2.10. The Selected Bidder shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility. Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.2.11. Any queries or request for additional information concerning this RFQ - DBFOO shall be submitted in writing by speed post/ courier/ special messenger and e-mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.13.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ - DBFOO for Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using SHAKTI coal allocated by CIL".

1.3. Schedule of Bidding Process

The Utility shall endeavor to adhere to the following schedule:

	Event Description	Date
	Qualification Stage	
1.	Last date for receiving queries	
2.	Pre-Application Conference	
3.	Utility response to queries latest by	
4.	Application Due Date	
5.	Announcement of Pre-qualified Applicants	
	Bid Stage	**Estimated Date**
1.	Sale of Bid Documents	[To be specified]
2.	Last date for receiving queries	[To be specified]
3.	Pre-Bid Conference – 1	[To be specified]
4.	Utility response to queries latest by	[To be specified]
5.	Pre-Bid Conference – 2	[To be specified]
6.	Bid Due Date	[To be specified]
7.	Opening of Bids	On Bid Due Date
8.	Letter of Award (LOA)	Within 30 days of Bid Due Date
9.	Validity of Bids	120 days of Bid Due Date
10.	Signing of PSA-DBFOO	Within 30 days of award of LOA

1.4. Pre-Application Conference

The date, time and venue of the Pre-Application Conference shall be:

Date: ***

Time: ***

Venue ***

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1. Scope of Application

2.1.1. The Utility wishes to receive Applications for Qualification in order to pre-qualify experienced and capable Applicants for the Bid Stage.

2.1.2. Pre-qualified Applicants may be subsequently invited to submit the Bids for the Project.

2.2. Eligibility of Applicants

2.2.1. For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

(a) The Applicant for pre-qualification may be a single entity or a group of entities (the **"Consortium"**), coming together to implement the Project or supply power from commissioned or part commissioned projects. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a natural person, private entity, [government-owned entity] or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the **"Conflict of Interest"**) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified[5]. An Applicant shall be deemed to have a Conflict ofInterest affecting the Bidding Process, if:

(i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub- section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the

[5] The provisions of sub-clauses (i), (iii) and (v) shall not apply to government companies.

entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Applicant is also a constituent of another Applicant; or

(iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or

(iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or

(v) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other; or

(vi) such Applicant, or any Associate thereof has participated as a consultant to the Utility in the preparation of any documents, design or technical specifications of the Project.

(d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated prior to the Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

(e) Other eligibility conditions shall include the following:

(i) The Applicant should be in possession of at least one-half of the land required for the Power Station;

(ii) The Applicant should have obtained environmental and forest clearance for the Power Station;

(iii) The Applicant should have commenced construction of the Power Station;

(iv) Omitted

(v) Only Applicants who agree and undertake to procure the boilers, turbines, and generators of their Projects from manufacturing facilities situate in India and owned and operated in India by an Indian company, a foreign company or a joint venture between an Indian and foreign company shall be eligible hereunder.

Provided, this Clause will not apply to projects where the required equipment has already been ordered on or before the 6.3.2019

For avoidance to doubt, it is clarified that in addition to Project / Units that are yet to commence its commercial operations, already operational Projects / Units having commercial operational date on or after 1st January 2013 shall also be eligible to participate. It is further clarified that all the terms, conditions & eligibility requirement stated herein in this document shall apply uniformly to all i.e. operational as well as yet to become operational projects.

2.2.2. To be eligible for pre-qualification, an Applicant shall fulfill the following conditions of eligibility:

(A) **Technical Capacity**: For demonstrating technical capacity and experience (the **"Technical Capacity"**), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:

(i) paid for, or received payments for, construction of Eligible Project(s); and/or

(ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/ or

(iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1,

such that the sum total of the above is more than Rs. 5,00,00,000/-(5 Crores) for every MW of capacity offered by the Applicant hereunder (the **"Threshold Technical Capacity"**).

(B) **Financial Capacity**: The Applicant shall have a minimum Net Worth (the **"Financial Capacity"**) equivalent to Rs. 1,50,00,000 (Rupees one crore and fifty lakh) per MW of capacity offered by the Applicant) at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and net worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project* hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost as per the PSA-DBFOO.

**The term Commercial Operation Date (COD) as used in the Power Supply Agreement -DBFOO is not to be construed as the COD of the Power Station but COD as defined under Article 13 and 14 of the Power Supply Agreement -DBFOO.*

2.2.3. **O&M Experience:** The Applicant shall either enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the requisite experience or undertake O&M through qualified and experienced staff of its own.

2.2.4. The Applicants shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following[$]:

i. Certificate(s) from statutory auditors of the Applicant or its Associate or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

ii. Certificate(s) from statutory auditors of the Applicant or its Associates specifying the Net Worth of the Applicant, 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 2.2.4 (ii). For the purposes of this RFQ – DBFOO, net worth (the "**Net Worth**") shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.2.5. The Applicant should submit a Power of Attorney as per the format at Appendix- II, authorising the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.6. Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 1956/ 2013 (the "**SPV**"), to execute the PSA-DBFOO and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

(a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;

(b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;

(c) members of the Consortium shall nominate one member as the lead member (the **"Lead Member"**), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;

[$] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ- DBFOO.

(d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;

(e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;

(f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;

(g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the **"Joint Bidding Agreement"**), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Joint Bidding Agreement, to be submitted along with the Application, shall, inter alia:

i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ - DBFOO, which would enter into the PSA-DBFOO and subsequently perform all the obligations of the Supplier in terms of the PSA-DBFOO, in case the contract to undertake the Project is awarded to the Consortium;

ii. clearly outline the proposed roles and responsibilities, if any, of each member;

iii. commit the minimum equity stake to be held by each member;

iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFQ - DBFOO , shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project / 2 years from supply commencement under this agreement, whichever is later, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV and (ii) 5% (five per cent) of the Total Project Cost as per the Power Supply Agreement-DBFOO.

v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the first anniversary of the commercial operation date of the Project / supply commencement under this agreement, whichever is later; and

vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Supplier in relation to the Project until the Financial Close of the Project is achieved in accordance with the PSA-DBFOO; and

(h) except as provided under this RFQ - DBFOO and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Utility.

2.2.7. Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.

2.2.8. An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Utility for seeking a waiver from the disqualification hereunder and the Utility may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.9. In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ - DBFOO, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member (the **"Associate"**). 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 by operation of law.

2.2.10. The following conditions shall be adhered to while submitting an Application:

(a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;

(c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and

(d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11. While Qualification is open to persons from any country, the following provisions shall apply:

(a) Where, on the date of the Application, 25% (twenty-five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or

(b) if at any subsequent stage after the date of the Application, there is an acquisition of 25% (twenty-five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Utility from national security and public interest perspective. The decision of the Utility in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Utility shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Applicant shall promptly inform the Utility of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

2.2.12. Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3. Change in composition of the Consortium

2.3.1. Change in the composition of a Consortium will not be permitted by the Utility during the Qualification Stage.

2.3.2. Where the Bidder[£] is a Consortium, change in the composition of a Consortium

[£] The option of change in composition of the Consortium which is available under Clause 2.3.2 may be exercised by any Applicant who is pre-qualified either as a Consortium or as a single entity. In the case of a single entity Applicant adding a Consortium Member at the Bid Stage, the single entity Applicant shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be an Applicant or the member of a Consortium which has been pre-qualified.

may be permitted by the Utility during the Bid Stage, only where:

(a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;

(b) the Lead Member continues to be the Lead Member of the Consortium;

(c) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and

(d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

2.3.3. Approval for change in the composition of a Consortium shall be at the sole discretion of the Utility and must be approved by the Utility in writing.

2.3.4. The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement before the Bid Due Date.

2.3.5. Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4. Number of Applications and costs thereof

2.4.1. No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another Application either individually or as a member of any Consortium, as the case may be.

2.4.2. The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The Utility will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5. Site visit and verification of information

2.5.1. Applicants are encouraged to submit their respective Applications after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6. Acknowledgement by Applicant

2.6.1. It shall be deemed that by submitting the Application, the Applicant has:

(a) made a complete and careful examination of the RFQ - DBFOO;

(b) received all relevant information requested from the Utility;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ - DBFOO or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.5 above; and

(d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2. The Utility shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ - DBFOO or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

2.7. Right to accept or reject any or all Applications/ Bids

2.7.1. Notwithstanding anything contained in this RFQ - DBFOO, the Utility reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.7.2. 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 Applicant does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Application.

(c) Utility considers that the implementation of the Award and / or PSA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and / or PSA under this RFP will have any impact of implication on the pending litigation or otherwise disputes with the bidder/supplier.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Utility reserves the right to:

(a) invite the remaining Bidders to match the Lowest Bidder/ submit their Bids in accordance with the RFP-DBFOO; or

(b) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

2.7.3. In case it is found during the evaluation or at any time before signing of the PSA-DBFOO or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the PSA-DBFOO, and if the Applicant/SPV has already been issued the LOA or has entered into the PSA-DBFOO, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ - DBFOO , be liable to be terminated, by a communication in writing by the Utility to the Applicant, without the Utility being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Utility may have under this RFQ - DBFOO , the Bidding Documents, the PSA-DBFOO or under applicable law.

2.7.4. The Utility reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ - DBFOO. Any such verification or lack of such verification by the Utility shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

B. DOCUMENTS

2.8. Contents of the RFQ - DBFOO

This RFQ - DBFOO comprises the glossary; disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

Section 1. Introduction
Section 2. Instructions to Applicants
Section 3. Criteria for Evaluation
Section 4. Fraud & Corrupt Practices
Section 5. Pre Application Conference
Section 6. Miscellaneous

Appendices

I. Letter comprising the Application
II. Power of Attorney for signing of Application
III. Power of Attorney for Lead Member of Consortium
IV. Joint Bidding Agreement for Consortium
V. Guidelines of the Department of Disinvestment
VI. Information Memorandum
VII. Details of Allocated Coal Linkage
VIII. List of Application-specific provisions

2.9. Clarifications

2.9.1. Applicants requiring any clarification on the RFQ - DBFOO may notify the Utility in writing by speed post/ courier/ special messenger and by e-mail attaching the queries in Microsoft word file in accordance with Clause 1.2.10.

They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Utility shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by e-mail. The Utility will forward all the queries and its responses thereto, to all purchasers of the RFQ - DBFOO without identifying the source of queries.

2.9.2. The Utility shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.

2.9.3. The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Utility shall be deemed to be part of the RFQ - DBFOO. Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.

2.10. Amendment of RFQ - DBFOO

2.10.1. At any time prior to the deadline for submission of Application, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ - DBFOO by the issuance of Addenda.

2.10.2. Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ - DBFOO.

2.10.3. In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Application Due Date.[5]

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11. Language

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12. Format and signing of Application

2.12.1. The Applicant shall provide all the information sought under this RFQ – DBFOO. The Utility will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications

[5] While extending the Application Due Date on account of an addendum, the Utility shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be providedbetween the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

shall be liable to rejection.

2.12.2. The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this RFQ - DBFOO) and clearly marked as "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of such Application and documents, which shall be marked as "COPY". The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD) / Pen Drive. In the event of any discrepancy between the original and the copy, the original shall prevail.

2.12.3. The Application and its copy shall be typed or written in indelible ink it shall be signed by the authorised signatory of the Applicant who shall also initial each page of the Application (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

2.13. Sealing and Marking of Applications

2.13.1. The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

2.13.2. Each envelope shall contain:

(i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;

(ii) Power of Attorney for signing the Application as per the format at Appendix-II;

(iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;

(iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;

(v) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;

(vi) copies of Applicant's duly audited balance sheet and profit and loss account for the preceding five years; and

(vii) 2 (two) soft copies of the Application on a Compact Disc (CD); and

(viii) In case of Project / Unit operational as on Bid Due Date, the detailed with regard to Power Project, Commissioning, Generation during last 3 years, fuel availability if any, capacity tied up and merchant capacity available.

Each of the envelopes shall clearly bear the following identification:

"Application for Qualification: Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using Shakti coal allocated by CIL"

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3.Each of the envelopes shall be addressed to:

ATTN. OF:	Shri. K.P. Jangid
DESIGNATION:	General Manager (Commerce)
ADDRESS:	2nd Floor, Sardar Patel Vidyut Bhavan, Race Course, Vadodara – 390 007, Gujarat
FAX NO:	0265-2344543
E-MAIL ADDRESS:	coacom@gebmail.com

2.13.4.If the envelopes are not sealed and marked as instructed above, the Utility assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

2.13.5. Applications submitted by fax or e-mail shall not be entertained and shall be rejected.

2.14. Application Due Date

2.14.1. Applications should be submitted latest by 1700 hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ - DBFOO. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

2.14.2. The Utility may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15. Late Applications

Applications received by the Utility after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16. Modifications/ substitution/ withdrawal of Applications

2.16.1. The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Utility prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

2.16.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.16.3. Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

D. EVALUATION PROCESS

2.17. Opening and Evaluation of Applications

2.17.1. The Utility shall open the Applications at *** hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

2.17.2. Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.

2.17.3. The Utility will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.

2.17.4. Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Utility. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.5. Any information contained in the Application shall not in any way be construed as binding on the Utility, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.

2.17.6. The Utility reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.

2.17.7. If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Applicant. The Utility shall have discretion to seek any additional documents, details, certificates etc. for the purpose of eligibility as well as evaluation of the Applicant.

2.17.8. In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Utility as incorrect or erroneous, the Utility shall reject such claim and exclude the same from computation of the Experience Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Utility reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

For avoidance of doubt, the Project shall be awarded to the Bidder whose landed Tariff i.e., quoted Tariff along with applicable Transmission charges and losses, is the lowest.

2.18. Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Utility in relation to, or matters arising out of, or concerning the Bidding Process. The Utility will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Utility may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Utility or as may be required by law or in connection with any legal process.

2.19. Tests of responsiveness

2.19.1. Prior to evaluation of Applications, the Utility shall determine whether each Application is responsive to the requirements of the RFQ - DBFOO. An Application shall be considered responsive if:

(a) it is received as per format at Appendix-I.

(b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;

(c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;

(d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);

(e) it contains all the information and documents (complete in all respects) as requested in this RFQ - DBFOO;

(f) it contains information in formats same as those specified in this RFQ - DBFOO;

(g) it contains certificates from its statutory auditors[5] in the formats specified at Appendix-I of the RFQ - DBFOO for each Eligible Project;

(h) it contains an attested copy of the receipt of the Utility towards the cost of the RFQ - DBFOO process as specified in Clause 1.2.1;

(i) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);

(j) it does not contain any condition or qualification; and

(k) it is not non-responsive in terms hereof.

2.19.2. The Utility reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Application. Provided, however, that the Utility may, in its discretion, allow the Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application.

2.20. Clarifications

2.20.1. To facilitate evaluation of Applications, the Utility may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Utility for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.20.2. If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Utility may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Utility.

E. QUALIFICATION AND BIDDING

2.21. Notification of prequalified Applicants

After the evaluation of Applications, the Utility would announce a list of pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. The Utility would notify the pre-qualified Applicants asking to remit the required amount within a week as the cost of procuring the RFP-DBFOO documents. At the same time, the Utility would notify the other Applicants that they have not been pre-qualified. The Utility will not entertain any query or clarification from Applicants who fail to qualify.

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[5] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ-DBFOO.

2.22. Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents. Only pre-qualified Applicants shall be invited by the Utility to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to examine the Bidding Documents, and to carry out such scrutiny and studies as may be required for submitting their respective Bids for award of the Project. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Utility.

2.23. Proprietary data

All documents and other information supplied by the Utility or submitted by an Applicant to the Utility shall remain or become the property of the Utility. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Utility will not return any Application or any information provided along therewith.

2.24. Correspondence with the Applicant

Save and except as provided in this RFQ - DBFOO, the Utility shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3. CRITERIA FOR EVALUATION

3.1. Evaluation parameters

3.1.1. Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2. The Applicant's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.2. Technical Capacity for purposes of evaluation

3.2.1. Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the **"Eligible Experience"**) in relation to eligible projects as stipulated in Clauses 3.2.3 and3.2.4 **(the "Eligible Projects"):**

Category 1: Project experience on Eligible Projects in power sector that qualify under Clause 3.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3

Category 3: Construction experience on Eligible Projects in power sector that qualify under Clause 3.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ - DBFOO:

(i) power sector would be deemed to include generation, transmission and distribution of electricity; and

(ii) core sector would be deemed to include coal mining, telecom, ports, airports, railways, metro rail, highways and bridges, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.[$]

3.2.2. Eligible Experience in respect of each category shall be measured only for Eligible Projects.

[$] Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant.

3.2.3. For a project to qualify as an Eligible Project under Categories 1 and 2:

(a) It should have been undertaken as a project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;

(b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty-six per cent) equity during the entire year for which Eligible Experience is being claimed;

(c) the capital cost of the project should be more than Rs. 100 crores (Rs. one hundred crore); and

(d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from transmission/distribution systems, highways, airports, ports and railway infrastructure, and/or (iii) collected and appropriated the revenues from sale of electricity produced by it, but shall not include revenues from sale or provision of goods or services such as, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project or revenues from sale of electricity by a distribution company.

3.2.4. For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than Rs. 100 crores (Rs. one hundred crore) shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn- key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.2.5. The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.2.6. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.3. Details of Experience

3.3.1. The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.

3.3.2. The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

3.3.3. The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4. Financial information for purposes of evaluation

3.4.1. The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.

3.4.2. In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.4.3. The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

3.5. Pre-Qualification of Applicants

3.5.1. The credentials of eligible Applicants shall be measured in terms of their Experience. The sum total of the Experience for all Eligible Projects shall be the "Aggregate Experience" of a particular Applicant. In case of a Consortium, the Aggregate Experience of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience of the Consortium. The Applicants who are fulfilling the requirements of the RFQ - DBFOO subject to the provisions under clause 2.7 of RFQ - DBFOO will be pre-qualified by the Utility.

4. FRAUD AND CORRUPT PRACTICES

4.1. The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Utility may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

4.2. Without prejudice to the rights of the Utility under Clause 4.1 hereinabove, if an Applicant is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ - DBFOO issued by the Utility during a period of 2 (two) years from the date such Applicant is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

4.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Utility who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PSA-DBFOO or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Utility, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PSA-DBFOO, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PSA-DBFOO, who at any time has been or is a legal, financial or technical adviser of the Utility in relation to any matter concerning the Project;

(b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "**coercive practice**" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

5.1. A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ - DBFOO document shall be allowed to participate in the Pre- Application conference. Applicants who have downloaded the RFQ - DBFOO document from the Utility's website (www.***) should submit a Demand Draft for the amount specified in Clause 1.2.1 towards the cost of RFQ - DBFOO process through their representative attending the conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.

5.2. During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

6.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Utility has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2. The Utility, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Applicant in order to receive clarification or further information;

(c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;

(d) retain any information and/ or evidence submitted to the Utility by, on behalf of, and/ or in relation to any Applicant; and/ or

(e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.

6.3. It shall be deemed that by submitting the Application, the Applicant agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

Appendices

APPENDIX I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To

The General Manager – Commerce
Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhawan, Race
Course Vadodara, 390007

Sub: Application for pre-qualification for Tender invited by GUVNL for Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using SHAKTI coal allocated by CIL

Dear Sir,

1. With reference to your RFQ - DBFOO document dated ..., I/we, having examined the RFQ - DBFOO document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to VI is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project and for sale of power to the Utility.

4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

5. I/ We acknowledge the right of the Utility to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

   a. I/ We have examined and have no reservations to the RFQ - DBFOO

document, including any Addendum issued by the Utility;

b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ - DBFOO document;

c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ - DBFOO document, in respect of any tender or request for proposal issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and

d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ - DBFOO document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ - DBFOO document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ - DBFOO document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.[7]

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines

[7] In case the Applicant is unable to provide the certification specified in para 13, it may precede the paragraph by the words, viz. "Except as specified in Schedule **** hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Utility will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are of a nature that could cast a doubt on the ability or suitability of the Applicant to undertake the Project

apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forming part of the RFQ - DBFOO at Appendix-V is enclosed.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.

16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ - DBFOO, we shall intimate the Utility of the same immediately.

17. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ - DBFOO document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ - DBFOO, are also enclosed.

18. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the PSA-DBFOO.

19. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.

20. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

21. I/ We agree and undertake to abide by all the terms and conditions of the RFQ - DBFOO document.

22. I/We hereby undertake that in the event the Bidder is selected as the Selected Bidder, I/We shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.

23. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to clause 1.1.4 of the RFQ - DBFOO out of the Capacity Required of {... MW} given under clause 1.1 of the RFQ - DBFOO.

24. I/ We certify that in terms of the RFQ - DBFOO, my/our Net worth is Rs. ... crore (Rupees ... crore).

25. I/ We certify that in terms of the RFQ - DBFOO, my/our Threshold Technical Capacity under clause 2.2.2 (A) of the RFQ - DBFOO is Rs ... crore (Rupees ...crore).

{26. I/We agree and undertake to be jointly and severally liable for all the obligations of the Supplier under the PSA-DBFOO till occurrence of Financial Close or for such period as provided in RFP-DBFOO, in accordance with the PSA-DBFOO.}[$]

In witness thereof, I/ we submit this application under and in accordance with the terms of the RFQ - DBFOO document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Applicant/ Lead Member

[$] Omit if the Applicant is not a Consortium.

ANNEX-I

Appendix I
Annex-I

Details of the Applicant

1. (a) Name:

   (b) Country of incorporation:

   (c) Address of the corporate headquarters and its branch office(s), if any, in India:

   (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:

   (a) Name:
   (b) Designation:
   (c) Company:
   (d) Address:
   (e) Telephone Number:
   (f) E-Mail Address:
   (g) Fax Number:

4. Particulars of the Authorised Signatory of the Applicant:

   (a) Name:
   (b) Designation:
   (c) Address:
   (d) Phone Number:
   (e) Fax Number:

5. In case of a Consortium:

   (a) The information above (1-4) should be provided for all the Members of the Consortium.

   (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.

   (c) Information regarding the role of each Member should be provided as per table below:

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Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)}[$]	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			
4.			

* The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 at Annex-IV.

6. The following information shall also be provided for the Applicant, including each Member of the Consortium:

Name of Applicant/ member of Consortium:

Sl. No.	Criteria	Yes	No
1.	Has the Applicant/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

[$] All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

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Annex-II

ANNEX-II

Technical Capacity of the Applicant[@]

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ - DBFOO)

Applicant type #	*Member Code**	*Project Code***	*Cate-gory$*	*Eligible Experience¥ (Equivalent Rs. crore)$$*			*Experience (In Rs. Crore)*
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
Single entity Applicant		a					
		b					
		c					
		d					
Consortium Member 1		1a					
		1b					
		1c					
		1d					
Consortium		2a					

@ Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.

* Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

** Refer Annex-IV of this Appendix I. Add more rows if necessary.

$ Refer Clause 3.2.1.

¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

$$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees [60(sixty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Applicant type[#]	*Member Code*[*]	*Project Code*[**]	*Cate-gory*[$]	*Eligible Experience*[#] *(Equivalent Rs. crore)*[$$]			*Experience (In Rs. Crore)*
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
Member 2		2b					
		2c					
		2d					
Consortium Member 3		3a					
		3b					
		3c					
		3d					
Consortium Member 4		4a					
		4b					
		4c					
		4d					
						Aggregate Experience =	

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ANNEX-III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ - DBFOO)

(In Rs. crore[$])

Applicant type[$$]	Member Code[£]	Net Worth[€]
(1)	(2)	(3)
Single entity Applicant		
Consortium Member 1		
Consortium Member 2		
Consortium Member 3		
Consortium Member 4		
TOTAL		

Name & address of Applicant's Bankers:

$ For conversion of other currencies into rupees, see note below Annex-II of Appendix-I

$$ An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

£ For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

€ The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9

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Annex-III

Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:

   (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its

   Associate's financials;

   (b) be audited by a statutory auditor;

   (c) be complete, including all notes to the financial statements; and

   (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

4. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ - DBFOO document.

5. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ - DBFOO document.

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ANNEX-IV

Details of Eligible Projects

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ - DBFOO)

Project Code: **Member Code:**

Item (1)	**Refer Instruction** (2)	**Particulars of the Project** (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or(c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ Commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

Instructions:

1 Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ - DBFOO, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Application. Applicants should also refer to the Instructions below.

2 For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.

3 A separate sheet should be filled for each Eligible Project.

4 Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.

5 Refer to Clause 3.2.1 of the RFQ - DBFOO for category number.

6 The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

7 In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Utility/ Agency (i.e. contract grantor, counter party to PSA-DBFOO, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.

8 Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4

9 For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.

10 For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).

11 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double

counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Applicant's statutory auditor[$] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/ Member/Associate may provide the requisite certification.

13. If the Applicant is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects[Φ]

Based on its books of accounts and other published information authenticated by it, this is to certify that .....*(name of the Applicant/Member/Associate)* is/ was an equity shareholder in ..... *(title of the project company)* and holds/held Rs. ..... cr. (Rupees..... crore) of equity (which constitutes .....%[€] of the total paid up and subscribed equity capital) of the project company from ..... *(date)* to..... *(date)*[¥]. The project was/is likely to be commissioned on .....*(date of commissioning of the project).*

We further certify that the total estimated capital cost of the project is Rs.....cr. (Rupees .....crore), of which Rs. ..... cr. (Rupees..... crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFQ - DBFOO during the past five financial years were Rs. ..... cr. as per year-wise details noted below:

.....
.....

Name of the audit firm:

Seal of the audit firm:(Signature, name and designation of the authorised signatory) Date:

[$] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification bystatutory auditors would not be necessary.

£ Refer Clause 3.2.1 of the RFQ-DBFOO.

Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

€ Refer instruction no. 10 in this Annex-IV.

¥ In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that ..... (name of Applicant) constructed and/ or owned the ..... (name of project) from ..... (date) to (date)."

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14. If the Applicant is claiming experience under Category 3 & 4[♦], it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works[Φ]

Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... *(name of the Applicant/Member/Associate)* was engaged by ..... *(title of the project company)* to execute ..... *(name of project)* for ..... *(nature of project)}[ψ]*. The construction of the project commenced on ..... *(date)* and the project was/ is likely to be commissioned on ..... *(date, if any)*. It is certified that ..... *(name of the Applicant/ Member/ Associate)* received/paid Rs. ..... cr. (Rupees.....crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs.....cr. (Rupees .....crore), of which the Applicant/Member/Associate received/paid Rs. ..... cr. (Rupees.....crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ - DBFOO , during the past five financial years as per year-wise details noted below:

.....

.....

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}[♦]

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the authorised signatory).

Date:

[♦] Refer Clauses 3.2.1 and 3.2.4 of the RFQ-DBFOO.

Φ Provide Certificate as per this format only. Attach Explanatory notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

ψ In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: " this is to certify that (name of Applicant/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the (name of Project company) when it undertook construction of the ..... (name of Project) through (name of the contractor).

♦ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

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Annex-IV

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[$]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of .....
(*name of the Applicant/Consortium Member/ Associate*) is held, directly or indirectly[£], by ..... (*name of Associate/ Applicant/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ - DBFOO.

A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Applicant/ Consortium Member and the Associate.In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein*}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score.[Θ]

[$] In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.
£ In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken
[Θ] Refer Clause 3.2.6 of the RFQ-DBFOO.

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ANNEX-V

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)

Ref. Date:

To,

***

***

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Application) satisfy the terms and conditions laid out in the RFQ - DBFOO document.

We have agreed that ... (insert member's name) will act as the Lead Member of our consortium.*

We have agreed that ... (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf and has been duly authorized to submit the RFQ - DBFOO. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of ....

* *Please strike out whichever is not applicable.*

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Annex-VI

ANNEX- VI

Particulars of the Power Station

1. Location of Power Station (Specify place, district and state):

2. No. of Units and Installed capacity of each unit (in MW):

	No. of Units	Installed Capacity (in MW)	COD
Existing			
Proposed			

3. Quantum of power

   Contracted with other purchasers, if Any (in MW):

4. Details of surplus capacity (in MW):

5. Land for Power Station
   (i) Total requirement (in ha):
   (ii) Land in Possession (in ha):

6. Status of environment and forest clearance:

7. Source of Fuel and Status of assured supply of Fuel:

8. Status of construction:

9. Status and source of procurement of equipment:

Signature:
Name:
Designation:
Date:
Place:

APPENDIX II

Power of Attorney for signing of Application and Bid[$]

(Refer Clause 2.2.5)

Know all men by these presents, We .... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), ... son/ daughter/ wife of .... and presently residing at ...., whois presently employed with us/ the Lead Member of our Consortium and holding the position of .... , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our Bid for the *** Project already commissioned / proposed or being developed by the *** (the "Bidder") including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Power Supply Agreement - DBFOO and undertakings consequent to acceptance of our Bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Power Supply Agreement -DBFOO with the Utility.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ... THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ... DAY OF ...20...

For ...

(Signature, name, designation and address)

Affixation of Common Seal
Witness:
1.
2.

[$] To be submitted in original.

Witnesses: (Notarised)

1.

2

Accepted

....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

2. *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*

3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed The Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX III

Power of Attorney for Lead Member of Consortium[$]

(Refer Clause 2.2.5)

Whereas the *** ("the Utility") has invited applications from interested parties for the *** Project (the "Project").

Whereas, ..., ..., ... and .... (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification-DBFOO document (RFQ - DBFOO), Request for Proposal-DBFOO (RFP-DBFOO) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We.... having our registered office at ...., M/s..... having our registered office at ...., M/s. .... having our registered office at ...., and having our registered office at ....,(hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S .... having its registered office at.... being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Utility, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Power Supply Agreement -DBFOO is entered into with the Utility.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

[$] To be submitted in original.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS .... DAY OF.... 20..

For ....

(Signature)

.....

(Name & Title)

For ....

(Signature)

....

(Name & Title)

For ....

(Signature)

...

(Name & Title)

Affixation of Common Seal
Witness:
1.
2.

Witnesses:

1.

2.

....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

2. *Also, wherever required, the Applicant should submit for verification the extract*

of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed The Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX IV

Joint Bidding Agreement for Consortium

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956/2013[Y]} and having its registered office at.....(hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at ..... (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at.....(hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at.....(hereinafter referred to as the "**Fourth Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}[5]

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

[Y] A Bidder who is registered abroad may substitute the words, viz. "a company registered under the Companies Act, 1956" by the words, viz. "a company duly organized and validly existing under the laws of the jurisdiction of its incorporation". A similar modification may be made in Recital 2, as necessary.

[5] The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

(A) *****, established/incorporated under the Indian Companies Act, 1956, represented by its [Chairman] and having its principal offices at *****(hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the "**Applications**") by its Request for Qualification No. ..... dated ..... (the "**RFQ - DBFOO**") for pre-qualification of Bidders for development and operation of ***** Project (the "**Project**") through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ - DBFOO document and other Bid Documents in respect of the Project, and

(C) It is a necessary condition under the RFQ - DBFOO document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ - DBFOO.

2. Consortium

The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act, 2013 for entering into a Power Supply Agreement-DBFOO (the "**PSA-DBFOO**") with the Utility and for performing all its obligations as the Supplier in terms of the PSA-DBFOO. If an SPV has been incorporated by the Utility prior to the Bid Due Date, the Parties undertake to transfer all shares of the SPV through a share purchase agreement.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the PSA-DBFOO when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium;}

{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member / Other Member of the Consortium.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ - DBFOO, RFP-DBFOO and the PSA-DBFOO, till such time as the Financial Close for the Project is achieved under and in accordance with the PSA-DBFOO.

6. Shareholding in the SPV

The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:
Second Party:
{Third Party:}
{Fourth Party:}

The Parties undertake that a minimum of 26% (twenty-six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of pre-qualification of Applicants for the Project in terms of the RFQ - DBFOO.

The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

The Parties undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

The Parties undertake that they shall comply with all equity lock-in requirements set forth in the PSA-DBFOO.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the PSA-DBFOO, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Utility to the Bidder, as the case may be.

9. Miscellaneous

This Joint Bidding Agreement shall be governed by laws of India.

The Parties acknowledge and accept that this Agreement shall not be amendedby the Parties without the prior written consent of the Utility.

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

	(Designation)
SIGNED, SEALED AND DELIVERED For and on behalf of	(Address)
LEAD MEMBER by:	SIGNED, SEALED AND DELIVERED
(Signature)	For and on behalf of
(Name)	THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:
1.

2.

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

FOURTH PART

(Signature)

(Name)

(Designation)

(Address)

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX V

Guidelines of the Department of Disinvestment

(Refer Clause1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary to the Government

APPENDIX- VI

INFORMATION MEMORANDUM

[APPENDIX – VII]
Details of the Allocated Coal Linkage

[Details to be provided with respect to Location of Coal Mine and Quality of Coal]

APPENDIX- VIII

LIST OF APPLICATION SPECIFIC PROVISIONS[$]

1. Clauses and appendices with non-numerical footnotes

1. Clause 1.2.3: Brief description of Bidding Process
2. Clause 1.2.4: Brief description of Bidding Process
3. Clause 2.2.1(C): Eligibility of Applicants
4. Clause 2.2.2 (B): Eligibility of Applicants: Financial Capacity
5. Clause 2.2.4 : Eligibility of Applicants
6. Clause 2.10.3: Amendment of RFQ - DBFOO
7. Clause 2.19.1 (g): Tests of responsiveness
8. Clause 3.2.1 (ii): Technical Capacity for purposes of evaluation
9. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 13, 22 and 26
10. Appendix I, Annex-I: Details of Applicant (Table to Para 5(c))
11. Appendix I, Annex-II: Technical Capacity of the Applicant
12. Appendix I, Annex-III: Financial Capacity of the Applicant
13. Appendix I, Annex-IV: Details of Eligible Projects: Para 12
14. Appendix I, Annex-IV: Details of Eligible Projects:
    (a) Certificate from the Statutory Auditor regarding PPP projects
    (b) Certificate from the Statutory Auditor/ Client regarding construction works, and
    (c) Certificate from Statutory Auditor/ Company Secretary regarding Associate
15. Appendix II: Power of Attorney for signing of Application and Bid
16. Appendix III: Power of Attorney for Lead Member of Consortium
17. Appendix IV: Joint Bidding Agreement: Recital, Para 4

2. Clauses and appendices with curly brackets

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 22
2. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 23
3. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 26
4. Appendix I, Annex I: Details of Applicant (Table to Para 5(c), Column 3)
5. Annex-IV, Appendix I: Form of Certificate from the Statutory Auditor/ Client regarding construction works
6. Appendix IV: Joint Bidding Agreement

3. Clauses and appendices with blank spaces

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 1, 23, 24 and 25
2. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from the Statutory Auditor regarding PPP project.

[$] This Appendix-VIII contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VIII may, therefore, be included in the RFQ-DBFOO document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes maybe deleted when it submits its Application.

3. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from the Statutory Auditor/ Client regarding construction works
4. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from Statutory Auditor/ Company Secretary regarding Associate
5. Appendix I, Annex-V: Statement of Legal Capacity
6. Appendix I, Annex-VI: Particulars of the Power Station
7. Appendix II: Power of Attorney for signing of Application
8. Appendix III: Power of Attorney for Lead Member of Consortium
9. Appendix IV: Joint Bidding Agreement: Recitals

APPENDIX- IX

Deleted

Request for Proposal

for

Power Supply Agreement

for

Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL)

Issued by: Gujarat Urja Vikas Nigam Limited (GUVNL)

Sardar Patel Vidyut Bhawan,

Race Course, Vadodara, 390007

Issued on: ……. 2022

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Request for Proposal-DBFOO (RFP-DBFOO)

[NAME AND ADDRESS OF THE UTILITY]

LETTER OF INVITATION

Sub: RFP-DBFOO for *** Project

Dated:

To,

.....

.....

.....

Dear Sir,

Pursuant to your application in response to our Request for Qualification-DBFOO for the above said project (the "RFQ-DBFOO"), you were pre-qualified as a Bidder, and asked vide our letter dated .... to remit the fee for RFP-DBFOO document (the "RFP-DBFOO") within a week. We acknowledge your remittance of [Rs. 300,000 + 18% GST (Rs. three lakh only)] as the cost of procuring the RFP-DBFOO documents, which are enclosed.

You are requested to participate in the Bid Stage and submit your financial proposal (the "Bid") for the aforesaid project in accordance with the RFP-DBFOO.

Please note that the [Utility] reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

(Signature, name and designation of the Signatory)

DISCLAIMER

The information contained in this Request for Proposal-DBFOO ("**RFP-DBFOO**") document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Utility or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP-DBFOO and such other terms and conditions subject to which such information is provided.

This RFP-DBFOO is not an agreement and is neither an offer nor invitation by the Utility to the prospective Bidders or any other person. The purpose of this RFP-DBFOO is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP-DBFOO. This RFP-DBFOO includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP-DBFOO may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP-DBFOO. The assumptions, assessments, statements and information contained in the Bidding Documents, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP-DBFOO and obtain independent advice from appropriate sources.

Information provided in this RFP-DBFOO to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP-DBFOO or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP-DBFOO and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP-DBFOO or arising in any way for participation in this Bid Stage.

The Utility also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP-DBFOO.

The Utility may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP-DBFOO.

The issue of this RFP-DBFOO does not imply that the Utility is bound to select a Bidder or to appoint the Selected Bidder or Supplier, as the case may be, for the Project and the Utility reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Utility or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

	GLOSSARY
Allocated Coal Linkage	Linkage Coal allocated to the Utility under SHAKTI Scheme of Govt. of India
Associate	As defined in Clause 2.1.14
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause1.1.7
Bid Due Date	As defined in Clause1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.5
Bid Stage	As defined in Clause 1.2.1
CIL	As defined in Clause 3.5.2
Conflict of Interest	As defined in Clause 2.1.14
Contract	As defined in Clause 1.1.5
Damages	As defined in Clause 2.1. 14
DBFOO	As defined in Clause 1.1.1
Government	Government of *****
Lowest Bidder	As defined in Clause 1.2.7
LOA	As defined in Clause 3.3.5
Member	Member of a Consortium
PSA-DBFOO	As defined in Clause 1.1.2
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
Request for Proposals-DBFOO or RFP-DBFOO	As defined in the Disclaimer
Request for Qualification-DBFOO or RFQ-DBFOO	As defined in Clause 2.1.2
Selected Bidder	As defined in Clause 3.3.1
Supplier	As defined in Clause 1.1.2
Tariff	As defined in Clause 1.2.7
Utility	As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove. The words and expressions beginning with capital letters and not defined herein, but defined in the RFP-DBFOO, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

Invitation for Proposal

Gujarat Urja Vikas Nigam Limited

1. INTRODUCTION[$]

1.1. Background

1.1.1. The Gujarat Urja Vikas Nigam Ltd. (the "**Utility**") is engaged in the business of bulk purchase and sale of electricity for & on behalf of its subsidiary four Distribution Companies namely Uttar Gujarat Vij Company Ltd. (UGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL). As a part of this endeavor, the Utility, for & on behalf of its four electricity Distribution Companies has decided to procure electricity on a long term basis from a power station (the "**Project**") through Public Private Partnership (the "**PPP**") on Design, Build, Finance, Own and Operate (the "**DBFOO**") basis by sourcing fuel under SHAKTI Scheme of Ministry of Power allocated by Utility from the options given in clause 3.5.2, and has decided to carry out the Bidding Process for selection of a corporate entity as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents.

GUVNL solicits bids from the following types of Projects:

Type 1: Projects / Units already commercially operationalised on or after 1st January 2013

Type 2: New Projects that are yet to be commercially operationalised

Brief particulars of the Project are as follows:

Capacity Required at Delivery Point (in MW)	**Minimum Capacity** not less than 10% (ten per cent) of Capacity Required **(in MW)**	**Period when supply must commence**
3000 MW	300 MW	September 2023 (exact supply commencement month would be indicated prior to Bid Due Date)

1.1.2. The Bidder(s) who are issued Letter of Award (LoA) (the "**Selected Bidder(s)**") shall accept the LoA (the "**Successful Bidder**"). The Successful Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the Power Supply Agreement (the "**Supplier**"), shall be responsible for designing, engineering, financing, procurement,

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[$] **Instructions for Bidders**

Note 1: The provisions in curly brackets shall be suitably modified by the Bidders after the RFP-DBFOO is issued. (See Appendix-VII)

Note 2: Blank spaces contain formats that are to be used by the Bidders after the RFP-DBFOO is issued. (See Appendix-VII)

Note 3: Footnotes marked "$" in the relevant Clauses of the RFP-DBFOO are for guidance of the Bidders. In case of Appendices, the footnotes marked "$" or in other non-numerical characters shall be omitted by the Bidders while submitting their respective Bids. (See Appendix-VII)

construction, operation and maintenance of the Power Station for production of electricity and supply thereof under and in accordance with the provisions of a long-term agreement for supply of power (the "**Power Supply Agreement-DBFOO**" or the "**PSA-DBFOO**") to be entered into between the Selected Bidder and the Utility in the form provided by the Utility as part of the Bidding Documents pursuant hereto.

1.1.3. The scope of work will broadly include designing, financing, construction, operation and maintenance of the Power Station and supply of power in accordance with the terms in the PSA-DBFOO.

1.1.4. Bidders may Bid for the the capacity specified in Clause 1.1.1, or a part thereof, not being less than 10% (ten per cent) of such capacity at National e- Bidding Portal (**"DEEP Portal"**) developed by PFC Consulting Ltd. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.

1.1.5. The PSA-DBFOO sets forth the detailed terms and conditions for grant of the contract to the Supplier, including the scope of the Supplier's services and obligations (the **"Contract"**).

1.1.6. The statements and explanations contained in this RFP-DBFOO are intended to provide a better understanding to the Bidders about the subject matter of this RFP-DBFOO and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Supplier set forth in the PSA-DBFOO or the Utility's rights to amend, alter, change, supplement or clarify the scope of work, the Contract to be awarded pursuant to this RFP- DBFOO or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP-DBFOO are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Utility.

1.1.7. The Utility shall receive Bids pursuant to this RFP-DBFOO in accordance with the terms set forth in this RFP-DBFOO and other documents to be provided by the Utility pursuant to this RFP-DBFOO, as modified, altered, amended and clarified from time to time by the Utility (collectively the **"Bidding Documents"**), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the **"Bid Due Date"**).

1.2. Brief description of Bidding Process

1.2.1. The Utility has adopted a two-stage process (collectively referred to as the **"Bidding Process"**) for selection of the Bidder for award of the Project. The first stage (the **"Qualification Stage"**) of the process involved pre- qualification of interested parties/ Consortia in accordance with the provisions of the RFQ-DBFOO. At the end of the Qualification Stage, the Utility pre- qualified Applicants are eligible for participation in this second stage of the Bidding Process (the **"Bid Stage"**) comprising Request for Proposal-DBFOO.

The Government of India has issued guidelines (see Appendix-V of RFP- DBFOO) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Utility shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to Bid, and should give an

undertaking to this effect in the form at Appendix-I

1.2.2. All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of ₹500 per MW for the maximum capacity for which the Applicant is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee shall be deposited through NEFT/IMPS/RTGS after adding the applicable taxes. After the completion of the Bidding Process, only Selected Bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest.

1.2.3. In the Bid Stage, the aforesaid pre-qualified Applicants, including their successors, (the **"Bidders"**, which expression shall, unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their financial offers (the **"Bids"**) in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 days (one hundred and twenty days) from the Bid Due Date.

1.2.4. The Bidding Documents include the draft PSA-DBFOO for the Project which is enclosed/ which will be provided to the Bidders on or near about ***. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP-DBFOO Document, will be deemed to form part of the Bidding Documents.

1.2.5. A Bidder is required to deposit, along with its Bid, a bid security of Rs 5 lakh (Rupees five lakh) per MW of capacity offered by the Bidder (the **"Bid Security"**), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO. The Bidders will have to provide Bid Security in the form of bank guarantee acceptable to the Utility.. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.6. During the Bid Stage, Bidders are requested to examine the Bidding Documents in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Contract including implementation of the Project

1.2.7. Bids are invited for the Project on the basis of a tariff to be offered by a Bidder for and in respect of the Project. For the purposes of evaluation hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the **"Tariff"**). The contract period shall be pre-determined and specified in the Bidding Documents. For the purpose of evaluation hereunder, the landed Tariff shall be worked out by adding Transmission charges & cost towards Transmission Loss for ISTS network, if applicable up to Delivery Point, as stated in this bid document.

In this RFP-DBFOO, the term "Lowest Bidder" shall mean the Bidder who is offering the lowest landed Tariff i.e. quoted tariff after adding applicable transmission charges & transmission losses.

1.2.8. Generally, the lowest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP-DBFOO, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the capacity required as per clause 1.1 is not fully met by the Lowest Bidder. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process. Further, it is clarified that any single Bidder cannot quote part capacity from different stations.

1.2.9. The Supplier shall, in consideration of its investment and services, be entitled to receive a Fixed Charge and a Fuel Charge.

1.2.10. Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP-DBFOO.

1.2.11. Any queries or request for additional information concerning this RFP- DBFOO shall be submitted in writing and e-mail attaching queries or request in Microsoft word File to the officer designated in Clause 2.11.5 below. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: RFP-DBFOO for Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using SHAKTI coal allocated by CIL".

1.3. Schedule of Bidding Process

The Utility shall endeavor to adhere to the following schedule:

	Event Description	**Date**
1.	Last date for receiving queries	
2.	Pre-Bid Conference-1	
3.	Utility response to queries latest by	
4.	Pre-Bid Conference-2	
5.	Bid Due Date	
6.	Opening of Bids	
7.	Letter of Award (LOA)	Within 30 days of Bid Due Date
8.	Validity of Bids	120 days of Bid Due Date
9.	Signing of PSA-DBFOO	Within 30 days of award of LOA

1.4. Pre-Bid Conference

1.4.1. The date, time and venue of the Pre-Bid Conference shall be:

Date: ***
Time: ****
Venue: ***

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

2.1.1. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.1.2. Unless the context otherwise requires, the terms not defined in this RFP- DBFOO, but defined in the Request for Qualification document for the Project (the **"RFQ-DBFOO"**) shall have the meaning assigned thereto in the RFQ- DBFOO.

2.1.3. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Any variations or deviations found subsequently shall not confer any right on the Bidders, and the Utility shall have no liability whatsoever in relation to or arising out of any variations or deviations detected subsequently.

2.1.4. Notwithstanding anything to the contrary contained in this RFP-DBFOO, the detailed terms specified in the draft PSA-DBFOO shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the PSA-DBFOO.

2.1.5. The Bid should be furnished in the format at Appendix–I, clearly indicating the Bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.6. The Bid shall consist of a Tariff to be quoted by the Bidder, as per the terms and conditions of this RFP-DBFOO and the provisions of the PSA-DBFOO.

2.1.7. The Bidder shall deposit a Bid Security as specified in Clause 1.2.4 of this RFP-DBFOO. The Bidder has the option to provide the Bid Security either through NEFT/IMPS/RTGS payment or in the form of a Bank Guarantee acceptable to the Utility, as per format at Appendix–II.

2.1.8. The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO.

2.1.9. The Bidder should submit a Power of Attorney as per the format at Appendix– III, authorising the signatory of the Bid to commit the Bidder.

2.1.10. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix– IV.

2.1.11. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.12. The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.13. The documents including this RFP-DBFOO and all attached documents, provided by the Utility are and shall remain or become the property of the Utility and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Utility will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.14. A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Utility and not by way of penalty for, inter alia, the time, cost and effort of the Utility, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA-DBFOO or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply incases where the direct or indirect shareholding of a Bidder, its Memberor an Associate thereof (or any shareholder thereof having ashareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply toany ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person

shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Bidder is also a constituent of another Bidder; or

(iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

(v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

(vi) such Bidder or any Associate thereof has participated as a consultant to the Utility in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For purposes of this RFP-DBFOO, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "**Associate**"). 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 by operation of law.

A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the PSA-DBFOO. In the event any such adviser is engaged by the Selected Bidder or Supplier, as the case may be, after issue of the LOA or execution of the PSA-DBFOO for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the PSA-DBFOO and without prejudice to any other right or remedy of the Utility, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Utility may have thereunder or otherwise, the LOA or the PSA-DBFOO, as the case may be, shall be liable to be terminated without the Utility being liable in any manner

whatsoever to the Selected Bidder or Supplier for the same.

For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to Notice Inviting Tender released by Utility. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of this Project.

2.1.15. This RFP-DBFOO is not transferable.

2.1.16. Any award of Contract pursuant to this RFP-DBFOO shall be subject to the terms of Bidding Documents.

2.1.17. Clause Deleted.

2.2. Change in composition of the Consortium

2.2.1. Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Utility during the Bid Stage, only where:

(a) the Lead Member continues to be the Lead Member of the Consortium;

(b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and

(c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/ Associate of any other Consortium bidding for this Project.

2.2.2. Approval for change in the composition of a Consortium shall be at the sole discretion of the Utility and must be approved by the Utility in writing. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.

2.2.3. The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.2.4. The option of change in composition of the Consortium which is available under Clause 2.2.1 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member at the Bid Stage, the single entity Bidder shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

2.3. Change in Ownership

2.3.1. By submitting the Bid, the Bidder acknowledges that it was pre-qualified on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project under this Agreement / hold equity share capital representing not less than:

(i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA-DBFOO. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the PSA-DBFOO, and a breach hereof shall, notwithstanding anything to the contrary contained in the PSA-DBFOO, be deemed to be a breach of the PSA-DBFOO and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

2.3.2. By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of pre-qualification under and in accordance with the RFQ-DBFOO, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Utility forthwith along with all relevant particulars about the same and the Utility may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the PSA-DBFOO but prior to Financial Close (for Type 2 Projects), it would, notwithstanding anything to the contrary contained in the PSA-DBFOO, be deemed to be a breach of the PSA-DBFOO, and the same shall be liable to be terminated without the Utility being liable in any manner whatsoever to the Supplier. In such an event, notwithstanding anything to the contrary contained in the PSA-DBFOO, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA-DBFOO or otherwise.

2.4. Cost of Bidding

The Bidders shall be responsible for all of the costs associated with thepreparation of their Bids and their participation in the Bidding Process. The Utility will not be responsible or in any way liable for such costs, regardless ofthe conduct or outcome of the Bidding Process.

2.5. Site visit and verification of information

2.5.1. Bidders are encouraged to submit their respective Bids after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2. It shall be deemed that by submitting a Bid, the Bidder has:

(a) made a complete and careful examination of the Bidding Documents;

(b) received all relevant information requested from the Utility;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.5.1 above;

(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Utility, or a ground for termination of the PSA-DBFOO by the Supplier;

(f) acknowledged that it does not have a Conflict of Interest; and

(g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3. The Utility shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP-DBFOO, RFQ-DBFOO, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

2.6. Verification and Disqualification

2.6.1. The Utility reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ-DBFOO, the RFP- DBFOO or the Bidding Documents and the Bidder shall, when so required by the Utility, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Utility shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

2.6.2. The Utility reserves the right to reject any Bid and appropriate the Bid Security 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 Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then the Utility reserves the right to:

(i) invite the remaining Bidders to submit their Bids in accordance with Clauses 3.3.3 and 3.3.4; or

(ii) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

2.6.3. In case it is found during the evaluation or at any time before signing of the PSA-DBFOO or after its execution and during the period of subsistence thereof, including the Contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the PSA-DBFOO, and if the Selected Bidder has already been issued the LOA or has entered into the PSA-DBFOO, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP- DBFOO, be liable to be terminated, by a communication in writing by the Utility to the Selected Bidder or the Supplier, as the case may be, without the Utility being liable in any manner whatsoever to the Selected Bidder or Supplier. In such an event, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA-DBFOO, or otherwise.

B. DOCUMENTS

2.7. Contents of the RFP-DBFOO

2.7.1. This RFP-DBFOO comprises the Glossary, Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids

Section 1. Introduction
Section 2. Instructions to Bidders
Section 3. Evaluation of Bids
Section 4. Fraud and Corrupt Practices
Section 5. Pre-Bid Conference
Section 6. Miscellaneous

Appendices

I. Letter comprising the Bid
II. Bank Guarantee for Bid Security
III. Power of Attorney for signing of Bid
IV. Power of Attorney for Lead Member of Consortium
V. Guidelines of the Department of Disinvestment
VI. Details of the Allocated Coal Linkage
VII. List of Bid-Specific Provisions

2.7.2. The draft PSA-DBFOO provided by the Utility as part of the Bidding Documents shall be deemed to be part of this RFP-DBFOO.

2.8. Clarifications

2.8.1. Bidders requiring any clarification on the RFP-DBFOO may notify the Utility in writing by speed post/courier and by e-mail attaching the queries in Microsoft word file in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Utility shall endeavor to respond to the queries within the period specified therein, but

no later than 15 (fifteen) days prior to the Bid Due Date. The clarifications will be placed on Utility website. The Utility will upload on its website all the queries and its responses thereto, without identifying the source of queries.

2.8.2. The Utility shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.

2.8.3. The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Utility shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.

2.9. Amendment of RFP-DBFOO

2.9.1. At any time prior to the Bid Due Date, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP-DBFOO by the issuance of Addenda.

2.9.2. Any Addendum issued hereunder will be in writing.

2.9.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10. Format and Signing of Bid

2.10.1. The Bidder shall provide all the information sought under this RFP-DBFOO. The Utility will evaluate only those Bids that are received in the required formats and complete in all respects.

2.10.2. The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.11. Sealing and Marking of Bids

2.11.1. The Bidder shall submit the Bid in the format specified at Appendix-I, and seal it in an envelope and mark the envelope as "BID".

2.11.2. The documents accompanying the Bid shall be placed in a separate envelope and marked as "Enclosures of the Bid". The documents shall include:

(a) Bid Security in the format at Appendix–II;

(b) Power of Attorney for signing of Bid in the format at Appendix–III;

(c) If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix–IV; and

(d) A copy of the draft PSA-DBFOO with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.

2.11.3. A True copy of the documents accompanying the Bid, as specified in Clause 2.11.2 (a), (b) and (c) above, shall be bound together in one hard cover and a copy of the draft PSA-DBFOO as specified in Clause 2.11.2 (d) shall be bound in another hard cover. The pages in each hard cover shall be numbered serially and every page shall be initialed in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked "Copy of Documents".

2.11.4. The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

"Bid for the Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by CIL."

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5. Each of the envelopes shall be addressed to:

ATTN. OF:	Mr K.P. Jangid
DESIGNATION:	General Manager - Commerce
ADDRESS:	2nd Floor, Sardar Patel Vidyut Bhavan, Race Course, Vadodara – 390 007, Gujarat
FAX NO:	0265 2344543
E-MAIL ADDRESS:	coacom@gebmail.com

2.11.6. If the envelopes are not sealed and marked as instructed above, the Utility assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.7. Bids submitted by fax or e-mail shall not be entertained and shall be rejected.

2.12. Bid Due Date

2.12.1. Bids should be submitted latest by *** hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP-DBFOO. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

2.12.2. The Utility may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13. Late Bids

Bids received by the Utility after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14. Contents of the Bid

2.14.1. The Bid shall be furnished in the format at Appendix–I and shall consist of a Tariff to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Tariff to undertake the Project in accordance with this RFP-DBFOO and the provisions of the PSA-DBFOO.

2.14.2. Generally, the Project will be awarded to the Lowest Bidder.

2.14.3. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP-DBFOO.

2.14.4. The draft PSA-DBFOO shall be deemed to be part of the Bid.

2.15. Modifications/ Substitution/ Withdrawal of Bids

2.15.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Utility prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.15.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.15.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

2.16. Rejection of Bids

2.16.1. Notwithstanding anything contained in this RFP-DBFOO, the Utility reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2. The Utility reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17. Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended bymutual consent of the respective Bidders and the Utility.

2.18. Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Utility in relation to, or matters arising out of, or concerning the Bidding Process. The Utility will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Utility may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Utility or as maybe required by law or in connection with any legal process.

2.19. Correspondence with the Bidder

Save and except as provided in this RFP-DBFOO, the Utility shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.20. Bid Security

2.20.1. 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 issued by a nationalised bank, as per the list of Banks approved by Govt. of Gujarat vide Corrigendum no. EMD / 10/2021/ 7729/DMO dated 28.06.2021 or as amended from time to time in favour of the Utility in the format at Appendix–II (the **"Bank Guarantee"**) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time.

2.20.2. The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.20.3. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Utility as non-responsive.

2.20.4. Save and except as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Utility, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Utility, and in any case within 60 (sixty) days from the Bid Due Date.

2.20.5. The Selected Bidder's Bid Security will be returned, without any interest, upon the Supplier signing the PSA-DBFOO and furnishing the Performance Security in accordance with the provisions thereof. The Utility may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the PSA-DBFOO.

2.20.6. The Utility shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP-DBFOO, shall be deemed to have

acknowledged and confirmed that the Utility will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP- DBFOO. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.20.7. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or under the PSA-DBFOO, or otherwise, if

(a) a Bidder submits a non-responsive Bid;

(b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP-DBFOO;

(c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP-DBFOO and as extended by mutual consent of the respective Bidder(s) and the Utility;

(d) the Selected Bidder fails within the specified time limit-

(i) to sign and return the duplicate copy of LOA;

(ii) to sign the PSA-DBFOO; or

(iii) to furnish the Performance Security within the period prescribed thereof in the PSA-DBFOO; or

(e) the Selected Bidder, having signed the PSA-DBFOO, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1. Opening and Evaluation of Bids

3.1.1. The Utility shall open the Bids at *** hours on the Bid Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2. The Utility will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3. To facilitate evaluation of Bids, the Utility may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2. Tests of responsiveness

3.2.1. Prior to evaluation of Bids, the Utility shall determine whether each Bid is responsive to the requirements of this RFP-DBFOO. A Bid shall be considered responsive only if:

(a) it is received as per the format at Appendix–I;

(b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;

(c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;

(d) it is accompanied by the Bid Security as specified in Clause 2.1.7;

(e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;

(f) it contains all the information (complete in all respects) as requested in this RFP-DBFOO and/or Bidding Documents (in formats same as those specified);

(g) it does not contain any condition or qualification; and

(h) it is not non-responsive in terms hereof.

3.2.2. The Utility reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Bid. Provided, however, that the Utility may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

3.3. Selection of Bidder

3.3.1. Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the lowest landed Tariff offered to the Utility in conformity with the provisions of Clause 3.5 shall be declared as the selected Bidder (the "Selected Bidder"). In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

3.3.3. In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance or the capacity required is not met by the Lowest Bidder (the **"first round of bidding"**), the Utility may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Lowest Bidder (the **"second round of bidding"**). If in the second round of bidding, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof.

3.3.4. In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 3.3.3, the Utility may, in its discretion, invite fresh Bids (the **"third round of bidding"**) from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second lowest Bidder in the first round of bidding.

3.3.5. After selection, a Letter of Award (the **"LOA"**) shall be issued, in duplicate, by the Utility to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Utility may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.3.6. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Supplier to execute the PSA-DBFOO within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PSA-DBFOO.

3.3.7. The Selected Bidder shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.

3.4. Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Utility makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Utility and/ or their employees/ representatives on matters related to the Bids under consideration.

3.5. Bid Parameter

3.5.1. The Bid shall comprise the Tariff offered by the Bidder for production and supply of electricity to the Utility in accordance with the provisions of the PSA- DBFOO. The Tariff comprising the Bid shall be offered in accordance with the provisions of Clause 3.5.2.

3.5.2. Since the Bidder is expected to source linkage coal from Coal India Limited (the "CIL") or a subsidiary thereof] from Coal Linkage as per SHAKTI Policy arranged by the Utility, the cost of Fuel which shall be included in the Fuel Charge shall be a „pass through" in accordance with the terms of the PSA-DBFOO. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge, Transmission Cost and Fuel Charge which shall be specified separately (as per Appendix-I of RFP), and the Bidder seeking the lowest Landed Tariff shall be the Selected Bidder. The Base Fixed Charge shall not be more than 70% of the Tariff and the Base Fuel Charge shall not be more than 50% of the Tariff.

(b) Clause Deleted

(c) Clause Deleted

(d) Clause Deleted

4. FRAUD AND CORRUPT PRACTICES

4.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the PSA- DBFOO. Notwithstanding anything to the contrary contained herein, or in the LOA or the PSA-DBFOO, the Utility may reject a Bid, withdraw the LOA, or terminate the PSA-DBFOO, as the case may be, without being liable in any manner whatsoever to the Bidder or Supplier, as the case may be, if it determines that the Bidder or Supplier, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA-DBFOO, or otherwise.

4.2. Without prejudice to the rights of the Utility under Clause 4.1 hereinabove and the rights and remedies which the Utility may have under the LOA or the PSA-DBFOO, or otherwise if a Bidder or Supplier, as the case may be, is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the PSA-DBFOO, such Bidder or Supplier shall not be eligible to participate in any tender or RFP-DBFOO issued by the Utility during a period of 2 (two) years from the date such Bidder or Supplier, as the case may be, is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Utility who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PSA-DBFOO or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Utility, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.15 of this RFP-DBFOO, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PSA-DBFOO, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PSA-DBFOO, who at any time has been or is a legal, financial or technical adviser of the Utility in relation to any matter concerning the Project;

(b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "**coercive practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

5.1. Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased the RFP-DBFOO document shall be allowed to participate in the Pre-Bid Conferences. A maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

5.2. During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

6.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Utility has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2. The Utility, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Utility by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.3. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.4. The Bidding Documents and RFQ-DBFOO are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP- DBFOO, in the event of any conflict between them the priority shall be in the following order:

(a) the Bidding Documents;

(b) the RFQ-DBFOO.

i.e. the Bidding Documents at (a) above shall prevail over the RFQ-DBFOO at(b) above.

Appendices

APPENDIX – I

Letter comprising the Bid
(Refer Clauses 2.1.5 and 2.14)

The General Manager – Commerce
Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhawan, Race Course
Vadodara, 390007

Sub: Bid for *** Project

1. With reference to your RFP-DBFOO document dated ***[$], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Supplier for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as Supplier for the development, construction, operation and maintenance of the aforesaid Project and for sale of power to the Utility.

4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Utility to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members[£] or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

   (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum / Clarifications issued by the Utility; and

[$] All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.
[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

(b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP-DBFOO document; and

(c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP-DBFOO document, in respect of any tender or request for proposal issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP-DBFOO, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and

(e) the undertakings given by us along with the Application in response to the RFQ-DBFOO for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP-DBFOO document.

9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ-DBFOO document.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forming part of the RFP-DBFOO at Appendix-V is enclosed.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Utility of the same immediately.

16. I/ We acknowledge and undertake that our Consortium was pre-qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty-six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA-DBFOO. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the PSA-DBFOO in respect of Change in Ownership.

17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of pre-qualification under and in accordance with the RFQ-DBFOO, I/We shall inform the Utility forthwith along with all relevant particulars and the Utility may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the PSA-DBFOO but prior to Financial Close of the Project or timelines as provided under the Bid Documents, it would notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the PSA-DBFOO shall be liable to be terminated without the Utility being liable to us in any manner whatsoever.

18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the PSA-DBFOO. In case where the Utility has already established an SPV for the Project, the Selected Bidder shall acquire the entire equity thereof.

19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a PSA-DBFOO in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

21. I/ We have studied all the Bidding Documents carefully and also surveyed the Site. We understand that except to the extent as expressly set forth in the PSA-DBFOO, we shall have no claim, right or title arising out of any documents or information provided to us by the Utility or in respect of any matter arising out of or relating to the Bidding Process including the award of Contract.

22. I/We hereby undertake that in the event the Bidder is selected as the Selected Bidder, I/We shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.

23. I/ We offer a Capacity of ***MW (at Delivery Point) from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQ-DBFOO out of the Capacity Required of ***MW given under clause 1.1 of the RFQ-DBFOO.

24. I/ We offer a Bid Security of Rs. *** lakhs (Rupees *** lakhs only) to the Utility in accordance with the RFP-DBFOO Document.

25. The Bid Security in the form of a Bank Guarantee (as per prescribed format) is attached.

26. The documents accompanying the Bid, as specified in Clause 2.11.2 of the RFP-DBFOO, have been submitted in a separate envelope and marked as "Enclosures of the Bid".

27. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.

28. The Tariff has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP-DBFOO, draft PSA-DBFOO, our own estimates of costs and revenues, and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

29. I/ We agree and undertake to abide by all the terms and conditions of the RFP-DBFOO document.

30. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Supplier under the PSA-DBFOO till occurrence of Financial Close or for such period as provided in RFP-DBFOO,

in accordance with the PSA-DBFOO.}

31. I/ We undertake to feed electric supply into the grid at a point that is economical and efficient, as determined by the RLDC or SLDC, as the case may be.

32. I/ We undertake to bear the transmission charges and transmission losses upto the point of delivery of electricity to the Utility from out of the Tariff offered below and in accordance with the terms to be set forth in the Power Supply Agreement.

33. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP-DBFOO.

I/ We hereby submit the following Bid and offer, as on the Bid Due Date, in accordance with the provisions of the Power Supply Agreement and Clause 3.5 of this RFP-DBFOO-[A Tariff of Rs. ... and paise.....[$] (Rupees ....and paise ....) per kWh comprising a) Fixed Charge of Rs. .... and paise .... [$] (Rupees .... and paise....)[$] per kWh b) Inter-State transmission charges of Rs.... Per kWh and inter-state transmission losses of ... Rs. per kWh c) Fuel Charge of Rs. .... and paise .... [$] per kWh (Rupees .... and paise ....) comprising of (a) Rs. .... and paise .... [$] per kWh (Rupees .... and paise ....) per kWh on account of cost of Fuel, (b) Rs and paise .... [$] per kWh (Rupees.... and paise ....) per kWh on account of transportation, (d) Rs. .... and paise .... [$] (Rupees .... and paise ....) per kWh on account of washing.

I/we hereby submit that we would be sourcing the coal from coal linkage allocated vide Letter of Assurance /FSA __dated __(copy enclosed). The notified price as per Letter of Assurance /FSA is Rs._____per MT and GCV of_kCal/Kg.[$]

I/we have considered the freight payable to Indian Railways for coal transportation (inclusive of taxes) as Rs ..../tonne. The distance considered for transportation of coal from mines to plant locations has been taken as .... kms.

The Bid Format is as under:

Bid parameters	Unit	Rs and paise (in two decimals)
(1) Fixed Charge for the base year	per kWh	
(2) Fuel Charge = Sum of (a)+(b)+(c)		
(a) Cost of Fuel	per kWh	
(b) Cost of transportation	per kWh	
(c) Cost of Washing	per kWh	

[5] Paise may be quoted only in whole numbers.

$ Paise may be quoted only in whole numbers.
$ Applicable only if the Applicant is sourcing fuel from Coal through CIL/SCCL under option (a) of Clause 4.8.2 of this RFP-DBFOO.

Bid parameters	Unit	Rs and paise (in two decimals)
(3) Transmission Cost = Sum of (a) + (b)		
(a) ISTS Transmission Charges* (for Drawal State)	per kWh	
(b) ISTS Transmission Losses* (for Drawal State) ISTS Transmission Losses (for Drawal State)	In % per kWh	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

**To be pre-specified by Utility prior to bid submission date*

Additional clarifications regarding submission of bid:

i. Utility 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 adjusted in tariff as per the Bid Documents.

ii. Utility 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 adjusted in tariff as per the Bid Documents. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre- specified by Utility.

iii. In the DEEP Portal bid field of "Cost of Fuel in Rs per Kwh", Bidder to input single value after summing "Cost of Fuel" & "Cost of Washing". While both this components have to be separately quoted and submitted as per the Appendix-I of the RFP (i.e. Letter comprising the Bid)

iv. Intra-State Transmission charges & losses for the host State wherein Generator / Bidder is located, if any applicable from time to time, shall be on the account of Generator / Bidder at all times during the contract tenure. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier at all times during the contract tenure. Bidders are advised to factor in such costs in the tariff. No separate reimbursement / adjustment shall be allowed under Contract.

v. For the Projects connected with Gujarat STU, the "Transmission Cost" Parameter under above Table shall be assumed as NIL.

vi. At Sr. 34 of Appendix I under RFP, following additional details are to be submitted:

Sr.	Particulars	Unit	Details
1	CIL's Notified Price of Coal	Rs./Tonne	
2	GCV of Coal	Kcal/kg	
3	Freight payable to Indian Railways for coal transportation (inclusive of taxes)	Rs./Tonne	
4	Distance considered for transportation of coal from mines to plant location	Kms.	

**Bidder to refer clause 22.2.1 & 22.2.4 of PSA*

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP-DBFOO document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)
Place: Name and seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

APPENDIX – II

Bank Guarantee for Bid Security

(Refer Clauses 2.1.7 and 2.20.1)

B.G. No. Dated:

In consideration of you, ***, having its office at ***, (hereinafter referred to as the "Utility", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ... (a company registered under the Companies Act, 1956/2013) and having its registered office at ... (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project on DBFOO basis (hereinafter referred to as "the Project") pursuant to the RFP-DBFOO Document dated ... issued in respect of the Project and other related documents including without limitation the draft Power Supply Agreement ("PSA- DBFOO") (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at ... and one of its branches at ... (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP-DBFOO Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP-DBFOO Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Utility an amount of Rs. *** (Rupees *** only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

1. Any such written demand made by the Utility stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

2. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Utility is disputedby the Bidder or not, merely on the first demand from the Utility stating that the amount claimed is due to the Utility by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. *** (Rupees *** only).

3. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Utility and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

4. We, the Bank, further agree that the Utility shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Utility that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Utility and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

6. In order to give full effect to this Guarantee, the Utility shall be entitled to treat the Bank as the principal debtor. The Utility shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Utility, and the Bank shall not be released from its liability 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 said Bidder or any other forbearance, act or omission on the part of the Utility or any indulgence by the Utility to the said Bidder or by any change in the constitution of the Utility or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

8. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

9. It shall not be necessary for the Utility to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Utility may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Utility in writing.

11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Utility serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before *** (indicate date falling 180 days from the Bid Due Date).

Signed and Delivered by ... Bank

By the hand of Mr./Ms ..., its ... and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX – III

Power of Attorney for signing of Bid

(Refer Clause 2.1.9)

Know all men by these presents, We, … (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of … and presently residing at…, who is presently employed with us/ the Lead Member of our Consortium and holding the position of …, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the *** Project already commissioned / proposed or being developed by the *** (the "Bidder") including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders' and other conferences and providing information / responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Power Supply Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Power Supply Agreement with the Utility.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, …, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS … DAY OF .., 20….

For……..

(Signature, name,
designation and address)

Affixation of Common Seal Witness 1. 2.

Witnesses:

1.

2.

Accepted

Notarised

(Signature, name, designation and

address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX – IV

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the *** (the "Utility") has invited Bids from pre-qualified parties for the *** Project (the "Project").

Whereas, ..., ... and ..... (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal-DBFOO and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..., having our registered office at ..., M/s. ..., having our registered office at ..., and M/s. ..., having our registered office at ..., (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s ..., having its registered office at ..., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents and writings, accept the Letter of Award, participate in Bidders" and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Utility, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Power Supply Agreement is entered into with the Utility.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ... DAY OF.., 20....

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

(Executants)

(To be executed by all the Members of the Consortium)

Witnesses:

1.

2.

Affixation of Common Seal
Witness

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction*

where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX – V

Guidelines of the Department of Disinvestment

(Refer Clause1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex
New Delhi.
Dated 13th July 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for Bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

e. The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.

f. Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

g. Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The Bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)
Under Secretary to the Government of India

For official use only

[APPENDIX – VI]
Details of the Allocated Coal Linkage

[Details to be provided with respect to Location of Coal Mine and Quality of Coal]

APPENDIX- VII

List of Bid-Specific Provisions[$]

A. Clauses with currency-based footnotes

1. Introduction.
2. Clause 2.9.3: Amendment of RFP-DBFOO
3. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 22 and 33

Note: The above footnotes marked "$" shall not be deleted. They shall remain in the RFP-DBFOO to be issued to the prospective Bidders.

B. Appendices with non-numeric footnotes

All non-numeric footnotes shall be retained in the RFP-DBFOO for guidance of the Bidders. These shall be omitted by the Bidders while submitting their respective Bids.

C. Appendices where curly brackets are used

1. Appendix-I: Letter comprising the Bid: Paragraph 22, 30 & 33.

Note: The curly brackets should be removed after the provisions contained therein are suitably addressed by the Bidders.

D. Appendices with blank spaces

All blank spaces in Appendices shall be retained in the RFP-DBFOO. These shall be filled up when the format of the respective Appendix is used.

[$] This Appendix-VII contains a list of clauses and appendices that would need to be suitably modified for reflecting Bidder-specific provisions. This Appendix-VII may, therefore, be included in the RFP-DBFOO document to be issued to prospective Bidders. The blank spaces in Appendices may be filled up by the Bidder and the footnotes may be deleted when it submits its proposal.

APPENDIX-VIII

Deleted

POWER SUPPLY AGREEMENT –

for

Procurement of 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL)

Issued by:

Gujarat Urja Vikas Nigam Limited (GUVNL)

Sardar Patel Vidyut Bhawan, Race Course,

Vadodara, 390007

Issued on: 2022

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Part I

Preliminary

POWER SUPPLY AGREEMENT[1]

THIS AGREEMENT is entered into on this the … day of ..., 2022

BETWEEN

1 Gujarat Urja Vikas Nigam Ltd a company incorporated under the provisions of the Companies Act, 1956, and having its registered office at Sardar Patel Vidyut Bhavan, Race Course, Vadodara, Gujarat (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First 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 Second 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 design, build, finance, own and operate (the "**DBFOO**") basis by sourcing fuel from the Linkage Coal arranged by Utility subsequent to allocation under SHAKTI Scheme of Govt. of India in accordance with the terms and conditions to be set forth in a power supply agreement 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-DBFOO dated ..... (the "**Request for Qualification-DBFOO**" or "**RFQ-DBFOO**") for pre-qualification of Bidders who own and operate a power generating station and offer to supply electricity there from, and had pre-qualified certain Bidders including, inter alia, the selected Bidder.

---

[1] **Instructions for Bidders**
The draft Power Supply Agreement issued to the Bidders may be customised for bid-specific purposes in accordance with the instructions below:
Note 1: The provisions in curly brackets are to be retained in the draft Power Supply Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid specific particulars in the Power Supply Agreement. (See Appendix-I)
Note 2: Blank spaces are to be retained in the draft Power Supply Agreement and shall be suitably filled by the Bidders after the issue of LOA in order to reflect bid specific particulars in the Power Supply Agreement. However, blank spaces shall be retained in all Schedules which contain formats that are to be used after the Power Supply Agreement is executed. (See Appendix-I)
Note 3: Footnotes marked "£" are to be retained in the draft Power Supply Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Power Supply Agreement. However, footnotes marked "$" or "$$" shall be retained in the Power Supply Agreement as a part thereof. (See Appendix-I)

C. The Utility had prescribed the technical and commercial terms and conditions by its Request for Proposal-DBFOO dated *** (the "**Request for Proposals-DBFOO**" or "**RFP-DBFOO**"), and invited Bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No.23/17/2013-R&R (Vol-VI) Part 4 dated 06.03.2019 from the Bidders pre-qualified pursuant to the RFP- DBFOO 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 Power Supply Agreement within 30 (thirty) days of the date of issue thereof.

E. [The Utility has obtained the Letter of Assurance, dated [**] issued by [**] ("**Coal Supplier**") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("**Letter of Assurance**" appended herein as **Annexure 1**) for the purposes of the Contracted Capacity;]

F. In pursuance of the LOA, the Parties have agreed to enter into this Power Supply Agreement 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 Power Supply Agreement, 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 39) 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 or the Utility's Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Utility's Engineer, as the case may be, 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 and/ or the Utility's Engineer shall be provided free of cost and in three copies, and if the Utility and/or the Utility's Engineer is required to return any such Documentation with their 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 andStandards, 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 Supply Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1. Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Contract Period:

(a) Designing, engineering, financing, procurement, construction (in case of new Projects), operation and maintenance of the Power Station in accordance with the provisions of this Agreement utilizing the Coal Linkage/ Allocated Coal Linkage in accordance with the terms contained herein read with the terms and conditions of the Fuel Supply Agreement and the Letter of Assurance;

(b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and

(c) performance and fulfillment of all other obligations of the Supplier 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.

ARTICLE 3

GRANT OF SUPPLY CONTRACT

3.1. The Supply 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 supply contract set forth herein including the right and authority to utilise the Allocated Coal for producing electricity at the Power Station for supply thereof to the Utility (the "**Supply Contract**") for a period of [16] years (tentative) commencing from the Appointed Date, and the Supplier hereby accepts the Supply Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that the Utility shall, at any time no earlier than 1 (one) year, but no later than 6 (six) months prior to completion of the aforesaid Contract Period of [( )] years, upon issuing a notice to this effect to the Supplier, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.

Provided further that the Utility shall arrange for the extension of the Fuel Supply Agreement commensurate to the period of extension of this Agreement to ensure continuous coal supply.

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

(a) finance, construct, operate and maintain the Power Station in accordance with this Agreement;

(b) ensure 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 inthe Agreement;

(c) to receive Fixed Charge from the Utility in respect of the Availability of Contracted Capacity;

(d) to receive Fuel 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) 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

(g) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Supply Contract hereby granted or on the whole or

any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof to the extent of Contracted Capacity, save and except as expressly permitted by this Agreement or the Substitution Agreement.

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 23. 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, 10, 20, 28, 36 and 38, 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 60 (sixty) 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, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have:

(a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 23.1;

(b) executed the Deed of Hypothecation in accordance with the provisions of Clause 23.1.2;

(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

(d) procured the consent of CIL for execution of Fuel Supply Agreement.

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 180 (one hundred and eighty) 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. executed and procured execution of the Substitution Agreement;

C. executed the Fuel Supply Agreement;

D. executed the Financing Agreements and delivered to the Utility 3 (three) true copies thereof, duly attested by a Director of the Supplier;

E. delivered to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

F. acquired the real estate for the Power Station;

G. 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;

H. 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 24.3.3 and 31.6.1;

I. Omitted

J. in case of Type 1 projects commissioned as on Bid Due Date -submitted evidence of the commissioning of the Power Station, including details of installed Capacity and the Station Heat Rate of Power Station and Undertaking of compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof.

In case of Type 2 projects, submitted an Undertaking for compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including. revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof.

K. Obtained the letter of assurance, dated [**] issued by [**] ("**Coal Supplier**") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("**Letter of Assurance**" appended herein as **Annexure 1**) for the purposes of the Project.

L. [Surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility]

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. 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 endeavors 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 amount equal to the Bid 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 and subject to the provisions of Clause 9.2, 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. Commencement of Contract Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Contract Period. For the avoidance of doubt, the Parties agree that the Supplier may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Utility, and shall thereupon be entitled to commence or complete construction on the Project or supply electricity, as the case may be.

4.5. 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, before the 1st (first) anniversary of 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

Power Supply Agreement 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, procure finance for and undertake the design, engineering, procurement, construction, 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.

5.1.2. The Supplier shall comply 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 install, 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 at Delivery Point is at least 90% (ninety per cent) thereof during each year of the Operation Period (the "Normative Availability").

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 Contracted Capacity at Delivery Point 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, and shall include the deemedavailability for and in respect of the events described in Clause 15.8 (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when COD or the Transfer Date 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 andregulations 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 including Open Access, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws. Supplier shall apply for grant of long-term open access for supply of Contracted Capacity. Non-grant of long term open access shall be mutually decided by the Utility and Supplier. In case of delay in grant of long-term open access on ISTS network by the CTU, the same may be considered for appropriate time period extension for fulfillment of supplier obligations under this clause, provided that such reasons for delay are not attributable to the Supplier;

(b) procure, 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 under the Financing Agreements;

(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;

(e) procure the Station Premises and Line ROW, and maintain the same;

(f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;

(g) 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;

(h) procure that all equipment and facilities comprising the Power Station are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;

(i) support, cooperate with and facilitate the Utility in the implementation of this Agreement;

(j) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;

(k) assign, transfer or relinquish the Fuel Supply Agreement for and in respect of Allocated Coal, if any, to the Utility, to the extent allocated or assigned for Contracted Capacity, upon Termination of this Agreement, in accordance with the provisions thereof; and

(l) omitted

(m) comply with the directions of the Commission issued from time to time under the Act.

5.2. Obligations relating to Project Agreements

5.2.1. 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.

5.2.2. The Supplier shall submit to the Utility the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Utility shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Supplier within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Supplier shall submit to the Utility a true copy thereof, duly attested by a Director of the Supplier, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Utility to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Utility. No review and/ or observation of the Utility and/ or its failure to review and/ or convey its observations on any document, shall not relieve the Supplier of its obligations and liabilities under this Agreement in any manner nor shall the Utility be liable for the same in any manner whatsoever.

5.2.3. The Supplier shall procure that each of the Fuel Supply Agreements, to the extent it provides for supply of Allocated Coal for the Contracted Capacity, contains provisions that entitle the Utility to step into such agreement, in its sole discretion, in substitution of the Supplier in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Utility does not exercise such rights of substitution within a period not exceeding 180 (one hundred and eighty) days from the Transfer Date, the Fuel Supply Agreements to the extent specified hereinabove, shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Utility and the Covenant shall expressly provide for such eventuality. The Supplier expressly agrees to include the Covenant in all its Fuel Supply Agreements and undertakes that it shall, in respect of each of the Fuel Supply Agreements, procure and deliver to the Utility an acknowledgment and undertaking, in a form acceptable to the Utility, from the counter party(ies) of each of the Fuel Supply Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Utility in the event of Termination or Suspension.

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.

5.4. Obligations relating to operation of the Power Station

5.4.1. The Supplier shall 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 RLDC/SLDC may give from time to time in accordance with the provisions of the Act.

5.4.2. The Supplier shall enter 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 21.4.3, 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 Contracted Capacity to be made available at Delivery Point and any variation thereafter in Inter-State Transmission Charges as determined by National Load Despatch Centre in accordance with Regulation notified by Central Commission 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 Due Date shall be deemed to be Rs. ... (Rupees ...) for and in respect of the Contracted Capacity to be made available at Delivery Point, 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, as applicable from time to time, for the State where project is located shall be borne by the Supplier throughout the contract period.

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. Further, the transmission charges shall be adjusted under the monthly bill as per Article 21.13.

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 as notified by National Load Despatch Centre in accordance with the Regulation notified by the Central Commission 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, as applicable from time to time, for 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 determined by the Appropriate 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.

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. 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. For avoidance of doubt, it is clarified that the Tariff quoted should be inclusive of all Taxes, Duties, Cesses etc. as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law.

5.9. 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.

5.10. 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 environmental norms as applicable / notified as on Bid Due Date shall be on account of the Supplier at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions.

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 performall 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, including environmental or forest clearances, required from any Government Instrumentality for implementation and operation of the Project; Non-grant of long term open access shall be mutually decided by the Utility and Supplier.

(b) upon written request from the Supplier, provide reasonable assistance to the Supplier in obtaining access to all necessary infrastructure facilities, including water and electricity at rates and on terms no less favourable to the Supplier than those generally available to commercial customers receiving substantially equivalent services;

(c) Omitted;

(d) 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;

(e) Omitted;

(f) 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 has the financial standing and capacity to undertake 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 26% (twenty-six per cent) of its issued and paid up Equity as on the date of this Agreement, which shall also be no less than 5% (five per cent) of the Total Project Cost;

(l) the selected Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing / operating 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) all its rights and interests in the Fuel Supply Agreement for supply of Allocated Coal, to the extent such Fuel is required for the Contracted Capacity, shall pass to and vest in the Utility on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Utility, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person on the aforesaid Allocated Coal, save and except as expressly provided in this Agreement;

(o) it has a good and valid right to the Station Premises;

(p) 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;

(q) 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;

(r) all information provided by the selected Bidder in response to the Request for Qualification – DBFOO and Request for Proposal -DBFOO or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

(s) all undertakings and obligations of the Supplier arising from the Request for Qualification -DBFOO and Request for Proposal-DBFOO or otherwise shall be binding on the Supplier as if they form part of this Agreement.

7.2. 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.

7.3. 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-DBFOO, Request for Proposal-DBFOO, Scope of the Project, Specifications and Standards, transmission network, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, 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

Development and 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 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.*** crore (calculated @ Rs. 30 lakhs/MW) in the form set forth in Schedule-D (the "**Performance Security**"). Provided, however, that the Supplier may provide a Performance Security hereunder for a period of 2 (two) years and shall, no later than 60 (sixty) days prior to the expiry thereof, substitute it by a like Performance Security.

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 60 (sixty) 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 and the Fuel Supply Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement and the Fuel Supply Agreement, to the extent of Allocated Coal required for the Contracted Capacity, 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 31. 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, 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 31.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 3 (three) months after COD, and shall be released upon the Performance Guarantee taking effect in accordance with the provisions of Clause 9.4. Until such time the Performance Guarantee comes into effect, the Performance Security shall remain in force and effect, and upon the Performance Guarantee coming into effect pursuant hereto, the Utility shall release the Performance Security to the Supplier.

9.4. Performance Guarantee

9.4.1. The Supplier shall, for the performance of its obligations hereunder during the Operation Period, be deemed to provide to the Utility upon occurrence of COD, an irrevocable and unconditional guarantee pursuant to the provisions of this Clause 9.4 (the **"Performance Guarantee"**), for a sum equivalent to the Fixed Charge due and payable by the Utility to the Supplier for Normative Availability in respect of a period of 15 (fifteen) days in accordance with the provisions of this Agreement. The Performance Guarantee 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 Performance Guarantee by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.

9.4.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Guarantee is not effective or sufficient for meeting the obligations of the Supplier under this Agreement, the Utility may encash the Performance Security and appropriate the proceeds thereof as Damages.

9.5. Appropriation of Performance Guarantee

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 Performance Guarantee as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Performance Guarantee 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 Performance Guarantee, as the case may be.

ARTICLE 10

SITE OF THE PROJECT

10.1. The Site

The site of the Power Station shall comprise of: (a) the real estate required for the power station and associated services as described in Schedule-A, (the "**Station Premises**"); and (b) the real estate required for the lines and transmission towers of the Dedicated Transmission System, as described in Schedule-A (the "**Line ROW**"), and in respect of which the right of way shall be procured by the Supplier under and in accordance with this Agreement (collectively, the "**Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Power Station as set forth in Schedule-A.

10.2. Line ROW

10.2.1. The Supplier shall procure and maintain the Line ROW at its own risk and cost. For the avoidance of doubt, it is agreed that the minimum width of the right of way to be acquired shall conform to the provisions of Schedule-A and Schedule-B.

10.2.2. The Supplier agrees and undertakes to indemnify, defend, save and hold harmless the Utility and its officers, servants, agents and Government Instrumentalities against any and all suits, proceedings, actions, demands and claims for any loss, damage, cost and expense of whatever kind and nature, in connection with the acts or omissions of the Supplier in the procurement of Line ROW save and except any loss, damage, cost and expense relating to any act or omission of the Utility.

10.3. Access rights of the Utility and others

The Supplier shall allow free access to the Site at all times for the authorised representatives of the Utility, Senior Lenders, and the Utility's Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Power Station and to investigate any matter within their authority, and upon reasonable notice, the Supplier shall provide to such person reasonable assistance necessary to carry out their respective duties and functions.

10.4. Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Supplier under this Agreement and the Supplier hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Station Premises shall vest in and belong to the Utility or the concerned Government Instrumentality. The Supplier shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Utility forthwith of the discovery thereof and comply with such instructions as the Utility

or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any expenses incurred by the Supplier hereunder shall not be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.

ARTICLE 11

CONSTRUCTION OF THE POWER STATION[£]

11.1. Obligations in respect of construction of new Power Projects

The Supplier shall, as soon as may be:

(a) submit to the Utility its plant configuration (applicable for Type 2 Projects) and time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-E; and

(b) undertake, do and perform all such acts, deeds and things as may be necessary or required for completion of construction in accordance with this Agreement, Applicable Laws and Applicable Permits.

11.2. Construction of the Power Station

11.2.1 The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The [] day *(to be indicated at the time of bid submission in accordance with Scheduled Supply Commencement Date)* from the Appointed Date shall be the scheduled date for completion of the Power Station (the "**Scheduled Completion Date**") and the Supplier agrees and undertakes that construction of the Power Station shall be completed on or before the Scheduled Completion Date. For the avoidance of doubt, the Parties agree that the construction of Power Station hereunder shall include construction of a dedicated transmission system for point to point transmission of electricity from the generating station to the Point of Grid Connection, as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C (the "**Dedicated Transmission System**"). For projects which are already operational, the Supplier shall ensure conformity to the Specifications and Standards in addition to other compliance as required under this Agreement latest by Scheduled Completion Date as per the Agreement.

11.2.2 In the event that the Supplier fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-E, unless such failure has occurred due to Force Majeure or for reasons attributable to the Utility, it shall pay Damages to the Utility in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-E shall be deemed to be modified accordingly; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the

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[£] In case the Power Station is under construction on the Bid Date, or has been completed prior to that date, all provisions in respect of construction of the Power Station shall apply only to the extent they can be applied prospectively to the construction undertaken after such date, and this Power Supply Agreement shall be deemed to be modified accordingly. In particular, the relevant provisions of Clauses 4.1, this Article 11, Articles 12, 13, 14, 19 and 20, Clauses 22.4 and 22.5, and Schedules B, C, E, F, G and I shall be deemed to be modified to the extent necessary for and in respect of events that shall have occurred prior to COD of this Agreement.

Damages paid under this Clause 11.2.2 shall be refunded by the Utility to the Supplier, but without any interest thereon; provided also that in the event the Supplier agrees and undertakes to supply from an alternate source, the whole or part of the entitlement of the Utility from electricity that would have been produced from Contracted Capacity during the period between the Scheduled Completion Date and COD, and on the terms specified in this Agreement, the Damages payable under this Clause 11.2.2 shall be reduced in the same proportion that such supply shall bear to the entitlement of the Utility in supply from Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Power Station is not completed and COD does not occur within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement. The Clause 11.2.2 shall not apply to Type 1 projects.

11.2.3 Type 1 Projects shall be required to undertake & ensure all necessary activities to commence supply of power in accordance with the timelines & obligation under this Agreement. In the event of delay, unless such failure has occurred due to reasons attributable to the Utility, the Supplier shall pay Damages to the Utility at the amount specified at Clause 14.2 of Article 14 of this Agreement. For the avoidance of doubt, the Parties agree that in the event COD does not occur within 120 (one hundred and twenty) days from the Scheduled Supply Commencement Date specified under this agreement, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement

ARTICLE 12

MONITORING OF CONSTRUCTION

12.1. Quarterly progress reports

During the Construction Period, the Supplier shall, no later than 7 (seven) days after the close of each quarter, furnish to the Utility and the Utility's Engineer a quarterly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Utility's Engineer.

12.2. Inspection

During the Construction Period, the Utility's Engineer shall inspect the Power Station at least once a quarter and make a report of such inspection (the "**Inspection Report**") stating in brief the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Utility and the Supplier within 7 (seven) days of such inspection and upon receipt thereof, the Supplier shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Utility's Engineer shall not relieve or absolve the Supplier of its obligations and liabilities hereunder in any manner whatsoever.

12.3. Delays during construction

If the Supplier does not achieve any of the Project Milestones or the Utility's Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Power Station is not likely to be completed by the Scheduled Completion Date, it shall notify the Supplier to this effect, and the Supplier shall, within 15 (fifteen) days of such notice, by a communication inform the Utility's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

12.4. Video recording

During the Construction Period, the Supplier shall provide to the Utility for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Utility within 30 (thirty) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

12.5. The above provisions shall not be applicable to Type 1 Projects.

ARTICLE 13

COMPLETION CERTIFICATE

13.1. Tests

13.1.1. No later than 30 (thirty) days prior to the likely completion of any Unit of the Power Station, the Supplier shall notify the Utility's Engineer of its intent to subject such Unit to Tests. The date and time of each of the Tests shall be determined by the Supplier, and notified to the Utility and the Utility's Engineer who may designate its representative to witness the Tests, and in the event the Utility Engineer delays the Tests hereunder, the Utility shall impose exemplary penalties on the Utility Engineer and shall ensure that Tests are completed in time either by the Utility Engineer or any substitute thereof.

13.1.2. All Tests shall be conducted in accordance with Schedule-F at the cost and expense of the Supplier. The Utility's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Power Station with Specifications and Standards and if it is reasonably anticipated or determined by the Utility's Engineer during the course of any Test that the performance of the Power Station does not meet the Specifications and Standards, it shall have the right to require the Supplier to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Supplier shall provide to the Utility copies of all Test data including detailed Test results.

13.2. Completion Certificate

13.2.1. Upon completion of Construction Works, and the Supplier determining the Tests to be successful in accordance with the provisions of this Agreement, it shall forthwith issue to the Utility a certificate substantially in the form set forth in Schedule-G (the "**Completion Certificate**"). For Projects which are already operational, the Supplier has to carry out new Tests in accordance with provisions of this Agreement and submit to the Utility, a new Completion Certificate in accordance with the timelines provided under this Agreement.

13.2.2. Tests in respect of Station Heat Rate shall be deemed to be successful only if the Tests establish that the Station Heat Rate is equal to or lower than the rate specified in the Specifications and Standards. Provided, however, that in the event the Tests establish that the actual Station Heat Rate exceeds the specified Station Heat Rate by upto 2% (two per cent) thereof, the Tests shall be deemed to be successful as if the Power Station has achieved the specified Station Heat Rate. For avoidance of doubt, it is to clarify that this Clause shall be applicable for both Type 1 and Type 2 projects.

13.3. Provisional Certificate

13.3.1. The Supplier may issue a provisional certificate of completion substantially in the form set forth in Schedule-G (the "**Provisional Certificate**") if the Tests are successful and any Unit, including its interconnection with the Grid, can be safely and reliably placed in commercial operation in accordance with the provisions of this Clause 13.3.1 though certain works or things forming part

thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items (the "**Incomplete Works**").

13.3.2. Upon issue of such Provisional Certificate, the provisions of Article 14 shall apply to the Unit specified therein.

13.4. Synchronisation

13.4.1. At least 30 (thirty) days prior to the likely synchronisation of the Power Station to the Grid, the Supplier shall notify the Utility/Utility's Engineer and the RLDC or SLDC, as the case may be, of its intent to undertake such synchronisation.

13.4.2. Subject to the provisions of Clause 13.4.1, the Power Station may be synchronised with the Grid when it meets all the conditions specified in the Grid Code and Applicable Laws.

13.5. Completion of Incomplete Works

13.5.1. All Incomplete Works, including any shortfall in Contracted Capacity or Station Heat Rate, shall be completed or rectified, as the case may be, by the Supplier within 180 (one hundred and eighty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Utility or due to Force Majeure, the Utility shall be entitled to recover Damages from the Supplier to be calculated and paid for each day of delay until all items are completed, at the lower of, (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Utility's Engineer.

13.5.2. Upon completion of all Incomplete Works, the Supplier shall issue the Completion Certificate. Failure of the Supplier to complete all the Incomplete Works within the time set forth in Clause 13.5.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Utility, shall entitle the Utility to terminate this Agreement.

13.6 Omitted

ARTICLE 14

ENTRY INTO COMMERCIAL SERVICE

14.1. Commercial Operation Date (COD)

14.1.1. The Power Station or any Unit thereof, as the case may be, shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13. The commercial operation date of the Power Station or any Unit, as the case may be, shall be the date on which the Power Station or such Unit is deemed fit for generating electricity and supplying it to the Grid upon issuance of such Completion Certificate or the Provisional Certificate (the "**COD**"). After achieving COD, the Power Station or any Unit thereof shall enter into commercial service on Scheduled Supply Commencement Date, whereupon the Supplier shall be entitled to demand and collect the Tariff in accordance with the provisions of Article 21. For the avoidance of doubt, the Parties expressly agree that if the Power Station is substantially completed but COD is delayed for reasons attributable to the Utility, 15% (fifteen per cent) of the Fixed Charge shall be due and payable hereunder as if COD has occurred for the Power Station or any Unit thereof, as the case may be, in addition to the extension of Concession Period under and in accordance with the provisions of this Agreement. The Parties further agree that for determination of Tariff under Article 21, Scheduled Supply Commencement Date of the first Unit shall be deemed to be the Scheduled Supply Commencement Date of the Power Station (applicable when Contracted Capacity is committed from more than one identified Unit(s) of Power Station).

14.1.2. Omitted

14.2. Damages for delay

Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61st (sixty first) day after the Scheduled Completion Date/ Scheduled Supply Commencement Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.

14.3. Omitted

ARTICLE 15

OPERATION AND MAINTENANCE

15.1. O&M obligations of the Supplier

15.1.1. During the Operation Period, the Supplier shall operate and maintain the Power Station in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Power Station to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Supplier hereunder shall include:

(a) ensuring safe, smooth and uninterrupted supply of electricity from the Power Station, including prevention of loss or damage thereto, during normal operating conditions;

(b) undertaking operation and maintenance of the Power Station in an efficient, coordinated and economical manner, in compliance with the Grid Code, Central Electricity Authority (Grid Standards) Regulations, 2010, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, as amended from time to time and Applicable Laws;

(c) procuring that the Availability of the Power Station is not less than the Normative Availability;

(d) minimising disruption to operation of the Power Station in the event of accidents or other incidents affecting the safety and operation of the Power Station by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(e) operation and maintenance of all communication, control and administrative systems necessary for efficient operation of the Power Station and for providing safe and uninterrupted supply of electricity to the Utility;

(f) maintaining a public relations unit to interface with and attend to suggestions from Project affected persons, government agencies, media and other agencies;

(g) complying with Safety Requirements;

(h) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and

(i) maintaining reliability in operating the Power Station.

15.1.2. If the Supplier fails to comply with any directions issued by the Commission, the RLDC or the SLDC, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Supplier, and shall not be claimed from the Utility. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

15.2. Maintenance Requirements

The Supplier shall procure that at all times during the Operation Period, the Power Station conforms to the maintenance requirements set forth in Schedule-H and the Maintenance Manual (the "**Maintenance Requirements**").

15.3. Maintenance Manual

15.3.1. No later than 90 (ninety) days prior to the Scheduled Completion Date, the Supplier shall evolve an operation and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Power Station in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Utility. The Maintenance Manual shall be revised and updated once every 3 (three) years. For Type 1 Projects, the maintenance manual shall be provided to the Utility within 90 days of signing the PSA - DBFOO.

15.3.2. Without prejudice to the provision of Clause 15.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

15.4. Maintenance Programme

15.4.1. On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Supplier shall provide to the Utility its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

15.4.2. Any maintenance carried out by the Supplier as per the Maintenance Programme under this Clause 15.4 and as notified to the Utility under the provisions of Clause 21.5.4 shall be deemed to be scheduled maintenance (the "Scheduled Maintenance"). For the avoidance of doubt, any closure, suspension or reduction of Contracted Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of Contracted Capacity.

15.5. Safety, breakdowns and accidents

The Supplier shall ensure safe conditions at the Power Station, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

15.6. De-commissioning due to Emergency or Forced Outage

15.6.1. If, in the reasonable opinion of the Supplier, there exists an Emergency or Forced Outage, as the case may be, which warrants de-commissioning or shut down of the

whole or any part of the Power Station, the Supplier shall be entitled to de-commission or shut down the whole or any part of the Power Station for so long as such Emergency or Forced Outage and the consequences thereof warrant; provided that such de-commissioning or shut down and particulars thereof shall be notified by the Supplier to the Utility, the RLDC and the SLDC without any delay, and the Supplier shall diligently carry out and abide by any reasonable directions that the Utility, the RLDC or the SLDC may give for dealing with such Emergency or Forced Outage.

15.6.2. The Supplier shall re-commission the Power Station or any part thereof as quickly as practicable after the circumstances leading to its de-commissioning or shut down have ceased to exist or have so abated as to enable the Supplier to re- commission the Power Station and shall notify the Utility of the same forthwith.

15.7. Unit closure

15.7.1. Save and except, as provided in Clause 15.6, the Supplier shall not shut down or de-commission any Unit of the Power Station comprising the Contracted Capacity for undertaking maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of the Utility's Engineer. Such approval shall be sought by the Supplier through a written request to be made to the Utility's Engineer, and a copy thereof furnished to the Utility, at least 7 (seven) days before the proposed closure of such Unit and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Utility's Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Programme, and a copy of such permission shall be sent to the Utility.

15.7.2. Upon receiving the permission pursuant to Clause 15.7.1, the Supplier shall be entitled to shut down or de-commission the designated Unit for the period specified therein, and in the event of any delay in re-commissioning such Unit, the Supplier shall pay Damages to the Utility calculated at the rate of 2% (two per cent) of the Average Daily Fixed Charge for each day of delay until the Unit has been re-commissioned for generation.

15.8. Unscheduled Maintenance

15.8.1. Any maintenance or repair of the Power Station not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the **"Unscheduled Maintenance"**). For the avoidance of doubt, the Parties agree that any de-commissioning or shut down of the whole or any part of the Power Station under the provisions of Clause 15.6 shall be deemed to be Unscheduled Maintenance. It is further agreed that any reduction of generating capacity arising out of Unscheduled Maintenance shall be deemed as Non-Availability of Contracted Capacity. Provided, however, that the loss or reduction in Availability shall be of no greater scope and of no longer duration than is reasonably required by the aforesaid events.

15.9. Damages for breach of maintenance obligations

In the event that the Supplier fails to repair or rectify any defect or deficiency which causes reduction in Availability, it shall be deemed to be in breach of this Agreement and the Utility shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, 2% (two per cent) of the Average Daily Fixed Charge (worked out at normative availability) or such smaller sum as the Utility may, in its discretion determine upon prompt compliance of its obligations by the Supplier. Recovery of such Damages shall be without prejudice to the rights of the Utility under this Agreement, including the right of Termination thereof.

15.10. Restoration of loss or damage to the Power Station

Save and except as otherwise expressly provided in this Agreement, in the event that the Power Station or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the Supplier shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Power Station conforms to the provisions of this Agreement.

15.11. Modifications to the Power Station

The Supplier shall not carry out any material modifications to the Power Station save and except where such modifications are necessary for the Power Station to operate in conformity with the Specifications and Standards, Maintenance Requirements and Applicable Laws; provided that the Supplier shall notify the Utility/Utility's Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Utility/Utility's Engineer may make within 15 (fifteen) days of receiving the Supplier's proposal. For the avoidance of doubt, the Supplier should ensure that its power plant meets/shall comply with all the required environmental norms and that the Supplier has installed/shall install and operate all such equipment at its own cost as may be required as per timelines stipulated in such notifications, necessary to ensure compliance to notified norms/guidelines as on Bid Due Date

15.12. Excuse from performance of obligations

The Supplier shall not be considered in breach of its obligations under this Agreement if the Non-Availability of the whole or any part of the Contracted Capacity of the Power Station is on account of any of the following for the duration thereof:

(a) an event of Force Majeure;

(b) measures taken to ensure the safety of the Power Station except when unsafe conditions occurred because of failure of the Supplier to perform its obligations under this Agreement; or

(c) compliance with a request from the Utility or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Power Station:

Provided, that any such Non-Availability and particulars thereof shall be notified

by the Supplier to the Utility and the Utility's Engineer without any delay:

Provided further that the Supplier shall ensure and procure Availability of all unaffected parts of the Contracted Capacity of the Power Station, provided they can be operated safely.

15.13. Safety Requirements

The Supplier shall at all times comply with the provisions of this Agreement, Applicable Laws and Applicable Permits for securing the safety of the Power Station and the persons present in the premises thereof. In particular, the Supplier shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Power Station (the "**Safety Requirements**").

ARTICLE 16

MONITORING OF OPERATION AND MAINTENANCE

16.1. Monthly status reports

During Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish to the Utility and the Utility's Engineer a monthly report stating in reasonable detail the condition of the Power Station including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Utility and the Utility's Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

16.2. Inspection

The Utility's Engineer shall, with prior intimation to the Supplier, inspect the Power Station once every six months. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual and the Maintenance Programme, and send a copy thereof to the Utility and the Supplier within 7 (seven) days of such inspection.

16.3. Remedial Measures

The Supplier shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the monthly report referred to in Clause 16.1 and furnish a report in respect thereof to the Utility within 30 (thirty) days of receiving the O&M Inspection Report or furnishing the monthly report, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) days, the Supplier shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

ARTICLE 17

KEY PERFORMANCE INDICATORS

17.1. Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Supplier shall operate the Contracted Capacity of the Power Station such that it achieves or exceeds the performance indicators specified in this Article 17 (the "**Key Performance Indicators**")

17.2. Availability & Coal Report

The Supplier shall procure that during the Operation Period, the Availability of Contracted Capacity of the Power Station is not less than the Normative Availability and Incentives and Damages in relation to Availability shall be payable or recoverable, as the case may be, by the Utility in accordance with the provisions of Article 21.

Coal receipt & consumption:

During the Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish a monthly report to the Utility stating in reasonable detail the (a) Coal requisition to M/s CIL / subsidiaries (b) Coal receipt by the Power Plant (c) Coal consumed (d) Coal Stock at the end of month, along with such other details as may be required by the Utility to demonstrate the coal procurement, storage & utilization in efficient manner and in adherence to prudent practices.

17.3. Monthly status report

During Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish a monthly report to the Utility stating in reasonable detail the compliance with the Key Performance Indicators specified in this Article 17 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Power Station. The monthly report shall include a quantification of the Damages calculated in accordance with the provisions of this Agreement.

17.4. ISO certification

17.4.1. The Supplier shall, within 12 (twelve) months from COD, achieve and thereafter maintain throughout the Contract Period, **ISO 18001:2006** and **ISO 9001:2000** certifications or a substitute thereof for all the facilities at the Power Station, and shall provide a certified copy thereof to the Utility forthwith.

17.4.2. In the event of default in obtaining the certifications specified in Clause 17.4.1, the Supplier shall, within 15 (fifteen) days thereof, submit to the Utility an action plan that sets out the actions proposed to be taken by the Supplier for rectifying its deficiencies and obtaining such certifications.

17.4.3. If the period of default in obtaining the ISO certifications under this Clause 17.4 shall exceed a continuous period of 3 (three) months, the Supplier shall pay Damages to the Utility in an amount equal to 0.5% (zero point five per cent) of the Average Daily Fixed Charge for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

ARTICLE 18

ALLOCATION OF CAPACITY

18.1. Installed Capacity

The Supplier acknowledges and agrees that it shall set up and operate the Power Station with an installed capacity of ..... MW (the "**Installed Capacity**") which shall include Committed Capacity and Merchant Capacity in accordance with the provisions of this Agreement.

18.2. Contracted Capacity

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

For avoidance of doubt, the Contracted Capacity shall be the net capacity to be made available at the Delivery Point after taking into account auxiliary consumption, all applicable intra-state and inter-state transmission losses as applicable, from time to time, up to the Delivery Point.

18.3. Committed Capacity

The Parties expressly acknowledge and undertake that the Contracted Capacity hereunder along with similar capacity contracted between the Supplier and other Distribution Licensees for supply of electricity in accordance with the provisions of Section 62 or 63 of the Act, as the case may be, shall at all times be dedicated for production of electricity and supply thereof to the Utility and/or other Distribution Licensees with whom such agreements have been signed (the "**Committed Capacity**") and shall be utilised in accordance with the instructions of the Utility and/or such Distribution Licensees, save and except as provided in this Agreement.

18.4. Omitted

18.5. Sale of unutilized Committed Capacity

18.5.1. In the event that any part of the entitlement of the Utility to the Contracted Capacity is not utilised by the Utility or its nominees, the same shall be deemed to be Committed Capacity, but only for the period when it is not being utilised or is not scheduled for utilisation by the Utility. If any Contracted Capacity, deemed as Committed Capacity hereunder, is utilised for production of electricity and sale thereof to any other Distribution Licensee specified in Clause 18.3, the Fixed Charge due and payable for and in respect of such Contracted Capacity shall, subject to the provisions of Clause 18.5.2, be recovered by the Supplier from such Distribution Licensee as if the electricity has been supplied to the Utility. If such Contracted Capacity is not utilised for any Distribution Licensee hereunder, the Supplier may use the whole or part thereof as Merchant Capacity, provided that

the use of Allocated Coal, if any, for production of electricity from such Merchant Capacity shall be governed by the provisions of Clause 22.6. For the avoidance ofdoubt, the Parties agree that supply of electricity to a nominee of the Utility shall be subject to provision of adequate payment security either by the nominee or by the Utility. The Parties further agree that in the event any such Contracted Capacity remains unsold hereunder, the Fixed Charge in respect thereof shall be due and payable by the Utility to the Supplier.

18.5.2. Without prejudice to the provisions of Clause 18.5.1, the Fixed Charge due and payable by the Utility to the Supplier, for and in respect of the Contracted Capacity utilised for production of electricity and sale thereof to other Distribution Licensees or Buyers, as the case may be, shall be deemed to be waived and no Fixed Charge shall, therefore, be due or payable by the Utility in respect thereof; provided that the 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 that the Supplier may, at its own risk and cost, give such discount as it deems fit on the Fixed Charge payable by the Distribution Licensees or Buyers, as the case may be.

18.5.3. In the event that any part of the Committed Capacity is not utilised by the Distribution Licensees specified in Clause 18.3, the Supplier shall offer the same, with a notice of at least 3 (three) working days, to the Utility and other such Distribution Licensees upon payment of Tariff, and only upon failure of the Utility and the other Distribution Licensees to communicate acceptance of such supply within such 3 (three) working days, the Supplier may sell the same to Buyers in accordance with the provisions of this Agreement.

18.6. Substitute Supply

In the event the Availability of the Power Station is reduced on account of Scheduled Maintenance, Unscheduled Maintenance 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, including Merchant Capacity, if any, and such supply shall, for payment of Fixed Charge and Fuel Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. 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 2.2.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.

18.7. Merchant Capacity

Any generating capacity in excess of the Committed Capacity and forming part of the Installed Capacity shall be deemed to be merchant capacity (the "**Merchant Capacity**"). For the avoidance of doubt, it is to clarify that the use of Allocated Coal (by Utility) for Merchant capacity shall be governed by the provisions of Clause 22.6 and other terms as specified in this Agreement.

ARTICLE 19
UTILITY'S ENGINEER

19.1. Appointment of Utility's Engineer

19.1.1. Subject to the provisions of Clause 19.1.2, the Utility shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-I, to be the Utility's consultant under this Agreement (the "**Utility's Engineer**"). The appointment shall be made no later than 180 (one hundred and eighty) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Utility shall appoint a Utility's Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-I, and such procedure shall be repeated after expiry of each appointment.

19.1.2. The Parties expressly agree that in the event two or more Utilities have entered into long-term power supply agreements with the Supplier, which agreements are similar to this Agreement, they may in their discretion appoint a common firm to discharge the functions of the Utility's Engineer under their respective agreements. In the event no common firm is appointed by such Utilities, the Utility which contracts the largest volume of capacity in the Power Station shall appoint the Utility's Engineer to discharge the functions specified hereunder. Copies of all communications received by the Supplier from the Utility's Engineer and the replies thereto shall be sent forthwith by the Supplier to all Utilities who have not engaged the Utility's Engineer.

19.2. Duties and functions

19.2.1. The Utility's Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-I.

19.2.2. The Utility's Engineer shall submit regular periodic reports (at least once every quarter) to the Utility in respect of its duties and functions set forth in Schedule-I.

19.2.3. A true copy of all communications sent by the Utility to the Utility's Engineer and by the Utility's Engineer to the Utility shall be sent forthwith by the Utility's Engineer to the Supplier.

19.2.4. A true copy of all communications sent by the Utility's Engineer to the Supplier and by the Supplier to the Utility's Engineer shall be sent forthwith by the Utility's Engineer to the Utility.

19.3. Remuneration

The remuneration, cost and expenses of the Utility's Engineer shall be paid by the Utility which appoints the Utility's Engineer.

19.4. Termination of appointment

The Utility may, in its discretion, terminate the appointment of the Utility's Engineer at any time, but only after appointment of another Utility's Engineer in accordance with Clause 19.1.

19.5. Authorised signatories

The Utility shall require the Utility's Engineer to designate and notify to the Utility and the Supplier up to 2 (two) persons employed in its firm to sign for and on behalf of the Utility's Engineer, and any communication or document required to be signed by the Utility's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Utility's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

19.6. Excuse from appointment of Utility's Engineer

Notwithstanding anything to the contrary contained in this Agreement, in the event that a Utility has contracted the lower of, (a) 25% (twenty-five per cent) of the Installed Capacity; and (b) 200 (two hundred) megawatts, it shall not appoint a Utility's Engineer under this Article 19.

19.7. Interim arrangement

In the event that the Utility does not appoint a Utility's Engineer, or the Utility's Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Utility may, in the interim, designate and authorise any person to discharge the functions of the Utility's Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Utility's Engineer, and such functions shall be discharged as and when an Utility's Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 19.7 shall in any manner restrict the rights of the Utility to enforce compliance of the provisions of this Agreement.

Part IV

Financial Covenants

ARTICLE 20

FINANCIAL CLOSE

20.1. Financial Close

20.1.1. In case, of Type 2 project, the Supplier hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 185 (one hundred and eighty five) days, subject to payment of Damages to the Utility in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Utility in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

20.1.2. The Supplier shall, upon occurrence of Financial Close, notify the Utility forthwith, and shall have provided to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

20.2. Termination due to failure to achieve Financial Close

20.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 28.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 20.1.1 or the extended period provided thereunder, 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 shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 20.2.1 shall not apply.

20.2.2. Upon Termination under Clause 20.2.1, the Utility shall be entitled to encash the Bid Security/Performance Security, as the case may be, and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred due to Force Majeure or as a result of the Utility being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith along with the Damages due and payable under Clause 4.2.

ARTICLE 21

TARIFF

21.1. Tariff

21.1.1. The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Fuel 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"**).

21.1.2. As a part of the Tariff, the Utility shall pay to the Supplier an amount, determined in accordance with the provisions of this Article 21, as the Fixed Charge for Availability of the Power Station to the extent of Normative Availability thereof (the **"Fixed Charge"**).

21.2. Base Fixed Charge

21.2.1. The Parties agree that the fixed charge shall, in accordance with the offer of the Supplier for the Base Year, be Rs. .... (Rupees ...)[£] per kWh, to which the amount, if any, determined in accordance with the provisions of Clauses 21.2.2 or 21.2.3, as the case may be, shall be added or deducted, as the case may be, and the sum thereof (the "**Initial Fixed Charge**") shall be revised annually in accordance with the provisions of Clause 21.2.4 to determine the base fixed charge for the relevant Accounting Year (the "**Base Fixed Charge**").

21.2.2. In the event the Completion Certificate specifies a Station Heat Rate that is lower than the Station Heat Rate specified in Schedule-C, the Initial Fixed Charge shall be increased such that for every improvement of 1% (one per cent) as compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be increased by 1.5% (one point five per cent) thereof. Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such increase shall be restricted to 1% (one per cent).

21.2.3. In the event the actual Station Heat Rate is higher than the Station Heat Rate specified in the Completion Certificate the Initial Fixed Charge shall be decreased such that for every increase of 1% (one per cent) as compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be decreased by 2% (two per cent) thereof. Provided, however, that in case the source of Fuel is situated within 100 (one hundred) kilometres of the Power Station, such decrease shall be restricted to 1.5% (one point five per cent).

21.2.4. The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which Scheduled Supply Commencement Date occurs, and for each subsequent Accounting Year, the applicable Base Fixed Charge shall be determined by decreasing the Base Fixed Charge for the immediately preceding Accounting Year by 1% (one per cent) thereof. For the avoidance of doubt and by

[£] This amount shall be the amount specified in the Bid.

way of illustration, the Base Fixed Charge for the first Accounting Year in which Scheduled Supply Commencement Date occurs shall be the Initial Fixed Charge, and for the second and third Accounting Years subsequent to the Accounting Year in which Scheduled Supply Commencement Date occurs, shall be a sum equal to 99% (ninety-nine per cent) and 98.01% (ninety eight point zero one per cent) respectively of the Initial Fixed Charge.

21.3. Indexed Fixed Charge

The Base Fixed Charge determined for each Accounting Year in accordance with the provisions of Clause 21.2 shall be revised annually to reflect 30% (thirty 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 (the "**Indexed Fixed Charge**"). For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in February 2015; (b) Scheduled Supply Commencement Date occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.

21.4. Computation of Fixed Charge

21.4.1. Subject to the provisions of this Clause 21.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 21.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year.

21.4.2. Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2 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 70% (seventy per cent) of the Non-Availability hereunder. For the avoidance of doubt, the Parties expressly agree that if Fuel Shortage is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. By way of illustration, the Parties agree that in the event the Non-Availability arising on account of shortfall in supply of Fuel is determined to be 50% (fifty per cent), the Supplier shall, with respect to the Non- Availability arising on account thereof in accordance with the provisions of Clause 21.5.2, be entitled to a Fixed Charge as if the Availability is equivalent to 70% (seventy per cent) of such Non-Availability. For the avoidance of doubt, the Parties agree that the Supplier shall not be liable to pay the Damages specified in Clause 21.6.2 if Non-Availability shall arise as referred to in this Clause 21.4.2.

21.4.3. In the event that any shortfall in supply of electricity to the Utility occurs after operationalization of long term open access, 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 21.5.3 while the Non-Availability arising, due to deficiency in CTU network, 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 Distribution Licensees or Buyers, as the case may be, 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 21.4.3. Provided further that the provisions of this Agreement for and in respect of Tariff and Revenue Share shall apply to such supply. 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.

21.4.4. 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 90% (ninety per cent) computed with reference to the entitlement of the Utility in Contracted Capacity (the "**Capacity Charge**"). Provided, however, that in the event of Despatch of the Power Station beyond such 90% (ninety per cent), Incentive shall be payable in accordance with the provisions of Clause 21.6.1. For the avoidance of doubt, the Capacity Charge referred to herein shall be equal to and computed with reference to the maximum Availability of 90% (ninety per cent)of the Contracted Capacity.

21.4.5. Pursuant to the provisions of Clause 21.4.4, the Supplier shall not, for and in respect of any month, be entitled to receive payment of Fixed Charge for Availability exceeding 90% (ninety per cent) thereof and in the event it supplies electricity to the Utility in excess of such 90% (ninety per cent), such excess supply shall be eligible only for payment of Fuel Charge, save and except the payment of Incentive due under the provisions of Clause 21.4.4.

21.5. Declaration of Availability

21.5.1. Unless otherwise notified by the Supplier, the declared Availability shall, subject to the provisions of Clause 21.5.2, be deemed to be 100% (one hundred per cent) thereof at all times.

21.5.2. In the event Fuel stocks decline below the Minimum Fuel Stock, Availability shall be deemed to be reduced proportionate to the reduction in Minimum Fuel Stock, and shall be deemed as Non-Availability on account of Fuel Shortage. Provided that the Utility may, in its sole discretion, Despatch the Power Station for the full or part Non-Availability hereunder and to the extent of such Despatch, the Utility shall pay the full Fixed Charge due and payable in accordance with this Agreement. For the avoidance of doubt and by way of illustration, if the actual stock of Fuel is 80% (eighty per cent) of the Minimum Fuel Stock at the commencement of any day, the Availability for that day shall be deemed to be 80% (eighty per cent) and the Non-Availability on account of Fuel Shortage shall be notified by the Supplier to the Utility accordingly.

21.5.3. In the event that any shortfall in supply of electricity to the Utility occurs after operationalization of long term open access 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 entitlement of the Utility in 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 to the Utility forthwith.

21.5.4. The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its 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 maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty-eight) hours prior to its occurrence.

21.5.5. 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.

21.5.6. Notwithstanding the provisions of Clause 21.5.5, any reduction in Availability arising out of de-commissioning due to Emergency or a Force Majeure Event or any cause specified in Clause 15.6 shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses 15.6 or 28.5, as the case may be.

21.6. Incentive and Damages

21.6.1. 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 entitlement of the Utility in the Contracted Capacity, the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

21.6.2. 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 Availability of 85% (eighty-five per cent) shall, subject to the provisions of Clause 21.7, 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 below the aforesaid Availability of 85% (eighty-five per cent) shall be 25% (twenty-five per cent) of

the Fixed Charge which is reduced on account of shortfall in Availability below such 85% (eighty five per cent).

21.6.3. The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, 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.

21.7. Scheduled Maintenance

The period of closure for Scheduled Maintenance shall be deemed as Non-Availability in accordance with the provisions of Clause 15.4.2 and no Fixed Charge shall be due or payable for and in respect of such Non-Availability. For the avoidance of doubt, the Parties agree that the Damages specified in Clause 21.6.2 shall not apply for and in respect of the Non-Availability hereunder.

21.8. Fuel Charge

The Utility shall pay to the Supplier, as part of Tariff, a Fuel Charge to be determined in accordance with the provisions of Article 22.

21.9. Taxes and duties

21.9.1. 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 21.9.2, in accordance with Applicable Laws.

21.9.2. The Tariff payable by the Utility under this Article 21 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. For avoidance of doubt, it is clarified that the Tariff quoted should be inclusive of all Taxes, Duties, Cesses etc. as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law.

21.9.3. 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.

21.10. Billing and Payment

21.10.1. Commencing from the month following the month in which COD occurs, the Supplier shall, upon issuance of Regional Energy Account (REA) / State Energy Account (SEA) certifying the availability and energy scheduled for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate 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 Fuel 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. The Supplier may raise the Monthly Invoice through email (during office hours of Utility) / courier / hand delivery. In case, the Monthly Invoice is raised through email, it shall be ensured that the original invoice is received by the Utility within 5 working days from the date of invoice raised. In case of non-receipt of original invoice as per above timelines, the date of receipt of Invoice shall stand revised to the date of receipt of original invoice by Utility. In case of receipt of invoice through email after office hours of Utility, the next day shall be considered as the date of receipt of invoice. Either Party may raise an Invoice on the other Party (Supplementary Invoice) for payment / adjustment / recovery in accordance with the provisions of this Agreement.

21.10.2. 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 21.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 21; (e) detailed calculations of the Fuel Charge, in respect of the electricity dispatched, computed in accordance with Article 22; (f) detailed calculations of the Incentives and/or Damages in accordance with Clause 21.6; (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 respect of Key Performance Indicators in accordance with the provisions of Article 17; (j) adjustments, if any, on account of revision of the inter-state transmission charges referred to in Clause 5.5 and in accordance with Clause 21.13; (k) proportionate adjustment on account of inter-state transmission losses to be determined in accordance with Clause 5.6; and (l) the net amount payable under the Monthly Invoice (m) Coal consumption & receipt statement in accordance with the provisions of Article 17.

21.10.3. The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (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 aforesaid Payment Due Date shall also be applicable for the Supplementary Invoice. It is to clarify that Date of receipt of Invoice shall be considered as T0 and Due Date for Payment shall be T0+30 days.

21.10.4. 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.

21.11. Disputed Amounts

21.11.1. 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.

21.11.2. 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 38.4.

21.12. Discount for early payment

The Parties expressly agree that in the event the Utility pays the Tariff 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 Tariff by way of discount for early payment. It is clarified that the Date of receipt of Invoice shall be considered as T0 and Due Date for Payment shall be T0 +7 days.

In case the event of due date for payment including for early payment being a Bank Holiday / strike / Utility's Holiday, the next working day shall be considered as due date.

It is to clarify that discount for early payment shall not be applicable on the Invoices raised on account of Change in Law relating to taxes, duties, cess etc.

21.13. Adjustment of Transmission Charges based on Availability:

In the case where the actual availability of the Supplier at Delivery Point is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of actual applicable transmission charge for the respective month for shortfall i.e. difference between Normative Availability & Actual Availability.

ARTICLE 22
FUEL CHARGE

22.1. Station Heat Rate

22.1.1. The heat energy input, in kCal, required for generation and supply of 1 (one) kWh of electricity at the Point of Grid Connection, after accounting for auxiliary consumption and transmission losses, if any, as determined by Tests and specified in the Provisional Certificate or Completion Certificate, as the case may be, shall be the net station heat rate of the Power Station (the "Station Heat Rate" or "SHR"). Provided that the SHR shall be adjusted from time to time in accordance with the provisions of Clause 24.4, to account for any reduction in Despatch. Provided further that the aforesaid SHR shall be deemed to be increased by 0.15% (zero point one five per cent) per annum on each successive anniversaryof COD and the number so arrived at shall be the applicable SHR for that year. For the avoidance of doubt and by way of illustration, the Parties expressly agree that if Tests determine that the Station Heat Rate at the Point of Grid Connectionis say 2450 kCal per kWh, it shall be assumed that such Station Heat Rate has been derived after accounting for auxiliary consumption and transmission losses.

Note: Conversion of fuel into electricity shall be computed on the basis of the Station Heat Rate which must conform to predetermined specifications. The agreement also provides for incentives in the form of an enhanced Fixed Charge if the Supplier is able to improve on the pre-specified Station Heat Rate for ensuring greater efficiency in the interest of saving fuel.

22.2. Fuel Charge

22.2.1. The Utility shall pay to the Supplier for and in respect of the Fuel utilised for generation of a kWh of electricity for supply thereof to the Utility, a fuel charge determined from time to time in accordance with the provisions of this Clause 22.2.1 and expressed in Rupees per kWh (the **"Fuel Charge"**). The Parties agree that the Fuel Charge as on the Bid Date shall be deemed to be Rs. .... and paise.... (Rupees .... and paise....) per kWh, which represents the lower of the Bid submitted by the Supplier and the amount determined in pursuance of the provisions of Clause 22.2.2 as on the Bid Date[£]. For the avoidance of doubt, the Supplier represents and warrants that the Fuel Charge referred to hereinabove conforms with the provisions of Clause 22.2.3 and comprises (a) Rs. and paise .... (Rupees .... and paise ....) per kWh on account of cost of Fuel, (b) Rs. And paise .... (Rupees .... and paise) per kWh on account of transportation [for distance of ___kms], (c) Rs. .... and paise ..... (Rupees .... and paise ....) per kWh on account of washing, and any error or misrepresentation herein, as and when detected, shall entitle the Utility to reduce the Fuel Charge correspondingly and recover any excess payments made in the past along with interest at the rate specified in Clause 38.4.

22.2.2. Pursuant to the provisions of Clause 22.2.1, the Parties expressly acknowledge and agree that the figure arrived at by dividing the product of SHR and the Landed

[£] The Selected Bidder shall, prior to execution of this Agreement, satisfy the Utility that the Fuel Charge, as on the Bid Date, conforms with the provisions of Clause 22.2.

Fuel Cost per kilogram of Fuel by the Average GCV per kilogram of coal shall be deemed to be the Fuel Charge hereunder. The Parties further agree that the Fuel Charge for electricity generated from Allocated Coal (Linkage Coal allocated by Utility) and the Fuel, if any, from AFSA shall be determined separately, and unless specified to the contrary, Fuel Charge shall be deemed to be based on Allocated Coal (Linkage Coal allocated by Utility).

Explanation:

Landed cost of Fuel shall be the weighted average price of Fuel, in Rs. per kilogram, which is due and payable by the Supplier for procuring Fuel in accordance with the provisions of Clause 22.2.3, and shall include the cost of transportation thereof as specified in Clauses 22.2.4 and the cost of washing, if any, as specified in Clause 22.2.6 (the **"Landed Fuel Cost"**). Provided, however, that the Landed Fuel Cost shall in no case exceed the actual cost incurred by the Supplier. For the avoidance of doubt, the Parties expressly agree that in the event of any deviation from the GCV specified in [Clause 22.2.3/ the FSA or AFSA, as the case may be,] the Landed Fuel Cost shall be deemed to be adjusted and modified such that the Fuel Charge payable by the Utility shall be the same as if the GCV is in accordance with the value specified in [Clause 22.2.3/ the FSA or AFSA, as the case may be].

22.2.3. The cost of Fuel forming part of the Landed Fuel Cost shall be determined in accordance with the following explanation:

Explanation:

(a) For the Allocated Coal supplied by CIL/SCCL through Letter of Assurance/ FSA arranged by the Utility, the price of Fuel shall be deemed to be the lower of, (i) the indicative price of Fuel which shall be computed from the Fuel Charge, as specified in the Bid; and (ii) 101% (one hundred and one per cent) of the price payable by the Supplier to CIL, and in case of Additional Fuel Supply Arrangement for domestic Fuel, the price thereof shall be the lower of, (i) the current price of similar Fuel sold by CIL through e-auction or any substitute thereof; and (ii) actual cost of procurement. For the avoidance of doubt, the Parties agree that if the indicative price as computed hereunder from the Fuel Charge specified in the Bid shall be lower than 101% (one hundred and one per cent) of the price payable by the Supplier to CIL, the proportion by which the amount computed from the Bid is lower than the aforesaid 101% (one hundred and one per cent) of CIL price shall apply at all times for determining the price of Fuel.] The Parties further agree that the amount specified in Clause 22.2.1 is equivalent to or less than the aforesaid 101% (one hundred and one per cent) of the amount payable to CIL. The Supplier accordingly represents and warrants that the aforesaid amount has been derived from CIL's notified price of Rs. .... (Rupees) per tonne and GCV of ... kCal/kg as on the Bid Date and the cost of Fuel specified in Clause 22.2.1 shall be revised only in proportion to the revision in CIL price as compared to the rate specified hereinabove.

22.2.4. The total cost of transportation of domestic Fuel, forming part of the Landed Fuel Cost, shall be the lower of, (a) [110% (one hundred and ten per cent)] of the freight payable to the Indian Railways for transportation by rail, and (b) the actual cost of transportation. For the avoidance of doubt, the Parties agree that the amount specified

in Clause 22.2.1 is equivalent to or less than the aforesaid 110% (one hundred and ten per cent) of the amount payable to the Indian Railways. The Supplier represents and warrants that the aforesaid amount has been derived from the railway freight rate of Rs..... (Rupees) per tonne as on the Bid Date and the transportation charge specified in Clause 22.2.1 shall be revised only in proportion to the revision in rail freight as compared to the rate specified hereinabove.

22.2.5. Omitted

22.2.6. In the event washing of coal is required under Applicable Laws, the cost of washing shall be included in the Landed Fuel Cost and such cost shall be lower of, (a) the average cost of washing incurred by CIL for similar washing and (b) the actual cost paid by the Supplier. Provided, however, that in case the washery is operated by the Supplier, the cost of washing as certified by the Statutory Auditor of the Supplier shall be deemed to be the actual cost paid by the Supplier for the purposes of this Clause 22.2.6. For the avoidance of doubt, the Parties agree that the amount specified in Clause 22.2.1 is equivalent to or less than the aforesaid cost incurred by CIL. The Supplier represents and warrants that the aforesaid amount has been derived from the washing rate of Rs..... (Rupees) per tonne as on the Bid Date and the washing charge specified in Clause 22.2.1 shall be revised only in proportion to the increase in the average CIL cost of Rs. .... (Rupees ....) per tonne as compared to the rate specified hereinabove.

22.2.7. Omitted.

22.2.8. Omitted

22.3. Determination of GCV

22.3.1. The weighted average of the GCV of Fuel received during any month at the Power Station less 85 Kcal/Kg on account of variation during storage at generating station shall be reckoned as the average GCV (the "Average GCV") for the purposes of this Article 22 and shall, subject to the provisions of Clause 22.2.2, apply for computing the applicable element of the Landed Fuel Cost and the Fuel Charge payable for the use of such Fuel. For the avoidance of doubt, the Average GCV hereunder shall be computed separately for Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, for the purposes of determining the Fuel Charge.

22.3.2. Subject to the provisions of Clause 22.3.7, the Average GCV of Fuel shall be determined in accordance with the certification and classification provided by the supplier of Fuel in accordance with the provisions of the FSA. For the avoidance of doubt, the Parties expressly agree that in the event the certification provided by the supplier of Fuel refers to a band of GCV, the mean value of such band shall be reckoned as the GCV for purposes hereof. The Parties further agree that the Average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge, save and except as provided in Clause 22.3.7.

22.3.3. The Supplier shall collect random samples of Fuel in accordance with the applicable codes of the Bureau of Indian Standards (BIS) immediately following its arrival and storage at the Power Station and all the samples so collected during the preceding 24

(twenty four) hours shall be tested by the Supplier at 1100 hours each day to determine the GCV thereof, and the results of such testing shall be conveyed forthwith to the Utility for its information and record with such particulars as the Utility may require.

22.3.4. One-half of the quantity of each sample collected in accordance with the provisions of Clause 22.3.3 shall be stored and made available for testing thereof by the Utility or the Utility's Engineer at any time within a period of 1 (one) month from the date of sampling at the Power Station.

22.3.5. The Fuel received at the Power Station shall be stored in stacks, in quantities of about 5 (five) tonnes each or a multiple thereof, not exceeding 100 (one hundred) tonnes, and numbered in a manner that can correlate the stacks with the samples drawn in accordance with the provisions of Clause 22.3.3. For the avoidance of doubt, the Parties agree that the Supplier may, with prior consent of the Utility, substitute the storage and stacking methodology in such manner as may conform with Good Industry Practice.

22.3.6. For determining the actual GCV of Fuel, the Utility or the Utility"s Engineer, as the case may be, shall be entitled to inspect the relevant records of the Supplier, and may, at its own cost, conduct or cause to be conducted, sampling and testing of stored Fuel in accordance with Good Industry Practice, to determine its conformity with the Specifications and Standards and also with the tests conducted by the Supplier pursuant to the provisions of Clause 22.3.3. The Supplier shall provide such assistance as the Utility may reasonably require for such sampling and testing. In the event of a dispute relating to the procedure and outcome of any sampling or testing, the Parties shall remit such tests to a reputed independent laboratory or agency and in the event that the Parties fail to agree on appointment of an independent agency within 7 (seven) days of the notice of dispute issued by a Party, the independent laboratory or agency shall be specified by the Appropriate Commission.

22.3.7. If the sampling pursuant to Clause 22.3.6 demonstrates that the actual GCV determined for any month is more than the GCV reported by the Supplier to the Utility or the Average GCV determined in accordance with the provisions of Clause 22.3.2, as the case may be, the Average GCV for that month shall be deemed to be the lower of the GCV determined by such sampling and the Average GCV determined pursuant to the provisions of Clause 22.3.2, and in the event of any Dispute relating to sampling, the Dispute Resolution Procedure shall apply.

22.3.8. Notwithstanding anything to the contrary in this Article 22, the Parties expressly agree that the Utility shall not be liable to any payments in respect of the cost of Fuel, if such payments exceed the amounts due and payable in accordance with the provisions of the clause 22.2.3/the FSA or AFSA, as the case may be, in respect of the price of Fuel or the GCV thereof and any additional burden in this behalf shall at all times be borne by the Supplier.

22.4. Fuel Supply Agreement

22.4.1. Prior to the Appointed Date, the Supplier shall have executed an agreement with a supplier of Fuel for supply of Fuel sufficient for generating electricity at no less than 55% (fifty five per cent) of the Contracted Capacity during each month for a period

of at least 15 (fifteen) years commencing from Scheduled Supply Commencement Date, substantially in accordance with the provisions of Clause 22.5 (the **"Fuel Supply Agreement"** or **"FSA"**). Upon execution of the FSA between the Supplier and the supplier of Fuel, the same shall be assigned by the Supplier in favour of the Utility prior to the Appointed Date.

For the avoidance of doubt, the Parties agree that the rights of the Utility arising from such assignment shall be limited to procuring that the Allocated Coal is used only in accordance with the provisions of this Agreement and for no other purpose.

22.4.2. Omitted

22.4.3. The Fuel procured under the FSA shall be utilised by the Supplier for production of electricity to be supplied to the Utility as part of the Contracted Capacity and only the surplus, if any, may be used for Merchant Capacity, with prior consent of the Utility and subject to the provisions of Clause 22.6.

22.4.4. Omitted

22.5. Terms of FSA

The FSA executed in pursuance of Clause 22.4.1 shall, for and in respect of the supply of Allocated Coal for production of electricity from the Contracted Capacity, include the following terms and conditions:

(a) The minimum annual quantity of Fuel to be supplied under the FSA shall be sufficient for generating electricity for Despatch of at least 55% (fifty five per cent) of the Contracted Capacity during each month (the "**MACQ**") ;

(b) the FSA shall specify the grade of Fuel comprising GCV and ash content, which shall not be changed materially without mutual consent of the Supplier and the supplier of Fuel;

(c) the FSA shall specify the methodology for testing and weighment of Fuel prior to its delivery to the Supplier and shall provide for a dispute resolution mechanism in the event of disputes on any aspect of the FSA;

(d) supply of MACQ under FSA shall commence at least 30 (thirty) days prior to Scheduled Supply Commencement Date;

(e) Deleted

(f) the right of the supplier of Fuel to terminate the FSA for a material breach thereof by the Supplier shall be subject to the Utility's rights to substitute the Supplier and cure the breach;

(g) the Supplier shall have the right and obligation to assign all its rights, interests and obligations under the FSA in favour of the Utility with the consent of the supplier of Fuel in accordance with the terms and conditions specified in the FSA; and

(h) upon occurrence of a Supplier Default under this Agreement, the Utility shall, without any further approval or consent of the Supplier, have the right to assign or seek assignment of the FSA to its nominee in accordance with the terms and conditions specified in the FSA, and upon the Utility exercising its right hereunder, the Supplier shall cease to have any right or title to procure Allocated Coal from the supplier of Fuel.

22.6. Use of Allocated Coal for Buyers

22.6.1. Upon the Supplier meeting its obligations for and in respect of the supply of electricity to the Utility as part of the Contracted Capacity, it may generate electricity from Allocated Coal, with prior consent of Utility, which Utility may deny in its sole discretion, for sale thereof to Buyers subject to payment of Revenue Share to the Utility, in an amount equal to the higher of, (a) Fixed Charge and (b) 30% (thirty per cent) of the gross sale revenue accrued from Buyers for each kWh of electricity sold to any Buyer. Provided that the Utility may, in its sole discretion, reduce the Revenue Share to such extent and in such manner as it may determine from time to time.

22.6.2. In the event the Supplier uses the Allocated Coal in breach of the provisions of Clause 22.6.1 or diverts any Contracted Capacity to Buyers, save and except as provided in this Agreement, it shall pay to the Utility 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.

22.6.3. The Supplier shall furnish to the Utility, within 7 (seven) days of completion of each month, a statement of receipts from Capacity under clauses 22.6 and the Revenue Share therefrom, substantially in the form set forth in Schedule-M.

22.6.4. The Supplier shall, for each Accounting year, consolidate the statements in respect of Revenue Share from Capacity under clause 22.6 and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Utility within 60 (sixty) days of the close of that Accounting Year.

22.6.5. Payments for and in respect of Revenue Share for any month shall be due and payable by the Supplier within 7 (seven) days of the close of that month, failing which interest for the period of delay at the rate specified in Clause 38.4 of this Agreement shall be applicable.

22.7. Minimum Fuel Stock

The Supplier shall at all times maintain a minimum stock of Allocated Coal and Fuel from AFSA, if any, which is sufficient for full production of electricity from Contracted Capacity for supply thereof to the Utility for a continuous period of 7 (seven) days (the "**Minimum Fuel Stock**").

22.8. Fuel Shortage

22.8.1. 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 supply of

Fuel, and/or delays in transportation thereof, for reasons beyond the control of the Supplier (the **"Fuel Shortage"**), the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the Fuel Shortage, notify the Utility of the nature, extent and period of Fuel Shortage and the reasons thereof.

22.8.2. In the event of any Fuel Shortage hereunder, the Fixed Charge payable for and in respect of any Non-Availability arising as a result thereof shall be equal to 70% (seventy per cent) of the Fixed Charge computed in accordance with the provisions of Clause 21.4.2.

22.9. Additional Fuel Supply Arrangement

22.9.1. In the event of Fuel Shortage, the Supplier shall make best efforts to identify, as soon as may be possible, additional source(s) of fuel supply and transportation to meet such Fuel Shortage (the **"Additional Fuel Supply Arrangement"** or **"AFSA"**). The Supplier shall notify the Utility of the details of the Landed Fuel Cost under the AFSA and provide such other information as the Utility may require, for demonstrating that the AFSA is based on best prices available for supply and transportation of such fuel. The Supplier shall submit the AFSA for review and concurrence of the Utility. Thereafter, Utility shall submit the AFSA for review and approval of the Gujarat Electricity Regulatory Commission.

22.9.2. The Supplier shall procure Fuel under the AFSA only with prior approval of the Utility, which approval the Utility may deny in its sole discretion. Provided, however, that if the Utility approves part supply of Fuel under the Additional Fuel Supply Arrangement, it shall, in consultation with the Supplier, approve such additional costs as may be applicable for purchase of Fuel in comparatively smaller quantities and such costs shall be considered as part of the Landed Fuel Cost in determining the Fuel Charges.

22.10. Fuel Charge under AFSA

22.10.1. If the Supplier enters into an AFSA in accordance with the provisions of Clause 22.9, the Fuel Charge payable by the Utility for any electricity produced from such Fuel shall be determined on the basis of Landed Fuel Cost to be computed in accordance with this Article 22.

22.10.2. In the event the Supplier fails to procure Fuel under an AFSA, or such AFSA is not approved in full or part by the Utility or the Commission, as the case may be, the Fixed Charge payable for and in respect of any Non-Availability as a result thereof shall be equal to 70% (seventy per cent) of the Fixed Charge computed in accordance with the provisions of Clause 21.4.2

22.11. Reporting of Fuel stock

22.11.1. The Supplier shall, no later than 1100 hours on each day, provide a statement to the Utility setting out (a) the opening stock of Fuel at 0000 hrs of the preceding day (b) the arrival of fresh stocks, if any during the preceding day, (c) the consumption of Fuel during the preceding day; and (d) the closing stock on the preceding day at 2400 hrs.

22.11.2. The Supplier shall, no later than 1100 hours on each day, provide a statement to the Utility setting out the quantities and the average GCV of the Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, which were utilised for generation of electricity during the preceding day. Based on such average GCV, the consumption of respective Fuels and the electricity generated during the preceding day, the Supplier shall compute and specify the actual SHR for such preceding day.

22.12. Improvement in SHR

22.12.1. In the event the statements provided under Clause 22.11 during the course of any quarter establish that the actual SHR is better than the SHR specified in the Completion Certificate and the difference between the actual SHR and specified SHR exceeds 1% (one per cent) of the specified SHR, the specified SHR shall be reduced by one-half of such difference and the SHR so determined shall be the specified SHR of the Power Station for purposes of this Agreement, including for determination of the Fuel Charge under this Article 22. For the avoidance of doubt and by way of illustration, if the specified SHR of the Power Station is 2,200 and the actual SHR is 2,160, the specified SHR shall be revised and fixed at 2,180.

22.12.2. Upon revision of SHR pursuant to the provisions of Clause 22.12.1, the Fixed Charge shall be increased in accordance with the provisions of Clause 21.2.2 as if such SHR is specified in the Completion Certificate.

ARTICLE 23

PAYMENT SECURITY

23.1. Default Escrow Account

23.1.1. The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-J (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where Utility's Revenues are normally deposited (the "**Default Escrow Bank**"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 50% (fifty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 23.1 and the Default Escrow Agreement.

23.1.2. The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-K (the "**Deed of Hypothecation**"), whereby the Utility shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

23.1.3. Omitted

23.1.4. The Utility shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

23.2. Letter of Credit

23.2.1. The Utility shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the 20% (twenty per cent) of the annual Capacity Charge (the "Minimum Monthly Payment") (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-L and shall come into effect on COD, and shall be modified once every year to reflect the revision in Fixed Charge in accordance with the provisions of this Agreement.

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

23.2.3. 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 Default Escrow 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 (other than Disputed Amounts); 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 (excluding Disputed Amounts) has remained unpaid.

23.2.4. In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, 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 23.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Fixed Charge, except to give effect to such revision once every year.

23.2.5. 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.

23.3. Recovery from sale of Contracted Capacity

23.3.1. In the event the Supplier is unable to recover its Tariff (except Disputed Amounts) through the DefaultEscrow Account and the Letter of Credit, as the case may be, 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. The Parties further agree that the Supplier shall be entitled to use Allocated Coal for production of electricity and sale hereunder.

23.3.2. The sale of Contracted Capacity pursuant to Clause 23.3.1 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 23.3.1.

23.3.3. 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, restores the Default Escrow Account and renews the Letter of Credit.

23.4. 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, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month 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 Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

ARTICLE 24

DESPATCH OF CONTRACTED CAPACITY

24.1. Despatch of Contracted Capacity

24.1.1. The Utility shall, in accordance with Applicable Laws and Regulations thereunder, 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 its entitlement in 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. The Parties further agree that any additional cost incurred by the Supplier for Despatch to such third parties shall be due and payable by those third parties.

24.1.2. Pursuant to the provisions of Clause 24.1.1, the Supplier shall 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.

24.1.3. Scheduling and supply of electricity from Merchant Capacity may be undertaken by the Supplier in such manner as it may determine in conformity with the Grid Code & provisions of this Agreement.

24.1.4. 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.

24.2. Settlement of DSM/UI charges

24.2.1. 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.

24.2.2. Omitted

24.2.3. The Supplier may, in addition to the scheduling under Clause 24.1, supply electricity produced from the unutilised Contracted Capacity specified in Clause 18.5, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilized hereunder shall be deemed to be waived and shall not be payable by the Utility. Provided, that the Parties may with mutual agreement reduce the Fixed Charge to be waived hereunder to such extent as they may determine. Provided further that in the event the Supplier uses the Fuel procured under and in accordance with the provisions of Clause 22.4, it shall also pay the cost of Fuel and the Revenue Share specified therein.

24.3. Overriding powers of the Utility

24.3.1. 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.

24.3.2. In the event the Supplier does not comply with the directions of the Utility issued in pursuance of Clause 24.3.1, 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.

24.3.3. 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 24.3 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 24.3 shall remain in force and effect until the Vesting Certificate is issued under and in accordance with the provisions of Clause 32.5.

24.3.4. The exercise of any overriding powers by the Utility under this Clause 24.3 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 23. Notwithstanding anything to the contrary contained in this Clause 24.3, 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 23 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 23.3 shall apply.

24.4. Ramp up of Despatch

In the event the Utility Despatches less than 2% (two per cent) of its entitlement in the Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 8 (eight) hours to the Supplier for reaching Availability equal to such entitlement in the Contracted Capacity and shall make an additional payment on account of increase in SHR computed in accordance with the provisions of Schedule-C for and in respect of different levels of generation during the course of ramping up. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within 8 (eight) hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 21.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to its entitlement in the Contracted Capacity.

24.5. Proportionate Availability

24.5.1. The Supplier shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

24.5.2. In case the Contracted Capacity of a Unit/Contracted Capacity as a whole is a part of the installed capacity of a power station; in the event of Availability from the Project in a Settlement Period being less than 100%, the capacity available to Utility for despatch shall be reduced proportionately. However, the Supplier has the option to offer more than such reduced capacity for despatch by Utility but not lower than such "**Proportionate Availability**". The Supplier shall prove such Proportionate Availability by using readings of meters at Generators for each Settlement Period and Energy Output of the Project up to Contracted Capacity.

24.5.3. In case the Supplier fails to establish Utility's proportionate right as per provisions of this Agreement, the Supplier shall be liable to be penalised. Such penalty shall be higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoid 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. In case the Supplier is unable to maintain the schedule for ensuring proportionate availability specifically due to restrictions imposed by Regulatory Authority, the Utility may, upon request of the Supplier relax the applicability of provisions of Proportionate Availability.

ARTICLE 25

OMITTED

ARTICLE 26
INSURANCE

26.1. Insurance during Contract Period

The Supplier shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances 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 during the Contract Period.

26.2. Insurance Cover

Without prejudice to the provisions contained in Clause 26.1, the Supplier shall, during the Operations Period, procure and maintain 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 Supply 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.

26.3. Notice to the Utility

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Supplier shall by notice furnish to the Utility, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Utility may require the Supplier to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.4. Evidence of Insurance Cover

All insurances obtained by the Supplier in accordance with this Article 26 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.

26.5. Remedy for failure to insure

If the Supplier 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.

26.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Supplier pursuant to this Article 26 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.

26.7. 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.

26.8. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Supplier and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Power Station, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9. Compliance with conditions of insurance policies

The Supplier expressly acknowledges and undertakes to fully indemnify the Utility from and against all losses and claims arising from the Supplier's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 27

ACCOUNTS AND AUDIT

27.1. Audited accounts

27.1.1. 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.

27.1.2. 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.

27.1.3. 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 Distribution Licensees and Buyers, and (c) such other information as the Utility may reasonably require.

27.2. Appointment of auditors

27.2.1. The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-N. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.

27.2.2. 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 from the Panel of Chartered Accountants.

27.2.3. 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 any time, another firm (the "Additional Auditors") from the Panel 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.

27.3. 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.

27.4. 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 27.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

27.5. 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 28

FORCE MAJEURE

28.1. Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party 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.

28.2. 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 Site);

(b) strikes or boycotts (other than those involving the Supplier, 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 28.3;

(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 by or on behalf of such Contractor;

(d) 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 by such contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier 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.

28.3. 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 construction or 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) failure of the Utility to permit the Supplier to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

f) 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 by or on behalf of such Contractor;

g) any Indirect Political Event that causes a Non-Political Event; or

h) any event or circumstances of a nature analogous to any of the foregoing.

28.4. 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 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 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 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 by or on behalf of such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

28.5. Duty to report Force Majeure Event

28.5.1. 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 28 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.

28.5.2. 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.

28.5.3. 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 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6. Effect of Force Majeure Event on the Supply Contract

28.6.1. 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 and in Clause 20.1for achieving Financial Close and satisfying the Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:

(a) before COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after COD, 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 Average Daily Availability, the Utility shall extend the Contract Period in proportion to the loss of such Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty-five per cent) in Availability for 4 (four) days as compared to the Average Daily Availability shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

28.7. Allocation of costs arising out of Force Majeure

28.7.1. 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, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.2. Omitted

28.7.3. Save and except as expressly provided in this Article 28, 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.

28.8. 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 28, 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.

28.9. Termination of Fuel supply

In the event of Termination for Force Majeure Event, the Supplier shall cease to be entitled to the supply or production of Allocated Coal to the extent allocated or utilised for the Contracted Capacity, and the provisions of FSA to the extent thereof shall be held in abeyance until the use of such Allocated Coal for any other purpose, utility or buyer is authorized by the Central Government.

28.10. 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 nolonger 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.

28.11. Omitted

ARTICLE 29

COMPENSATION FOR BREACH OF AGREEMENT

29.1. 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 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Utility. For the avoidance of doubt, the Parties agree that the compensation payable under this Article 29 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.

29.2. 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, and for determining such compensation, information contained in the Financial Package may be relied upon to the extent it is relevant.

29.3. Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving COD or leads to reduction in the realisation of Fixed Charge, as the case may be, the Utility shall, in addition to payment of compensation under Clause 29.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed or the payment of Fixed Charge was reduced on account thereof, as the case may be; and in the event of reduction in Fixed Charge where the daily collection is less than 80% (eighty per cent) of the Average Daily Fixed Charge, the Utility shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Fixed Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in the realisation of Fixed Charge, as compared to the Average Daily Fixed Charge, for 4 (four) days shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

ARTICLE 30

SUSPENSION OF SUPPLIER'S RIGHTS

30.1. Suspension upon Supplier Default

30.1.1. Upon occurrence of a Supplier Default, the Utility shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to suspend all rights of the Supplier under the Fuel Supply Agreement relating to the Supplier's right to receive Allocated Coal, produce electricity therefrom and collect revenues from sale of such electricity (the "**Suspension**"), save and except as provided in Clause 31.3.3.

30.1.2. Omitted

30.1.3. During the period of Suspension hereunder, all rights and liabilities vested in the Supplier in accordance with the provisions of this Agreement shall continue to vest therein and the Supplier undertakes to indemnify the Utility for all costs incurred during such period.

30.2. Revocation of Suspension

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

30.3. Substitution of Supplier

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

30.4. Termination

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

ARTICLE 31

TERMINATION

31.1. Termination for Supplier Default

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

(a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

(c) the Supplier does not achieve the latest outstanding Project Milestone or the Scheduled Completion Date, as the case may be, due in accordance with the provisions of Schedule-E and continues to be in default for 180 (one hundred and eighty) days;

(d) the Supplier is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(e) the Supplier has failed to make any payment to the Utility within the period specified in this Agreement;

(f) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;

(g) the Supplier uses the Allocated Coal in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 22.6.2;

(h) the Supplier creates any Encumbrance in breach of this Agreement;

(i) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of Clause 22.6.2;

(j) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 24.1.4;

(k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(l) the Supplier fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the Supplier or (iii) shortfall in the Minimum Fuel Stock occurring for reasons not attributable to the Supplier;

(m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, and such transfer causes a Material Adverse Effect;

(n) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;

(o) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;

(p) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;

(q) a resolution for winding up of the Supplier is passed;

(r) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;

(iii) each of the Project Agreements remains in full force and effect;and

(iv) such amalgamation or reconstruction is approved by the Commission.

(s) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading

or the Supplier is at any time hereafter found to be in breach thereof;

(t) the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;

(u) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

(v) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or

(w) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

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

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

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

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

31.2. Termination for Utility Default

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

(a) The Utility commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;

(b) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or

(c) the Utility repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

31.3. Termination Payment

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

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

31.3.3. Upon Termination or expiry of the Contract Period by efflux of time, the Fuel Supply Agreement or any other arrangement for production and supply of Allocated Coal shall cease to be effective and the Supplier shall have no right whatsoever to use such Allocated Coal for the Power Station without the express permission or authorisation by the Central Government in this behalf. Provided, however, that the Parties may mutually agree to a further extension of the Contract Period on the terms specified in this Agreement.

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

31.3.5. The Supplier expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4. Extension of Contract Period

Notwithstanding anything to the contrary contained in this Agreement, the Utility may, at any time no earlier than 1 (one) year but no later than 6 (six) months prior to completion of the Contract period, by a notice issued to the Supplier in accordance with the Provision of Clause 3.1.1, require an extension of the Contract Period as specified therein, and in the event of such extension, the Contract Periodshall be deemed to be extended accordingly. For the avoidance of doubt, the Parties agree that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.1.1, shall apply *mutatis mutandis* to the extended Contract Period.

31.5. Restriction on use of Allocated Coal

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

31.5.2. Pursuant to the provisions of Clause 31.5.1, the Supplier agrees and undertakes to give irrevocable instructions and authority to the RLDC and SLDC not to entertain any instructions for despatch and scheduling that the Supplier may give after Termination for and in respect of the Contracted Capacity, save and except to the extent such instructions are expressly confirmed by the Utility.

31.5.3. Upon Termination, the Allocated Coal, if any, which is linked to or allocated for the Contracted Capacity shall, save and except as provided in Clause 31.3.3, be utilised solely in accordance with the instructions of the Utility and the Utility may, subject to Applicable Laws, allocate, transfer or divert such Allocated Coal in such manner as it may deem fit.

31.6. Instructions to RLDC and SLDC

31.6.1. The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing such copy hereunder, the Supplier shall be deemed to have given irrevocable instructions and authority to the RLDC and SLDC to follow the instructions of the Utility in accordance with the provisions of this Article 31. TheSupplier agrees and undertakes that it shall not in any manner challenge or revoke the provisions of this Article 31 or in any manner prevent the Utility, RLDC or SLDC from giving effect thereto.

31.6.2. The Utility agrees and undertakes to exercise its rights hereunder only to the extent of the Contracted Capacity and the use of Allocated Coal therefor, and the Supplier may supply electricity to other Distribution Licensees and Buyers in accordance with the provisions of this Agreement.

31.7. Survival of rights

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

31.8. Substitution upon Termination

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

Distribution Licensees.

31.8.2. In the event the Supplier proposes to offer and transfer its Contracted Capacity in accordance with the provisions of Clause 31.8.1, it shall give to each of the other Distribution Licensees who have an agreement for and in respect of the Committed Capacity, an offer of the proposed transfer setting out there in the principal terms of the offer along with a copy of this Agreement and such offer may not be revoked and shall remain effective for a period of 60 (sixty) days from the date of its receipt by the Distribution Licensee.

31.8.3. If any of the Distribution Licensees specified in Clause 31.8.2 notifies to the Supplier that it intends to acquire the whole or part of the Contracted Capacity, then the Supplier shall transfer, and such Distribution Licensee shall acquire, such whole or part of the Contracted Capacity in accordance with the provisions of this Agreement.

31.8.4. If the Distribution Licensees specified in Clause 31.8.2 do not notify their intention to acquire the whole or part of the Contracted Capacity within the offer period, the Supplier may transfer the Contracted Capacity to any Distribution Licensee within 90 (ninety) days from the expiry of the offer period and on the terms contained in this Agreement.

31.8.5. No transfer of the Contracted Capacity shall be effective unless the transferee shall have agreed in writing to be bound by all the provisions of this Agreement and shall have executed and delivered a Deed of Adherence, in the form acceptable to the Commission, and all other documents, necessary to validly effect the transfer under this Clause 31.8.

31.8.6. The Parties expressly agree that upon transfer of the Contracted Capacity in accordance with the provisions of this Clause 31.8, the obligation of the Utility to make a Termination payment shall be reduced to one half of the amount specified in Clause 31.3.

31.8.7. The Parties expressly agree that to the extent the Contracted Capacity is transferred to a Distribution Licensee in accordance with the provisions of this Clause 31.8, the Supplier shall be entitled to retain and utilise the Allocated Coal, proportionate to such Contracted Capacity, in accordance with the provisions of this Agreement. Until the use of Allocated Coal commences under the provisions of this Clause 31.8.7, the Supplier may use the whole or part of such Allocated Coal for production of electricity and supply thereof to the Distribution Licensees who have contracted any part of the Committed Capacity and on the terms specified in this Agreement.

31.8.8. In the event that the whole or part of the Allocated Coal cannot be utilised in accordance with the provisions of Clause 31.8.7, it may be used for supply of electricity to Buyers in accordance with the provisions of Clause 22.6 upon payment of Revenue Share, on a proportionate basis, to the Distribution Licensees who have contracted part of the Committed Capacity. Provided, however, that the provisions of this Clause 31.8.8 shall apply and remain in force for a period not exceeding 6 (six) months from the date of Termination.

31.8.9. In the event that the whole or part of the Allocated Coal cannot be utilised in accordance with the provisions of this Clause 31.8, the supply and utilisation of such whole or part of the Allocated Coal shall remain suspended, and if its utilisation is not restored within a period of 8 (eight) months from the date of Termination, the provisions of Clause 31.5 shall apply.

ARTICLE 32

DIVESTMENT OF RIGHTS AND INTEREST

32.1. Divestment Requirements

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

(a) execute such deeds of conveyance, documents and other writings as the Utility may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Supplier in the Fuel Supply Agreement to the extent of Allocated Coal that was required for the Contracted Capacity; and

(b) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Supplier in the Allocated Coal, free from all Encumbrances, absolutely unto the Utility or to its nominee.

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

32.2. Partial Divestment

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

32.3. Inspection

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

32.4. Cooperation and assistance on transfer of Allocated Coal

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

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

32.5. Vesting Certificate

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

32.6. Divestment costs etc.

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

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

Part VI

Other Provisions

ARTICLE 33

ASSIGNMENT AND CHARGES

33.1. Restrictions on assignment and charges

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

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

33.2. Permitted assignment and charges

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

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Power Station;

(c) assignment of rights, interest and obligations of the Supplier to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

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

33.3. Substitution Agreement

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

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

33.4. Assignment by the Utility

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

33.5. Approvals for assignment

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

ARTICLE 34

CHANGE IN LAW

34.1. Definitions

In this Article 34, the following terms shall have the following meanings:

34.1.1. "Change in Law" means the occurrence of any of the following events after the Bid Due Date:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Indian Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Supplier, which results in any change in any cost of or revenue from the business of selling electricity by the Supplier to the Procurer under the terms of this Agreement, or (iv) any change in the cost of implementing Environmental Management Plan for the Power Station; but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Supplier, or (ii) change in respect of UI / DSM Charges or frequency intervals by an Appropriate Commission.

"Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.

For avoidance of doubt, it is clarified that Ministry of Environment & Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof has notified revised environment norms to be complied by thermal power plants. In accordance with the terms provided under Article 4 & Article 5.10 of this Agreement, the same shall not qualify for adjustment in Tariff under the Change in Law and Utility shall not be liable for any cost reimbursement towards the same.

34.2. Application of impact of Change in Law

34.2.1. The impact of Change in Law under this Article 34 shall be determined as under:.

a) Construction Period (date of PSA till Supply commencement under the Agreement)

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees 50 Crore in Capital Cost, in relation to the Installed Capacity, over the term of this Agreement, the increase/decrease in Base Fixed Charge shall be an amount equal to zero point two six seven (0.267%) of the Base Fixed Charge. Provided that the Supplier provides to the Procurer documentary proof of such increase/ decrease in Capital Cost for

establishing the impact of such Change in Law. In case of Dispute, Article 36 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/decrease exceeds amount equivalent to Rs. 50 crore in Capital Cost.

This clause shall be applicable only to Type 2 Projects

b) Operation Period (From Supply commencement under this Agreement till term of PSA)

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Supplier shall be determined and effective from such date, as decided by the Gujarat Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Supplier is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.

34.3. Notification of Change in Law

34.3.1. If the Supplier is affected by a Change in Law in accordance with Article 34.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

34.3.2. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material. Provided that in case the Supplier has not provided such notice, the Procurer shall have the right to issue such notice to the Supplier.

34.3.3. Any notice served pursuant to this Article 34.3.2 shall provide, amongst other things, precise details of:

(a) the Change in Law; and

(b) the effects on the Supplier of the matters referred to in Article 34.2.

(c) the date of impact resulting from the occurrence of Article 34.1.1.

34.4. Tariff Adjustment Payment on account of Change in Law

34.4.1. Subject to Article 34.2, the adjustment in Monthly Tariff Payment shall be effective from:

(a) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or

(b) the date of order/judgment of the Competent Court or tribunal or Indian

Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

(c) the date of impact resulting from the occurrence of Article 34.1.1.

34.4.2. The payment for Changes in Law shall be through Supplementary Bill. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Supplier after such change in Tariff shall appropriately reflect the changed Tariff.

34.5. Appeal against Change in Law

If the results stated in Article 34.1.1 are brought about by a change in the interpretation of Law by a court or tribunal that does not qualify as a Competent Court, the Supplier agrees that it shall, at its own cost, appeal against such order/judgment up to the level of the appropriate Competent Court and the right of the Supplier to recover the additional amount from the Procurer on account of Changes in Law shall, unless waived in writing by the Procurer, shall be dependent on the Supplier taking adequate steps to contest the increase.

34.6. 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

34.7. Carrying Cost on impact due to Change in Law:

Notwithstanding anything to the contrary contained in this Agreement, the Supplier shall not in any manner be entitled to claim any amount towards carrying cost till the time Gujarat Electricity Regulatory Commission has determined and approved the impact due to Change in Law qualifying under this Agreement.

ARTICLE 35

LIABILITY AND INDEMNITY

35.1. General indemnity

35.1.1. The Supplier shall indemnify, defend, save and hold harmless the Utility and its officers, servants, agents, Government Instrumentalities and Utility owned and/or controlled entities/enterprises, (the "**Utility Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Supplier of any of its obligations under this Agreement orany related agreement or on account of any defect or deficiency in the provisionof services to the Utility or sale by the Supplier to any Buyer or from anynegligence 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 ordefault of this Agreement on the part of the Utility Indemnified Persons.

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

35.2. Indemnity by the Supplier

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

(a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

35.2.2. Without limiting the generality of the provisions of this Article 35, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the Supplier is unable to secure such licence within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

35.3. Notice and contest of claims

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

35.4. Defence of claims

35.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party allegedor asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by

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

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

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

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence o f such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

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

35.5. No consequential claims

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

ARTICLE 36

DISPUTE RESOLUTION

36.1. Dispute resolution

36.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicablyin accordance with the conciliation procedure set forth in Clause 36.2.

36.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

36.2. Conciliation

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

36.3. Omitted

36.4. Adjudication by the Commission

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

36.5. Omitted

ARTICLE 37
DISCLOSURE

37.1. Disclosure of Specified Documents

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

37.2. Disclosure of Documents relating to safety

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

37.3. Withholding disclosure of Protected Documents

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

Explanation:

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

ARTICLE 38
MISCELLANEOUS

38.1. Governing law and jurisdiction

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

38.2. Waiver of immunity

Each Party unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

38.3. Depreciation

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

38.4. Delayed payments

38.4.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a base rate equal to 5% (five per

cent) above the Bank Rate for the first month of delay, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

For avoidance of doubt, "Bank Rate" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

38.4.2. 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 such rate shall not be more than 3 percent higher than the base rate at any time. Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

38.4.3. All payments shall be first adjusted towards interest for Delayed Payments and thereafter, towards monthly charges, starting from the longest overdue bill.

38.5. Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

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

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

38.6. Liability for review of Documents and drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Utility or the Utility's Engineer of any Project Agreement, Document or drawing submitted by the Supplier nor any observation or inspection of the construction, operation or maintenance of the Power Station nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Supplier from its obligations, duties and liabilities under this Agreement,

Applicable Laws and Applicable Permits; and

(b) the Utility shall not be liable to the Supplier by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

38.7. Exclusion of implied warranties etc.

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

38.8. Survival

38.8.1. Termination shall:

(a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 35; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

38.9. Entire Agreement

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

38.10. Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to

agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

38.11. No partnership

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

38.12. Third parties

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

38.13. Successors and assigns

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

38.14. Notices

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

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

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

(b) in the case of the Utility, be given by facsimile or e-mail and by letter delivered by hand at the address given below and marked to the attention of the person set out below with a copy delivered to the Utility

Representative or such other person as the Utility may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Utility, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

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

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

38.15. Language

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

38.16. Counterparts

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

ARTICLE 39
DEFINITIONS

39.1 Definitions

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

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

"**Act**" means the Electricity Act, 2003;

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

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

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

"**Allocated Coal Linkage**" shall mean coal linkage arranged by Utility in pursuance to allocation under Para B (iv) of SHAKTI Scheme of Govt. of India;

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

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

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

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

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

corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

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

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

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

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

"**Bank Rate**" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify ;

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

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

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

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

"**Bid Security**" means the security provided by the Supplier to the Utility along with the Bid, in a sum of Rs. **** crore (Rupees **** crore) in accordance with the Request for Proposal-DBFOO, 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;

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

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

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

"**Change in Law**" shall have the meaning as set forth in Article 34;

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

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

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

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

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

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

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

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

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

"**Contract Period**" means the period starting on and from the Appointed Date and ending on the earlier of the [_15th] anniversary of the Appointed Date and the date of termination of the Agreement;

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

"**Contractor**" means the person or persons, as the case may be, with whom the Supplier

has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Power Station or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

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

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

"**DSM**" means the CERC Deviation Settlement Mechanism or its amendments thereof

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

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

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

"**Deed of Hypothecation**" shall have the meaning as set forth in Clause 23.1.2;

"**Default Escrow Account**" shall have the meaning as set forth in Clause 23.1.1;

"**Default Escrow Agreement**" shall have the meaning as set forth in Clause 23.1.1;

"**Default Escrow Bank**" shall have the meaning as set forth in Clause 23.1.1;

"**Delivery Point**" means

(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 24.1.1;

"**Dispute**" shall have the meaning as set forth in Clause 36.1.1;

"**Disputed Amounts**" shall have the meaning as set forth in Clause 21.10.3;

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

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

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

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

"**Effective Date**" means the date of signing of Power Supply Agreement

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

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

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

"**Expected Monthly Payment**" shall have the meaning as set forth in Clause 23.1.1;

"**Financial Close**" means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"**Financial Default**" shall have the meaning as set forth in Schedule-P;

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

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

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

"**Fixed Charge**" shall have the meaning as set forth in Clause 21.1.2;

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

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

"**Fuel Charge**" shall have the meaning as set forth in Clause 22.2.1;

"**Fuel**" means the coal[50] which is fit for use in generation of electricity at the Power Station;

"**Fuel Shortage**" shall have the meaning as set forth in Clause 22.8.1;

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

"**GOI**" means the Government of India;

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

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

"**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the

case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Linkage Coal" shall mean the coal linkage provided by Coal India Limited or Singareni Collieries Company Limited at notified price for regulated sector of thermal power"

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

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

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

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

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

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

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

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

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

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

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

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

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

"**O&M**" means the operation and maintenance of the Power Station and includes all matters connected with or incidental to such operation and maintenance, and provision of generating and transmission services and facilities in accordance with the provisions of this Agreement;

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

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

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

"**Operation Period**" means the period commencing from COD and ending on the

Transfer Date;

"**Panel of Chartered Accountants**" shall have the meaning as set forth in Clause 27.2.1;

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

"**Payment Due Date**" shall have the meaning as set forth in Clause 21.10.3;

"**Performance Security**" shall have the meaning as set forth in Clause 9.1.1;

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

"**Political Event**" shall have the meaning as set forth in Clause 28.4;

"**Power Station**" means the generating station as described in Schedules A and B or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities and the allocation of Allocated Coalwhich is linked to or attached with the Project

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

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

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

(a) rights over the Site in the form of licence, Line ROW or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;

(c) rights over Allocated Coal;

(d) all rights of the Supplier under the Project Agreements;

(e) financial assets, such as receivables, security deposits etc.;

(f) insurance proceeds; and

(g) Applicable Permits and authorisations relating to or in respect of the Power Station;

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

"**Project Milestones**" means the project milestones as set forth in Schedule-E;

"**Provisional Certificate**" shall have the meaning as set forth in Clause 13.3.1;

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

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

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

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

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

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

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

"**Safety Requirements**" shall have the meaning as set forth in Clause 15.13;

"**Scheduled Completion Date**" shall have the meaning as set forth in Clause 11.2.1;

"**Scheduled Maintenance**" shall have the meaning as set forth in Clause 15.4.2;

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

"**Secured Obligations**" means:

(a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;

(b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and

(c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

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

"**Site**" shall have the meaning as set forth in Clause 10.1;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in

Schedule-C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Power Station submitted by the Supplier to, and expressly approved by, the Utility;

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

"**Station Heat Rate**" shall have the meaning as set forth in Clause 22.1.1;

"**Station Premises**" shall have the meaning as set forth in Clause 10.1;

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

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

"**Substitution Agreement**" shall have the meaning as set forth in Clause 33.3.1;

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

"**Supplier Default**" shall have the meaning as set forth in Clause 31.1.1;

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

"**Scheduled Supply Commencement Date**" shall be the date as specified by the Utility; from which the Supplier shall be required to commence supply of Contracted Capacity at Delivery Point on commercial basis in accordance with the provisions under this Agreement i.e. September 2023.

"Supplementary Invoice" means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement.

"**Suspension**" shall have the meaning as set forth in Clause 30.1;

"**Tariff**" shall have the meaning as set forth in Clause 21.1.1;

"**Taxes**" means any Indian taxes including excise duties, customs duties, goods & services tax, 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 andforming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement and the Supply Contract hereunder;

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

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

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

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

(a) the capital cost of the Contracted Capacity as set forth in the Financial Package; and

(b) the actual capital cost of the Contracted Capacity upon completion of Construction;

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

"**UI Regulations**" means the CERC Unscheduled Interchange Regulations 2009 or any substitute thereof;

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

"**Unscheduled Maintenance**" shall have the meaning as set forth in Clause 15.8;

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

"**Utility Default**" shall have the meaning as set forth in Clause 31.2.1;

"**Utility's Engineer**" shall have the meaning as set forth in Clause 19.1;

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

"**Vesting Certificate**" shall have the meaning as set forth in Clause 32.5; and

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

alternative index or indices as the Parties may by mutual consent determine.

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE UTILITY by:	THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and....., Company Secretary / Authorised Officer who has countersigned the same in token thereof[6]:
(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)	(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)
In the presence of:	
1.	2.

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

Schedules

SCHEDULE – A
(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

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

Annex - I
(Schedule-A)

Site for the Power Station

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

Part A

Power Station

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

Part B

Line ROW

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

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE POWER STATION

1 Development of the Power Station

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

2 Power Station

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

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

3 Dedicated Transmission System

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

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

Annex - I
(Schedule-B)

Description of Power Station

1 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 shall not exceed .....

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

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

2 Dedicated communication

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

3 Specifications and Standards

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

4 Ramp Rates

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

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

6 Description of the Power Station[£]

The Power Station shall be constructed as briefly described below:

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

A. **Boiler**

(i) Type
(ii) Number of steam generators with auxiliaries
(iii) Steaming capacity (BMCR) T/hr

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

(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	No.		Capacity(m^3/hr)
	(b) MDBFP	No.		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	No.	Capacity

D. **Generator**

(i)	Number	No
(ii)	Capacity	MVA
(iii)	Power factor	
(iv)	Cooling	
	(a) Rotor	
	(b) Stator	

E. **Specify the requirements of the Ministry of Environment and Forests]**

Annex - II
(Schedule-B)

Description of the Dedicated Transmission System

1. Dedicated Transmission System

The Dedicated Transmission System shall have a capacity to transmit .....MW.

The Dedicated Transmission System shall connect the Power Station to the Grid at the Point of Grid Connection located at ..... in district .....of the State where the Power Station is situated.

The Dedicated Transmission System shall be constructed as briefly described below:[£]

1. **Electrical System**

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

2. **Switchyard**

(i) KV switchyard

(a) Transformer Bays (No.)

(b) Line Bays (No.)

(c) Bus Section + Bus coupler (No.)

(d) ICT bay (No.)

(e) Transfer bay + Switchable shunt reactor (No.)

2 Specifications and Standards

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

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

SCHEDULE- C

(See Clause 2.1and 24.4)

SPECIFICATIONS AND STANDARDS

1 Power Station

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

2 Station Heat Rate

The Station Heat Rate, reckoned at the Point of Grid Connection at CTU network shall, after accounting for auxiliary consumption and transmission losses of dedicated transmission system, not exceed 2,450 (two thousand four hundred fifty) kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR). This SHR shall be at CTU interconnection point for all projects i.e. whether directly connected with CTU or connected at network other than CTU network.

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

3 Dedicated Transmission System

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

Annex - I
(Schedule-C)

Specifications and Standards for the Power Station

1 Specifications and Standards

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

2 Additional Specifications and Standards

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

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

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

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

(b) Up to .....% (..... per cent) of the Fuel having an ash content of ....% (...per cent).

Annex - II
(Schedule-C)

Specifications and Standards for the Dedicated Transmission System

1 Specifications and Standards

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

2 Grid Conditions at the Point of Grid Connection

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

3 Fault Levels:

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

Annex - III
(Schedule-C)

Station Heat Rate

1 Increase in Station Heat Rate

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

Station Heat Rate at different levels of Despatch

(in %)

S. No.	Despatch as proportion of Utility's entitlement in Contracted Capacity	Increase in SHR (for super-critical turbine)	Increase in SHR (for sub-critical turbine)
1	85-100	Nil	Nil
2	75-84.99	1.25	2.25
3	65-74.99	2	4
4	55-64.99	3	6

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

3 Optimisation of SHR

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

SCHEDULE –D
(See Clause 9.1)

PERFORMANCE SECURITY

The.... ,
Distribution Company
[State of...]

WHEREAS:

(A) ....(the "**Supplier**") and [the .... Distribution Company] represented by and having its principal offices at .... ("**Utility**") have entered into a Power Supply Agreement dated ... (the "**Agreement**") whereby the Utility has agreed to the Supplier undertaking the construction and operation of the Power Station with a generating capacity of ..... MW in the State of .... on design, build, finance, own and operate (the "**DBFOO**") basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [Rs. .... cr. (Rupees crore)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C) We, ... through our Branch at ....(the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them

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

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.

5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Security and such substitution shall be repeated until the Vesting Certificate has been issued, and provided the Supplier is not in breach of this Agreement. Upon request made by the Supplier for release of the Performance Security along with the particulars required hereunder, duly certified by a statutoryauditor of the Supplier, the Utility shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

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

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

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

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –E
(See Clause 11.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

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

2 Project Milestone-I

Project Milestone-I shall occur on the date falling on the 100th (one hundredth) day from the Appointed Date (the "**Project Milestone-I**").

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

3 Project Milestone-II

Project Milestone-II shall occur on the date falling on the 300th (three hundredth) day from the Appointed Date (the "**Project Milestone-II**").

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

4 Scheduled Completion Date

The Scheduled Completion Date for completion of the Contracted Capacity of the Power Station shall be the _____day from the Appointed Date.

5 Extension of period

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

*Exact date would be indicated at the time of submission of bids considering the Scheduled Supply Commencement Date

SCHEDULE–F

(See Clause 13.1.2)

TESTS

1 Schedule for Tests

The Supplier shall, no later than 60 (sixty) days prior to the likely completion of the Power Station, notify the Utility's Engineer and the Utility of its intent to subject the Power Station to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Utility's Engineer and to the Utility particulars of all works and equipment forming part of the Power Station.

The Supplier shall, in consultation with the Utility's Engineer, determine the date and time for each Test and notify the same to the Utility who may designate its representative to witness the Tests.

2 Tests

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

3 Power Station

Installed Capacity Test

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

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

SHR Test

The Utility's Engineer shall carry out, or cause to be carried out, Tests specified in the Performance Testing Code - 4 (PTC – 4) and Performance Test Code - 6 (PTC – 6) of ASME Standards for boilers and turbines respectively, and Tests specified in other applicable codes in respect of associated equipment, to determine the Station Heat Rate at 100% (hundred per cent) maximum continuous rating (MCR) of the Power Station, after accounting for auxiliary consumption and losses on the Dedicated Transmission System, if any, and the Station Heat Rate shall be lower of SHR so determined after including 2% (two per cent) increase to account for potential variations arising from temperature, humidity, quality of coal and other unforeseen factors and 2,450 kCal per kWh, and the number so arrived at shall be specified as the Station Heat Rate in the Provisional Certificate or Completion Certificate, as the case may be.

4 Dedicated Transmission System

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

Structural Test for transmission towers and Sub-station structures:

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

5 Common Tests

Visual and physical Test:

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

Tests for equipment:

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

Trial run of Contracted Capacity:

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

6 Agency for conducting Tests

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

7 Completion/Provisional Certificate

Upon successful completion of Tests, the Supplier shall issue the Completion

Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 13.

8 Tests during construction

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

SCHEDULE –G

(See Clauses 13.2 & 13.3)

COMPLETION CERTIFICATE

1. I/We, ……(Name and Designation of the Managing Director of the Supplier), acting as the Supplier, under and in accordance with the Power Supply Agreement dated …… (the "**Agreement**"), for construction and operation of the Power Station with a capacity of ..... MW on design, build, finance, own and operate (the "**DBFOO**") basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been successfully undertaken to determine compliance of the Power Station with the provisions of the Agreement, and I/We am/are satisfied that the Power Station can be safely and reliably placed in commercial service of the Utility and the Buyers thereof.

2. It is certified that the Power Station/Unit ..... has an Installed Capacity of ..... MW which includes the Contracted Capacity of..... MW.

3. It is further certified that the Station Heat Rate of the Power Station is .....

4. It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Power Station/Unit have been completed, and the Power Station /Unit ..... is ready for entry into commercial operation on this …day of …20…*

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

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

Note: This document has to be submitted by both Type 1 and Type 2 projects.
**This date shall be Scheduled Supply Commencement Date*

PROVISIONAL CERTIFICATE

1 I/We, (Name and Designation of the Managing director of the Supplier), acting as the Supplier, under and in accordance with the Power Supply Agreement dated .... (the "**Agreement**"), for construction and operation of the Power Station with a capacity of .... MW on design, build, finance, own and operate (the "**DBFOO**") basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been undertaken for the Power Station/Unit ..... of the Power Station to determine compliance thereof with the provisions of the Agreement.

2 Construction Works forming part of the Power Station/Unit ..... of the Power Station that were found to be incomplete and/or deficient have been specified in the list of Incomplete Works appended hereto, and we agree and undertake that we shall complete and/or rectify all such works in the time and manner set forth in the Agreement. I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Power Station/Unit of the Power Station, pending completion thereof.

3 It is certified that the Power Station/Unit of the Power Station has an Installed Capacity of ..... which includes the Contracted Capacity of .....MW.

4 It is further certified that the Station Heat Rate of the Power Station is .....

5. In view of the foregoing, I/We am/are satisfied that the Power Station/Unit of the Power Station can safely and reliably enter into commercial operation on this the .... day of ..... 20....

:

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

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

SCHEDULE – H
(See Clause 15.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

The Supplier shall, at all times, operate and maintain the Power Station in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Supplier shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-H (the "**Maintenance Requirements**").

The Supplier shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-H within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Utility shall be entitled to recover Damages as set forth in Clause 15.9 of the Agreement, without prejudice to the rights of the Utility under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

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

3 Emergency repairs/restoration

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

4 Periodic inspection by the Supplier

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

SCHEDULE –I

(See Clause 19.1)

APPOINTMENT OF UTILITY'S ENGINEER

1 Appointment of Utility's Engineer

The provisions of the Standard Request for proposal-DBFOO for selection of Technical Consultants, issued by the Ministry of Finance vide O. M. No. 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of a Utility's Engineer. Provided, however, that no entity which is owned or controlled by the Utility shall be eligible for appointment as the Utility's Engineer hereunder.

In the event of termination of a Utility's Engineer appointed in accordance with the provisions of Paragraph 1.1, the Utility shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-I.

2 Terms of Reference

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

3 Fee and expenses

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

4 Substitution of Utility's Engineer

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

5 Appointment of government entity as Utility's Engineer

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

Annex - I
(Schedule-I)

Terms of Reference for Utility's Engineer

1 Scope

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

This TOR shall apply to construction, operation and maintenance of the Power Station.

2 Definitions and interpretation

The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

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

3 Role and functions of the Utility's Engineer

The role and functions of the Utility's Engineer shall include the following:

(i) review of the Documents as set forth in Paragraph 4;

(ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;

(iii) observe Tests as set forth in Paragraph 4;

(iv) review, inspection and monitoring of O&M as set forth in Paragraph 5;

(v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;

(vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

(vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(viii) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and

(ix) undertaking all other duties and functions in accordance with the Agreement.

The Utility's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

The Utility's Engineer shall undertake a review of the Documents to be furnished by the Supplier for construction of the Power Station and send its comments/observations to the Utility and the Supplier within 15 (fifteen) days of receipt of such Documents. In particular, such comments shall specify the conformity or otherwise of such Documents with the Scope of the Project and Specifications and Standards. The Utility's Engineer shall review any modified Documents sent to it by the Supplier in pursuance thereof and furnish its comments within 7 (seven) days of receiving such Documents.

The Utility's Engineer shall review the monthly progress report furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 7 (seven) days of receipt of such report.

The Utility's Engineer shall inspect the Construction Works and equipment once every quarter, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Utility's Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Power Station or in the equipment. The Utility's Engineer shall send a copy of its Inspection Report to the Utility and the Supplier within 7 (seven) days of the inspection.

The Utility's Engineer may inspect the Power Station more than once in a quarter if any lapses, defects or deficiencies require such inspections.

The Utility's Engineer shall observe all the Tests specified in Schedule-F prior to issue of Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.5 and all matters incidental thereto, the Utility's Engineer shall act under and in accordance with the provisions of Article 13 and Schedule-F.

5 Operation Period

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

The Utility's Engineer shall review the annual Maintenance Programme furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 15 (fifteen) days of receipt of the Maintenance Programme.

The Utility's Engineer shall review the monthly status report furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 7 (seven) days of receipt of such report.

The Utility's Engineer shall inspect the Power Station, once every six months, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators and Maintenance Requirements. The Utility's Engineer shall send a copy of its O&M Inspection Report to the Utility and the Supplier within 7 (seven) days of the inspection.

The Utility's Engineer may inspect the Power Station more than once in a quarter, if any lapses, defects or deficiencies require such inspections.

The Utility's Engineer shall examine the request of the Supplier for closure of any section of the Power Station comprising Contracted Capacity for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in generation and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Supplier. Upon expiry of the permitted period of closure, the Utility's Engineer shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Supplier under Clause 15.9.

The Utility's Engineer shall monitor and review the curing of defects and deficiencies by the Supplier as set forth in Clause 16.3.

6 Termination

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

7 Determination of costs and time

The Utility's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

The Utility's Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Assistance in Dispute resolution

When called upon by either Party in the event of any Dispute, the Utility's Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the

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

9 Other duties and functions

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

10 Miscellaneous

The Utility's Engineer shall notify its programme of inspection to the Utility and to the Supplier, who may, in their discretion, depute their respective representatives to be present during the inspection.

A copy of all communications, comments, instructions, Documents sent by the Utility's Engineer to the Supplier pursuant to this TOR, and a copy of all the test results with comments of the Utility's Engineer thereon shall be furnished by the Utility's Engineer to the Utility forthwith.

The Utility's Engineer shall obtain, and the Supplier shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Supplier to the Utility's Engineer, whereupon the Utility's Engineer shall send 1 (one) of the copies to the Utility along with its comments thereon and retain the other copy to be kept in its safe custody.

Upon completion of its assignment hereunder, the Utility's Engineer shall duly classify and list all Documents, results of tests and other relevant records, and hand them over to the Utility or such other person as the Utility may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Utility.

Wherever no period has been specified for delivery of services by the Utility's Engineer, it shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE – J

(See Clause 23.1.1)

DEFAULT ESCROW AGREEMENT (Draft)

WOULD BE RELEASED BY GUVNL PRIOR TO BID DUE DATE

SCHEDULE – K

(See Clause 23.1.2)

DEED OF HYPOTHECATION (Draft)

WOULD BE RELEASED BY GUVNL PRIOR TO BID DUE DATE

SCHEDULE –L

(See Clause 23.2.1)

LETTER OF CREDIT

DATE: ....

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

FROM: (Specify the name and address of the bank issuing the Letter of Credit)[$] (the "**Bank**")

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

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. ... (Rupees)[$$] (the "**Monthly Payment**"), payable not more than once in a month upon notice received from the Supplier to this effect.

2. The Letter of Credit shall come into force with effect from ...., 20. and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the "**Expiry Date**"), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.

3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under a power supply agreement dated .....entered into between the Utility and the Supplier (the "**Power Supply Agreement**") for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

4. Any reference to the Power Supply Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Power Supply Agreement or agreement into the terms and conditions of this Letter of Credit.

5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

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

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

(i) a copy of the Monthly Invoice (as defined in the Power Supply Agreement) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and

(ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Power Supply Agreement) is in accordance with the Power Supply Agreement and that the amount due has remained unpaid and has not been disputed by the Utility.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated ...., entered into between the Bank, the Utility and the Supplier.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

14. This Letter of Credit is governed by the Laws of India.

15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

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

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

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

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

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

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

NOTES:

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

SCHEDULE –M

(See Clause 22.6)

REVENUE SHARE FROM SALE TO BUYER

Power Station: **Month:**

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

Total Revenue Share:

Remarks, if any:

SCHEDULE –N

(See Clause 27.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

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

2 Invitation for empanelment

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

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

3 Evaluation and selection

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

4 Mutually agreed panel

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

SCHEDULE –O

(See Clause 32.5)

VESTING CERTIFICATE

1 [The ..... Distribution Company] represented by and having its principal offices at .... (the "**Utility**") refers to the Power Supply Agreement dated .... (the "**Agreement**") entered into between the Utility and .... (the "**Supplier**") for supply of ..... MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

2 The Supplier has transferred to the Utility all the Allocated Coal in its possession and has also assigned and transferred to the Utility all rights and title in the Allocated Coal and the Fuel Supply Agreement.

3 The Utility hereby acknowledges compliance and fulfilment by the Supplier of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Utility shall be deemed to have acquired, and all title and interest of the Supplier in or about the Allocated Coal shall be deemed to have vested unto the Utility, free from any encumbrances, charges and liens whatsoever.

4 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Supplier to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Supplier in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf	For and on behalf of
Supplier by:	Utility by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
(Fax No.)	(Fax No.)
(e-mail address)	(e-mail address)
In the presence of:	
1.	2.

SCHEDULE –P

(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

1 The .... Distribution Company represented by and having its principal offices at ..... (hereinafter referred to as the "**Utility**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2 …. Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at …, (hereinafter referred to as the "**Supplier**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and

3 .... (insert name and particulars of Lenders' Representative) and having its registered office at , acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

(A) The Utility has entered into a power supply agreement dated …. with the Supplier (the "**Power Supply Agreement**") for supply of .... MW of electricity from the Power Station at .... in the State of , and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) Senior Lenders have requested the Utility to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Supply Contract to a Nominated Company in accordance with the provisions of this Agreement and the Power Supply Agreement.

(D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Utility has agreed and undertaken to transfer and assign the Supply Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Power Supply Agreement.

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

1 DEFINITIONS AND INTERPRETATION

Definitions

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

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

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

"**Lenders' Representative**" means the person referred to as the Lenders" Representative in the foregoing Recitals;

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

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

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

Interpretation

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

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

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

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

2 ASSIGNMENT

Assignment of rights and title

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

3 SUBSTITUTION OF THE SUPPLIER

Rights of substitution

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

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

Substitution upon occurrence of Financial Default

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

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

Substitution upon occurrence of Supplier Default

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

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

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

Procedure for substitution

The Utility and the Supplier hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Utility under Clause 3.3.2, as the case may be, the Lenders" Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Power Station including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Supplier towards the Utility under the Power Supply Agreement and towards the Senior Lenders under the Financing Agreements.

To be eligible for substitution in place of the Supplier, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Utility for shortlisting the Bidders for award of the Supply Contract; provided that the Lenders" Representative may represent to the Utility that all or any of such criteria may be waived in the interest of the Project, and if the Utility determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

Upon selection of a Nominated Company, the Lenders" Representative shall, request the Utility to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Power Station in accordance with the provisions of the Power Supply Agreement;

(b) endorse and transfer the Supply Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and

(c) enter into a Substitution Agreement with the Lenders" Representative and the Nominated Company on the same terms as are contained in this Agreement.

If the Utility has any objection to the transfer of Supply Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders" Representative, give a reasoned order after hearing the Lenders" Representative. If no such objection is raised by the Utility, the Nominated Company shall be deemed to have been accepted. The Utility shall thereupon transfer and endorse the Supply Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Utility,

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

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

Selection to be binding

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

4 PROJECT AGREEMENTS

Substitution of Nominated Company in Project Agreements

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

5 TERMINATION OF POWER SUPPLY AGREEMENT

Termination upon occurrence of Financial Default

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

Termination when no Nominated Company is selected

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

Realisation of Outstanding Debt

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

6 DURATION OF THE AGREEMENT

Duration of the Agreement

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

7 INDEMNITY

General indemnity

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

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

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

Notice and contest of claims

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

8 DISPUTE RESOLUTION

Dispute resolution

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

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

Adjudication by the Commission

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

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

9 MISCELLANEOUS PROVISIONS

Governing law and jurisdiction

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

Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Utility with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

Priority of agreements

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

Alteration of terms

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

Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

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

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

No third party beneficiaries

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

Survival

Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

Severability

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

Successors and assigns

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

Notices

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

Language

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

Authorised representatives

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

Original Document

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE UTILITY by:	THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by its Board of Directors at the meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:
(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)	(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the Lenders' Representative:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)
In the presence of:

1. 2.

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

Appendices

APPENDIX-I

LIST OF BID-SPECIFIC PROVISIONS[£]

A. Provisions with currency-based footnotes

Footnotes with "£" sign

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

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

Footnotes with "$" or "$$" signs

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

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

B. Provisions where curly brackets are used

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

C. Provisions with blank spaces

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

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

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

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

APPENDIX-II

Deleted