

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: _____. The parties to this Base Contract are the following:

 Duns Number: _____
 Contract Number: _____
 U.S. Federal Tax ID Number: _____

Notices:

Attn: _____
 Phone: _____ Fax: _____

Confirmations:

Attn: _____
 Phone: _____ Fax: _____

Invoices and Payments:

Attn: _____

Phone: _____ Fax: _____

Wire Transfer or ACH Numbers (if applicable):

BANK: _____
 ABA: _____
 ACCT: _____
 Other Details: _____

and NORTHWEST PIPELINE GP

Duns Number: 67977322
 Contract Number: _____
 U.S. Federal Tax ID Number: 870269236

Marketing Services
 Attn: Short Term Firm
 Phone: 801 584-6880 Fax: 801 584-7076

Marketing Services
 Attn: Short Term Firm
 Phone: 801 584-6880 Fax: 801 584-7076

Marketing Services
 Attn: Short Term Firm
 P.O. Box 58900 MS 3H3 Salt Lake City, Utah 84158-0900
 Phone: 801 584-6880 Fax: 801 584-7076

BANK: _____
 ABA: _____
 ACCT: _____
 Other Details: _____

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select only one box from each section:

Section 1.2 Transaction Procedure	X	Oral (default) Written	Section 7.2 Payment Date	X	25 th Day of Month following Month of delivery (default) _____ Day of Month following Month of delivery
Section 2.5 Confirm Deadline	X	2 Business Days after receipt (default) _1_ Business Days after receipt	Section 7.2 Method of Payment	X	Wire transfer (default) Automated Clearinghouse Credit (ACH) Check
Section 2.6 Confirming Party	X	Seller (default) Buyer	Section 7.7 Netting	X	Netting applies (default) Netting does not apply
Section 3.2 Performance Obligation	X	Cover Standard (default) Spot Price Standard	Section 10.3.1 Early Termination Damages	X	Early Termination Damages Apply (default) Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.			Section 10.3.2 Other Agreement Setoffs	X	Other Agreement Setoffs Apply (default) Other Agreement Setoffs Do Not Apply
Section 2.26 Spot Price Publication	X	Gas Daily Midpoint (default) _____	Section 14.5 Choice Of Law		UTAH
Section 6 Taxes	X	Buyer Pays At and After Delivery Point (default) Seller Pays Before and At Delivery Point	Section 14.10 Confidentiality	X	Confidentiality applies (default) Confidentiality does not apply
Special Provisions Number of sheets attached: One					
X Addendum(s): 1 Sheet adding Section 14.12					

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

Party Name

By _____
 Name: _____
 Title: _____

NORTHWEST PIPELINE GP

Party Name

By _____
 Name: _____
 Title: _____

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.16. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.17. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.20. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.23. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.24. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average

of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.27. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.28. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.29. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; or (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either “Early Termination Damages Apply” or “Early Termination Damages Do Not Apply” as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, “Contract Value” means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and “Market Value” means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to “evergreen provisions”) shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either “Other Agreement Setoffs Apply” or “Other Agreement Setoffs Do Not Apply” as indicated on the Base Contract.

Other Agreement Setoffs Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the

date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6 and Section 10, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

14.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

14.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

14.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

14.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

14.7. There is no third party beneficiary to this Contract.

14.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

14.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

14.11 The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

NORTHWEST PIPELINE GP	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: NORTHWEST PIPELINE GP P.O. Box 58900 M/S 3H3 Salt Lake City, Utah 84158-8900 Attn: Short Term Firm Phone: 801-584-6880 Fax: 801 584-7076 Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of Buyer or Seller </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of Buyer or Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of Buyer or Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions:				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

Special Provisions to Base Contract for Sale and Purchase of Natural Gas

Special provisions to Base Contract for Sale and Purchase of Natural Gas dated _____, between _____ and Northwest Pipeline GP.

The following shall be added to Section 14, Miscellaneous, as Paragraph 14.12

14.12 This base contract for sale and purchase of natural gas is a standard form of contract developed by NAESB. If any provision of Northwest Pipeline GP's FERC Gas Tariff is expressly contradictory to any provision of the base contract, Northwest Pipeline GP's FERC Gas Tariff shall control.



USAID
FROM THE AMERICAN PEOPLE



National
Association of
Regulatory
Utility
Commissioners

Gas-to-Power Workshop: Enhancing Private Investment in Natural Gas-Fired Electricity Generation Day 2

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

Recap and Takeaways from Day one of the Workshop

- My list..
 - We learned about the development and operations of the NERC
 - We learned about the West African Gas Pipeline Authority (WAGPA) and the West African Gas Pipeline Company (WAGPCo)
 - Regional Gas Market in Key World Markets
 - We began to discuss Investment Drivers in the Gas to Power Business
 - Exercise: Investor Role Playing
 - Began to look at the Integrated Natural Gas Value Chain
 - Process of collaboration and debate
- Your list...
- Certificates of Completion

Establishing a Framework for Sustained Private Sector Participation in Gas to Power

- When prices provide the reasonable ability for investors to profit over the life of the investment, capital will flow to the privately financed production of electricity from natural gas and to the necessary other aspects of gas supply.
- Profit is not a bad word.
- Profitability will necessitate appropriate compensation for commodity (energy) services and capacity in both electric and natural gas markets.
- Unless the Government of Nigeria is prepared to continue subsidies, end-user prices will need to make a transition.
- The transition to market-derived prices for electricity will likely create a difficult situation for regulators.

Factors related to specific project or company

- **Reliable Equity partners**
 - Blend of Local and international partners may be best.
 - Government ownership stake has advantageous and disadvantages.
- **Strong and balanced Capital Structure**
 - Balance of debt and equity
 - Capital structure may depend on company one project versus many portfolio affects risk
- **Exchange rate risk**
 - Mitigation tools
- **Predictable and secure cash flow,**
- **Fair competition with other producers..** sale of power to entity without own generation...

Factors related to specific project or company (2)

- **PPA and GPA**, which stipulates capacity and energy charges as well as dispatch, fuel metering, interconnection, insurance, force majeure, transfer, termination, change of law provisions, re-financing arrangements, dispute resolution, etc.
- **Additional inducements Depending on Situation**
 - sovereign guarantees, partial risk guarantees; political risk insurance and cash, namely escrow accounts, letters of credit and liquidity facilities--all of which should be made clear at the time of the tender, especially the sovereign guarantees which are cited as among the most effective instrument when coupled with a PRG.
- **Technical Ability**
- **Effective management and long-run view**
 - Community involvement.
 - Good corporate citizen

Ideal National Framework for IPP Development

Other arrangements are possible, but ideally a favorable investment climate has the following elements which can lead to the lowest cost supply:

- Well Functioning legal system
 - Enforcement of contracts
 - uphold rule of law
 - resolve disputes
- Robust Banking Infrastructure
 - Bridge financing
 - Introduction and assistance
 - LOC
- Minimal Currency Risk
- Ability to Move Capital In and Out of the Country
- Possibility of Raising Private or Public Equity Capital in Country

Ideal National Framework for IPP Development (2)

Other arrangements are possible, but ideally a favorable investment climate has the following elements which can lead to the lowest cost supply:

- Well Functioning legal system
 - Enforcement of contracts
 - uphold rule of law
 - resolve disputes
- Robust Banking Infrastructure
 - Bridge financing
 - Introduction and assistance
 - LOC
- Minimal Currency Risk
- Ability to Move Capital In and Out of the Country
- Possibility of Raising Private or Public Equity Capital in Country

Ideal National Framework for IPP Development (3)

- Effective Executive Government and agencies
 - economic stability, good repayment record and investment-grade rating
 - Consistent
 - Fair
- Regulatory/institutional/ownership framework
 - legislatively protected
 - Obtainability of licenses, permits, right of ways
 - Liens, enforcement of property rights
- Larger framework for power system development and planning and a commitment to making plans realistic and workable
- Transmission and natural gas infrastructure
- Skilled and available workforce and other suppliers
- Responsive pragmatic fixes to problems within legal/institutional system

Ideal National Framework for IPP Development (4)

- Enlightened and effective economic regulation
 - Transparent
 - Consistent
 - Predictable
 - Independent
 - Efficient
 - Cost-based tariffs
 - Depth of Staff Skills
 - Collaborative learning environment
 - Explicit rather than implicit subsidies
 - Due Process
 - Fair implementation of laws and rules
 - Professional
 - Protective of sensitive information through non-disclosure agreements
 - Enforceability of decisions
 - Multi-sector Agency offers cross efficiency and consistency

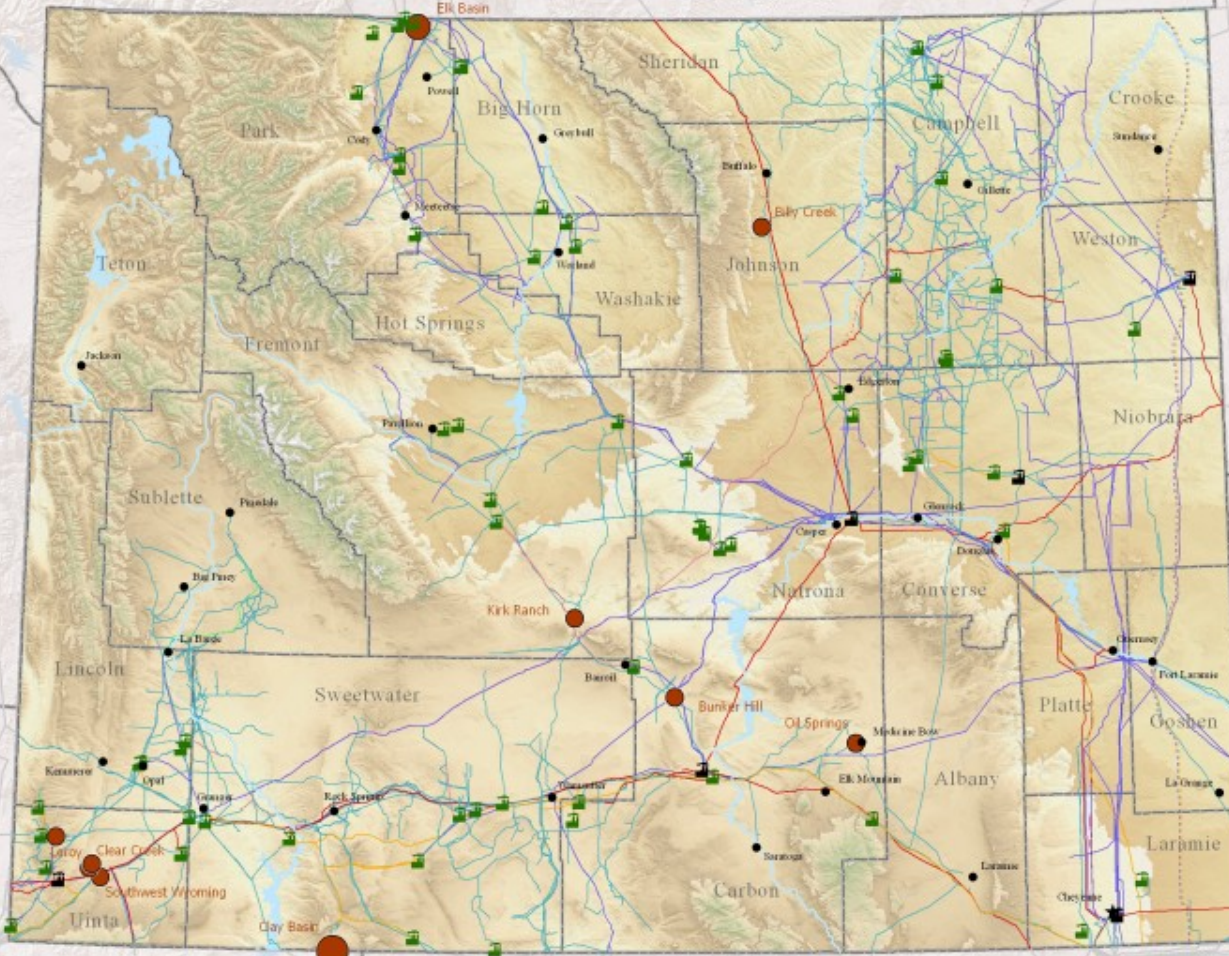
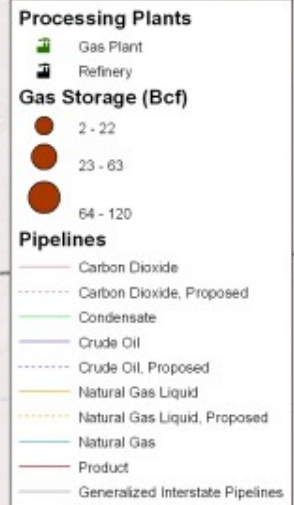
Multi Sector versus Single Sector Regulator

- Much debate about this issue.
- Single sector agency is argued to be focused and efficient.
 - Mexico, European Union (DG 13), Bahamas
- Multi-sector agency offers some advantages
 - Some skills apply regardless of the industry.
 - Cost of capital
 - Allocation of fixed versus variable costs
 - Rate design
 - More
 - US State Commissions (with exceptions).
 - Federal Energy Regulator Commission
- There are blended structures. Although in general their effectiveness has not lived up to promise.
 - Panama, Bolivia
- Telecom often Separate

Non-ideal Framework Raises Costs and Outcomes May be less Consistent and Successful

- Without the institutional framework, each project becomes individually developed.
- Extensive and difficult obstacles handled on a case-by-case basis with great involvement of the Executive.
- Companies will require extensive risk premium payments and costly risk mitigation techniques
- Lends to criticism regarding openness, legalities and more..
- Success rate generally low.
- This is the Enron/AES Barge Model.

Wyoming Pipeline Infrastructure



0 10 20 30 Miles

Crude Oil Pipeline System



Natural Gas Pipeline System



CO2, NGL and Product Pipeline System



This map was prepared by the Wyoming Pipeline Authority for informational purposes only. It is not intended to be used as a legal document. The Wyoming Pipeline Authority is not responsible for any errors or omissions in this map. The Wyoming Pipeline Authority is not responsible for any damages or losses resulting from the use of this map. The Wyoming Pipeline Authority is not responsible for any claims or liabilities arising from the use of this map. The Wyoming Pipeline Authority is not responsible for any claims or liabilities arising from the use of this map.

Revised: March 2014. Wyoming Pipeline Authority. All rights reserved.

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

**STANDARD
POWER PURCHASE AGREEMENT**

FOR

PROCUREMENT OF POWER

**FOR
[INSERT 'MEDIUM TERM' OR 'LONG TERM', as applicable]
BASIS**

Under Case – 1 Bidding Procedure

THROUGH

**TARIFF BASED COMPETITIVE BIDDING PROCESS
(As per Guidelines for Determination of Tariff by Bidding Process for Procurement of
Power by Distribution Licensees)**

**FOR MEETING THE [INSERT BASE LOAD / SEASONAL LOAD /
DIURNAL LOAD] REQUIREMENTS**

OF

[INSERT NAME OF THE PROCURER(S)]

Between

*[Insert Name of Distribution Licensee 1]
("Procurer 1")
and*

*[Insert Name of Distribution Licensee 2]
("Procurer 2")
and*

*.....
[Insert Name of Distribution Licensee n]
("Procurer n")
And*

*[Insert Name of the Seller]
("Seller")*

**Issued by
[Insert Name and Address of
Procurer / Authorized Representative]**

INDEX

SECTION	CONTENTS	PAGE NO.
1.	ARTICLE 1: DEFINITIONS AND INTERPRETATION	5
2	ARTICLE 2 : TERM OF AGREEMENT	18
3	ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/ PROCURER(S).....	20
4	ARTICLE 4 : COMMENCEMENT OF SUPPLY OF POWER.....	25
5	ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH	32
6	ARTICLE 6: METERING AND ENERGY ACCOUNTING.....	36
7	ARTICLE 7: BILLING AND PAYMENT	37
8	ARTICLE 8 : FORCE MAJEURE	48
9	ARTICLE 9: CHANGE IN LAW.....	53
10	ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION	55
11	ARTICLE 11: LIABILITY AND INDEMNIFICATION	60
12	ARTICLE 12: ASSIGNMENTS AND CHARGES	63
13	ARTICLE 13: GOVERNING LAW AND DISPUTE RESOLUTION.....	65
14	ARTICLE 14: MISCELLANEOUS PROVISIONS.....	67
15	SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)	75
16	SCHEDULE 2: CALCULATION OF 'X' DAYS.....	76
17	SCHEDULE 3: AVAILABILITY FACTORS.....	77
18	SCHEDULE 4: TARIFF	78
19	SCHEDULE 5: DETAILS OF INJECTION POINT / DELIVERY POINT	91
20	SCHEDULE 6: ESCALATION INDEX.....	92
21	SCHEDULE 7: REPRESENTATION AND WARRANTIES	93
22	SCHEDULE 8: QUOTED TARIFF	95
23	SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE	96
24	SCHEDULE 10: SELECTED BID	99
25	SCHEDULE 11: LIST OF BANKS.....	101
26	SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS	103
27	SCHEDULE 13: LIST OF ARTICLES	110

THIS AGREEMENT¹ IS MADE ON THE [] DAY OF [] 20[]

Between

- (1) [Insert Name of Distribution Licensee 1], (the "Procurer 1")
- (2) [Insert Name of Distribution Licensee 2], (the "Procurer 2")
- (3) [Insert Name of Distribution Licensee 3], (the "Procurer 3")

(n) [Insert Name of Distribution Licensee n], (the "Procurer n")

and

[Insert Name of the Seller], (the "Seller")²

[The "Procurer1", "Procurer 2" and "Procurer n" are (hereinafter collectively referred to as the "Procurers"³ and individually as a "Procurer"), and each of the "Procurer" and "the Seller" are individually referred as "Party" and collectively to as the "Parties")

Whereas:

- A. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the [Insert 'Procurer'/'Authorized Representative', as applicable], had initiated a competitive bidding process through issue of RFP for procurement of power for [Insert 'medium' or 'long', as applicable] under Case-1 bidding procedure for meetingthe Procurers' [Insert 'base load/ diurnal load/ seasonal load', as applicable] power requirements.
- B. Pursuant to the said bidding process, [Insert name of Selected Bidder] has been identified by the [Insert 'Procurer'/'Authorized Representative'], as the Seller for sale and supply of electricity in bulk to the Procurer(s), for the Contracted Capacity (as defined hereunder) of

¹ In case the Selected Bidder is supplying from more than one generating source, then separate PPAs need to be executed for each such generating source;

² In case of the Selected Bidder being a Bidding Consortium, the Seller would be the Project Company and sign the Power Purchase Agreement;

³ Procurer(s) can be one or more. The standard PPA provides options for single or multiple Procurers conducting the power procurement process. One appropriate option needs to be incorporated consistently in the PPA to be enclosed with the RFP in any Bid Process;

⁴ The Procurer has the option to authorise a body corporate to carry out the Bid Process for the selection of the Selected Bidder on their behalf. In case it exercises such an option the references to Authorized Representative may be retained, otherwise the references may be deleted and consequential changes in other portions of the document undertaken;

[To be filled in based on Selected Bid] MW, in accordance with the terms of this Agreement.

- C. The Seller has provided to the Procurer(s), Contract Performance Guarantee(s) as per Schedule 9 of this Agreement.
- D. [Insert incase the Selected Bidder is a Bidding Consortium] The Selected Bidder has incorporated the Project Company by the name, [Insert Name of the Project Company] to execute this Agreement and to undertake all the responsibilities and obligations of the Selected Bidder and shall be construed as Seller for the purposes of this Agreement.
- E. As envisaged in the RFP, the Parties have agreed to sign this Power Purchase Agreement setting out the terms and conditions for the sale of Contracted Capacity and supply of electricity by the Seller to the Procurer(s).
- F. The Procurer(s) agree, on the terms and subject to the conditions of this Agreement, to use the Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- G. The Procurer(s) have further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.
- H. All the other RFP Documents have been executed by the Procurer(s) and the Seller simultaneously with the signing of this Agreement.

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

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

The following terms when used in this Agreement shall have the respective meanings, as specified below:

“Act” or “Electricity Act 2003”	shall mean the Electricity Act 2003 or any amendments made to the same or any succeeding enactment thereof;
“Agreed Form”	shall mean, in relation to any document, the form of the said document most recently agreed to by the Parties and initialed by them for identification;
“Agreement” or "Power Purchase Agreement" or "PPA"	shall mean this document including its recitals and Schedules;
“Allocated Contracted Capacity”	shall mean the portion of the Contracted Capacity allocated to each of the Procurers as provided in Schedule 13 hereof, subject to adjustment as per Schedule 1 of this Agreement; [<i>Insert this definition only in case of multiple Procurers</i>]
"Appropriate Commission"	shall mean the Central Electricity Regulatory Commission referred to in sub-section (1), section 76 of the Electricity Act, 2003; or the State Regulatory Commission referred to in section 82 of the Electricity Act, 2003 or the Joint Commission referred to in section 83 of the Electricity Act, 2003, as the case maybe;
“Authorized Representative” [<i>Insert this definition if applicable</i>]	shall mean[Insert name of Authorized Representative], the body corporate authorized by the Procurer(s) to carry out the bidding process for the selection of the Selected Bidder on their behalf;
“Availability Based Tariff” or “ABT”	shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
“Availability Factor” or “Availability”	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Contracted Capacity);

“Available Capacity”	shall have the meaning ascribed thereto in ABT;
“Bid”	shall mean Non-Financial Bid and Financial Bid submitted by the Selected Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;
“Bid Deadline”	shall mean the last date and time for submission of the Bid in response to the RFP, as specified in the RFP;
“Bidding Guidelines” or “Competitive Bidding Guidelines”	shall mean the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, issued by Ministry of Power, Government of India under The Electricity Act, 2003 on January 19, 2005 under Section 63 of the Electricity Act and as amended from time to time;
“Bid Documents” or “Bidding Documents”	shall mean the RFP along with all its attachments and any amendments thereto or clarifications thereof.
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Business Day”	shall mean with respect to Seller and each Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State of [<i>Insert name of the State</i>] in which the concerned Procurer’s registered office is located;
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under Section 76 of the Electricity Act, 2003, or its successors;
“CTU Pooling Point”	shall mean the point(s) as mentioned in Format 5.10 of the RFP;
“Capacity Charge” or “Capacity Charges”	shall have meaning ascribed thereto in Schedule 4;
“Capital Structure Schedule”	shall mean sources of finance used to finance the capital cost of the power station as provided in the Financing Agreements;
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
“Change in Law”	shall have the meaning ascribed thereto in Article 9.1.1 of this Agreement;
“Consultation Period”	shall mean the period, commencing from the date of issue of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 10 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances
“Contract Performance Guarantee”	means the irrevocable unconditional bank guarantee, submitted by the Seller to the Procurer(s) in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement;
“Contract Year”	means the period beginning on the Effective Date (as defined

hereunder) and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31;

Provided that:

- (i) in the financial year in which Scheduled Delivery Date would occur, a Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall begin once again from the Scheduled Delivery Date and end on immediately succeeding March 31, and
- (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the term of this Agreement;

And further provided that for the purpose of payment, the Tariff will be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement;

"Contracted Capacity"	means the rated net capacity [<i>Insert capacity</i>] MW at the Injection Point supplied from the Power Station's Net Capacity;
"Control Centre" or "Nodal Agency"	means the RLDC or SLDC or such other load control centre designated by the Procurer(s) from time to time through which the Procurer(s) shall issue Dispatch Instructions to the Seller for supply of power;
"Debt Service"	means the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the Notice to Proceed);
"Declared Capacity"	means the net capacity of power supply at the relevant time (expressed in MW) at the Injection Point as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;
"Delivery Point"	in relation to the Procurer(s), shall mean the STU Pooling Point(s) as specified in Schedule 1 of this Agreement;
"Direct Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 8.3;
"Dispute"	means any dispute or difference of any kind between a Procurer and the Seller or between the Procurers (jointly) and the Seller, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 13;
"Dispatch Instruction"	means any instruction issued by the Procurer(s) through the concerned SLDC / RLDC to the Seller, in accordance with

	applicable Grid Code and this Agreement;
"Due Date"	means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer(s) (or, if such day is not a Business Day, the immediately succeeding Business Day) by which date such bill is payable by such Procurer(s);
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1;
"Electricity Laws"	means the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Charges"	shall have the meaning ascribed to this term under Schedule 4;
"Expiry Date"	Shall mean[Insert date] day of [Insert month] of [Insert last Contract Year] year;
"Final Test Certificate"	means a certificate of the Independent Engineer certifying the result of a Performance Test in accordance with Article 5.5 of this Agreement;
"Force Majeure"	shall have the meaning ascribed thereto in Article 8.3 of this Agreement;
"Forced Outage"	shall have the meaning ascribed thereto in Grid Code;
"Fuel"	means the primary fuel used to generate electricity namely [Insert name of the fuel as applicable, namely domestic coal, imported coal, domestic (pipeline) gas, or imported gas (RLNG)];
"Fuel Supply Agreement(s)" [<i>this definition shall be deleted for Sellers who have hydro projects or captive coal mine based projects as generation source</i>]	<p>means the agreement(s) entered into between the Seller and the fuel supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station.</p> <p>In case the transportation of the Fuel is not the responsibility of the fuel supplier, the term shall also include the separate agreement between the Seller and the fuel transporter for the transportation of Fuel in addition to the agreement between the Seller and the fuel supplier for the supply of the Fuel;</p>
"Grid Code" / "IEGC" or "State Grid Code"	means the Grid Code specified by the Central Commission under Clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Grid System"	means the Interconnection and Transmission Facilities and any other transmission or distribution facilities through which the Procurer(s) supply electricity to their customers or the transmission company transmits electricity to the Procurer(s);

“Indirect Non-Natural Force Majeure Event”	shall have the meaning ascribed thereto in Article 8.3;
“Indian Governmental Instrumentality”	means the Government of India, Governments of State of [Insert the name(s) of the State(s) in India, where the Procurer(s), the Seller and the Seller’s power station are located] or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above such State Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer(s) but includes the Appropriate Commission(s);
“Independent Engineer”	means an independent consulting engineering firm or group appointed [Insert “jointly” in case of multiple Procurers] by the Procurer and the Seller, to carry out the functions in accordance with Article 5.5 of this Agreement;
"Injection Point"	shall mean one of the CTU or STU Pooling Point(s) from the list of points mentioned in Format 5.10 of the RFP and specified by the Selected Bidder in its Bid for each Block;
"Interconnection Facilities"	means the facilities on the Procurers’ side of the Delivery Point for receiving and metering electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power.
“Invoice” or “Bill”	means either a Monthly Invoice, a Supplementary Invoice or a Procurers’ Invoice;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 7.3.5;
"Law"	means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission ;
“Lead Member”	shall mean a company who commits at least 51% equity stake in the Project Company and so designated by other Member(s) in Project Company; <i>[Insert this definition only in case the Seller is a Project Company]</i>

"Lead Procurer"	shall have the meaning ascribed thereto in Article 14.1 [Insert this definition only in case of procurement by more than one Procurer];
"Lender(s)"	means the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the power station to provide the Seller with the <i>senior</i> debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned: Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurers under this Agreement in any manner and shall also does not lead to an increase in the liability of any of the Procurers;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 7.4.1;
"Member"	shall mean each company in the Project Company; [<i>Insert this definition only in case the Seller is a Project Company</i>]
"Meters" or "Metering System"	means meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Maintenance Outage"	shall have the meaning as ascribed to this term as per the provisions of the Grid Code.
"Minimum Offtake Guarantee" (Applicable in case of imported coal / imported LNG based projects)	means guaranteed offtake of [Insert per cent (... %)] of the total Contracted Capacity for the Procurer or all Procurers taken together, as the case may be, during a Contract Year ⁵ .
"Month"	means a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	means a monthly invoice comprising Capacity Charges (applicable after Scheduled Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;
"Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 8.3.
"Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 8.3.

⁵ To be decided by the Procurer but needs to be aligned with the prevalent CERC norms

"Normative Availability"	means % (.....%) <i>[Insert both in terms of figures and numbers respectively, in line with Clause 4.4 of the Bidding Guidelines]</i> Availability of the Contracted Capacity at the Injection Point on Contract Year basis ⁶ .
"Notice to Proceed" or "NTP" [to be inserted only in case of long term procurement]	shall mean the date on which the Seller shall fulfill the conditions as contained in Article 3.1.1 of this Agreement in accordance with the provisions of this Agreement;
"Operating Period";	means the period from the Scheduled Delivery Date, until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Operating Procedures"	shall have the meaning ascribed thereto in Grid Code;
"Parent Company" or "Parent"	shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member in a Project Company, as the case may be;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Performance Test"	means the test carried out in accordance with Article 5.5 of this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 10 of this Agreement;
"Power Station"	means the <i>[Insert name of generation source specified by the Seller in its Bid]</i> power generation facility of installed capacity of [] MW, located in <i>[Insert name of the District and State]</i> ; This includes all Units and components such as associated fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke <i>[if applicable]</i> ; bay/s for transmission system in the switchyard, dam, intake, water conductor system <i>[if applicable]</i> , and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility;
"Power Station's Net Capacity"	shall mean the [] MW rated net capacity measured at the Power Station's interconnection facilities with the STU/ CTU transmission system;
"Project Company" <i>[Insert in case the Selected Bidder is a</i>	shall mean the company incorporated by the Selected Bidder (to perform the duties of the Seller) to sign this Agreement and supply power to the Procurer(s) as per the terms of this Agreement;

⁶ This shall be aligned to the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the Bid process . This will be Normative capacity index in case of hydro plants.

Bidding Consortium]

"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the power station; b) the requirements of Indian Law; and the physical conditions at the site;
"Quoted Capacity Charges"	shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges (as applicable);
"Quoted Energy Charges"	shall mean the sum total of Quoted Non Escalable Energy Charges and Quoted Escalable Energy Charge (as applicable);
"Quoted Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Escalable Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Escalable Fuel Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Escalable Fuel Handling Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Escalable Transportation Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Non Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Non Escalable Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Non Escalable Fuel Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Non Escalable Fuel Handling Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);
"Quoted Non Escalable Transportation Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 (as applicable);

“Quoted Tariff“	shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;
"RPC"	means the relevant Regional Power Committee established by the Government of India for a specific Region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that Region;
“RBI”	means Reserve Bank of India;
"Regional Energy Accounts" or "REA"	means as defined in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Revised Scheduled Delivery Date”	shall have the meaning ascribed thereto in Article 4.2.3;
"RLDC"	means the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region in which the Seller is located;
“RFP”	shall mean Request For Proposal document dated [Insert date of the RFP document] issued by [Insert name of Procurer/ Authorized Representative] and shall include any modifications, amendments or alterations thereto and clarifications issued regarding the same;
RFP Documents	shall mean the following documents to be entered into in respect of the procurement, by the parties to the respective agreements: <ul style="list-style-type: none">a) PPA;b) Default Escrow Agreement; andc) Agreement to Hypothecate cum Deed of Hypothecationd) any other agreement(s) designated as such, from time to time by the [Insert 'Procurer' / 'Authorized Representative', as applicable];
"Rupees" or "Rs."	means the lawful currency of India;
“SBAR”	means the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
“STU Pooling Point(s)”	shall mean the point(s) as mentioned in Format 5.10 of the RFP;
“Scheduled Delivery Date”	shall have the meaning ascribed thereto in Article 4.2;
“Selected Bid”	means the Bid of the Selected Bidder as accepted by the Procurer / Authorized Representative, copy of which is attached herewith and

	marked as Schedule 10;
"Selected Bidder"	shall mean the Bidder selected pursuant to the RFP to supply power to the Procurer(s) as per the terms of PPA and other RFP Documents;
"SERC"	means the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under sub-section (1) of Section 83 of the Electricity Act 2003;
"Scheduled Energy" or "Scheduled Generation"	means scheduled generation as defined in the ABT;
"Scheduled Outage"	shall have the meaning ascribed to this term as per the provisions of the Grid Code;
"Settlement Period"	means the time block for issue of daily generation and drawl schedules as provided in ABT;
"SLDC"	means the centre established under Sub-section (1) of Section 86 of the Electricity Act 2003, relevant for the State(s) where the generation source, the Injection Point and the Delivery Point are located;
"SLDC Charges"	mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer(s);
"State Transmission Utility" or "STU"	shall mean the Board or the Government Company specified as such by the State Government under Sub-section (1) of Section 39 of the Act;
"Supplementary Bill"	means a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 7;
"Tariff Payment"	means the payments under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;
"Tariff"	means the tariff as computed in accordance with Schedule 4;
"Termination Notice"	shall mean the notice given for termination of this Agreement in accordance with relevant Articles of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.2;
"Tested Capacity"	in relation to the Power Station means the results of the most recent Performance Test carried out in relation to the Power Station in accordance with Article 5.5 of this Agreement;
"Transmission Service Agreement"	means the agreement(s) executed between [Insert as applicable – " <i>the Seller and the CTU / STU</i> " / " <i>the Procurer(s) and the CTU / STU</i> " for evacuation of power up to the Contracted Capacity from the Injection Point to the Delivery Point;
"Ultimate Parent"	shall mean a company which owns at least twenty six percent (26%)

Company”	equity in the Seller or Member of a Project Company, (as the case may be) and such Seller or Member of a Project Company, (as the case may be) shall be under the direct control or indirectly under the common control of such company;
“Unit”	Means one steam generator, steam turbine, generator or one hydro generator and associated auxiliaries of the power station;
“US \$ “ or “USD” or “Dollar” [for imported fuel only]	means the lawful currency of United States of America;
“Unscheduled Interchange” or “UI”	shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time;
"Week"	means a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wheeling Charges" or “Transmission Charges”	mean the charges[Insert as applicable - <i>to be paid by the Seller and reimbursed by the Procurer(s) / paid by the Procurer(s)</i>] as transmission tariff of intervening CTU networks for the transfer of power from the Injection Point upto the Delivery Point, as approved by Appropriate Commission (excluding the charges for the STU network or STU system operator or SLDC Charges, if any). .

1.2 Interpretation

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

- 1.2.1 “Agreement” shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule” and a “paragraph / clause" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph/clause respectively of this Agreement.
- 1.2.3 An “Affiliate” of any Party shall mean a company that either directly or indirectly controls or is controlled by or is under common control of the same person which controls the concerned party; and control means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company.
- 1.2.4 A “crore” means a reference to ten million (10,000,000) and a “lakh” means a reference to one tenth of a million (1,00,000);
- 1.2.5 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.

- 1.2.6 "holding company" of a company or corporation shall be construed as a reference to any company or corporation of which the other company or corporation is a subsidiary;
- 1.2.7 "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;
- 1.2.8 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.
- 1.2.9 "Rupee", "Rupees" and "Rs." shall denote lawful currency of India;
- 1.2.10 "subsidiary" of a company or corporation (the holding company) shall be construed as a reference to any company or corporation:
- a) which is controlled, directly or indirectly, by the holding company, or
 - b) more than half of the issued share capital of which is beneficially owned, directly or indirectly, by the holding company, or
 - c) which is a subsidiary of another subsidiary of the holding company,
 - d) for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;
- 1.2.11 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors.
- 1.2.12 Words importing the singular shall include the plural and vice versa.
- 1.2.13 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 1.2.14 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.15 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.16 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the

parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part.

- 1.2.17 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.18 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days.
- 1.2.19 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement.
- 1.2.20 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representation made by the Selected Bidder / Seller in Article 21.2.1(vi) of Schedule 7 hereof.

2 ARTICLE 2 : TERM OF AGREEMENT

2.1 Effective Date

- 2.1.1 The Agreement shall come into effect from the date of execution of this Agreement by the Parties and delivered by last of all the Parties.

2.2 Term of Agreement

- 2.2.1 This Agreement shall come into effect from the Effective Date. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 1.1, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least (.....) days [*Insert the number of days – number of days in case of medium term procurement to be ninety (90) days and in case of long term procurement, to be one hundred and eighty (180) days prior to the Expiry Date*], subject to approval of the [*Insert name of the SERC(s) of the State(s) where the Procurer(s) are located, as applicable*].

2.3 Early Termination

- 2.3.1 This Agreement shall terminate before the Expiry Date:
- i. if either [Insert as applicable - *the Procurer* (in case of a single Procurer) / *all the Procurers (jointly)* (in case of joint procurement by more than one Procurer)] or the Seller exercise a right to terminate, pursuant to Article 4.7.3, Article 10.4.5 or Schedule 7 of this Agreement or any other provision of this Agreement; or
 - ii. in such other circumstances as the Seller and [Insert as applicable - *the Procurer* (in case of a single Procurer) / *all the Procurers (jointly)* (in case of joint procurement by more than one Procurer)] may agree, in writing.

2.4 Survival

- 2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it effect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 8 (Force Majeure), Article 10 (Events of Default and Termination), Article 11 (Liability and Indemnification), Article 13 (Governing Law and Dispute Resolution) including Article 13.3.2, Article 14 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement

which expressly or by their nature survive the term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/ PROCURER(S)

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 **[The following Article to be inserted only in case of long term procurement]** The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within (.....) months [Insert number of months, as applicable] from the Effective Date, unless such completion is affected by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurer(s):

- a) The Seller shall have executed Fuel Supply Agreement and provided a copy of the same to the Procurer(s) [*this condition shall be removed in case the generation source, chosen by the Seller is a captive coal-mine based thermal plant or a hydro-electric plant*].
- b) [*Insert where the Seller is responsible to arrange for obtaining necessary transmission linkage*] The Seller shall have obtained necessary permission for long term Open Access for the transmission system from the Injection Point up to the Delivery Point;
- c) [*Insert where the Seller is responsible to arrange for obtaining necessary transmission linkage*] The Seller shall have executed the Transmission Service Agreement with the CTU / STU [*select whichever is applicable*] for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer(s);
- d) The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the power station and shall have given to such contractor an irrevocable NTP;
- e) The Seller shall have sent a written notice to all the Procurer(s) indicating the Contracted Capacity and total installed capacity for each unit and for the power station as a whole expressed in MW in the provisio at (d) above.
- f) The Seller shall have achieved Financial Closure;
- g) The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this PPA and all other RFP Documents

OR.

[The following Article to be inserted only in case of medium term procurement]
The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within (.....) months [Insert number of months, as applicable] from the Effective Date, unless such completion is affected by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurer(s):

..... [Insert name of Procurer(s)]

- a. The Seller shall have executed Fuel Supply Agreement and provided a copy of the same to the Procurer(s) [*this condition shall be removed in case the generation source, chosen by the Seller is a captive coal-mine based thermal plant or a hydro-electric plant*].
- b. [*Insert where the Seller is responsible to arrange for obtaining necessary transmission linkage*] The Seller shall have obtained necessary permission for medium term Open Access for the transmission system from the Injection Point up to the Delivery Point;
- c. [*Insert where the Seller is responsible to arrange for obtaining necessary transmission linkage*] The Seller shall have executed the Transmission Service Agreement with the CTU / STU [*select whichever is applicable*] for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer(s);
- d. The Seller shall have sent a written notice to all the Procurer(s) indicating the Contracted Capacity and total installed capacity for each unit and for the power station as a whole expressed in MW.

3.2 Satisfaction of conditions subsequent by the Procurer(s)

- 3.2.1 The Procurer(s) agree(s) and undertake(s) to duly perform and complete the following activities at the Procurer's own cost and risk within (.....) months [Insert number of months, as applicable] from the Effective Date, unless such completion is affected by any Force Majeure event or if any of the activities is specifically waived in writing by the Seller:
- a) [*Insert where the Procurer(s) is responsible to arrange for obtaining necessary transmission linkage*] The Procurer(s) shall have obtained necessary permission for medium term Open Access for the transmission system from the Injection Point up to the Delivery Point;
 - b) [*Insert where the Procurer(s) is responsible to arrange for obtaining necessary transmission linkage*] *The Procurer(s) shall have executed the Transmission Service Agreement with the CTU / STU [select whichever is applicable] for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Seller;*
 - c) The Procurer(s) shall have obtained the order of the [Insert name(s) of the Commission(s) in the State(s) in which the Procurer(s) are located] for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller;
 - d) The Procurer(s) shall have provided an irrevocable letter to the Lenders, duly accepting and acknowledging the rights provided to the Lenders under the terms of this PPA and all other RFP Documents

3.3 [To be inserted only in case of long term procurement] Joint responsibilities of the Procurer(s) and the Seller

- 3.3.1 The [Insert as applicable – “Procurer” / “Procurers (jointly)”] and the Seller shall have jointly agreed on the specific Scheduled Delivery Date(s) with Contracted Capacity to be commenced from such date(s) in terms of Article 1.1 of this Agreement.

3.4 Consequences of non-fulfillment of conditions subsequent

- 3.4.1 If any of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, even [Insert as applicable – “three (3) months’ in case of long term procurement/ “one (1) month” in case of medium term] after the time specified under Article 3.1, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurers additional Contract Performance Guarantee from any of the banks in the list of banks provided in Schedule 11 of this Agreement, of Rs. [Insert Amount not less than that derived on the basis of Rs. 1.50 lakhs per MW of Contracted Capacity], which has been provided [Insert as applicable: “to the Procurer” / “separately to each of the Procurers separately to each of the Procurers for the amount calculated pro-rata (and rounded off to [insert amount]) with the principle that amounts below Rupees [insert amount] shall be rounded down and amounts of Rupees [insert amount] and above shall be rounded up) in the ratio of Allocated Contracted Capacities”], within two (2) business days of expiry of every such week. Such additional Contract Performance Guarantee shall also be valid till the end of the Term of Agreement, and the Procurer(s) shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such increased Contract Performance Guarantee, in accordance with the provisions of this Agreement.

- 3.4.2 Subject to Article 3.4.3, if:

- (i) fulfillment of any of the conditions specified in Article 3.1 is delayed beyond the period of [“three (3) months’ in case the Scheduled Delivery Date is more than 5 years from Effective Date/ ‘one (1) month’ in case of medium term procurement] after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurer(s) in accordance with Article 3.4.1 hereof; or
- (ii) the Seller furnishes additional Contract Performance Guarantee to the Procurers in accordance with Article 3.4.1 hereof but fails to fulfill the conditions specified in Article 3.1 for a period of [“six (6) months’ in case the Scheduled Delivery Date is more than 5 years from Effective Date/ ‘two (2) months’ otherwise] beyond the period specified in Article 3.1 above,

..... [Insert as applicable: “the Procurer” / “all the Procurers (jointly)”] shall have the right to terminate this Agreement by giving a Termination Notice to the Seller in writing of at least seven (7) days.

If the Procurer(s) or the Seller elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer(s) an amount of Rupees *[Insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity]* only as liquidated damages.

The Procurers shall be entitled to recover this amount of liquidated damages by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer(s) within ten (10) days from the date of termination of the Agreement.

It is clarified for removal of doubt that this Article shall survive the termination of this Agreement.

- 3.4.3 In case of inability of the Seller to fulfill the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of Months *[Insert 'ten (10) months' in case of long term procurement / 'two (2) months' in case of medium term procurement]*, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the *[Insert "Procurer" / "Procurers (jointly)", as applicable]* or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party.
- 3.4.4 In case of inability of the Procurer(s) to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Seller as mentioned in Article 3.2 would be extended on a 'day for day' basis, equal to the additional time which may be required by the Procurer(s) to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of six (6) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer(s). If the Seller elects to terminate this Agreement, the Procurer(s) shall, within a period of thirty (30) days, the Procurer(s) shall release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurer(s) shall pay to the Seller as liquidated damages, a sum equivalent to five percent (5%) of the value of the Contract Performance Guarantee.
- 3.4.5 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3 and 3.4.4, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date.

3.5 [To be inserted only in case of long term procurement] Reduction in the amount of Contract Performance Guarantee

- 3.5.1 On successful supply of power as per the terms of this Agreement for a duration of [Insert half the number of total number of Contract Years] years from the Scheduled Delivery Date, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees [Insert amount calculated at Rs. 15 lakhs per MW of the total Contracted Capacity]. The Seller shall thereafter provide such reduced Contract Performance Guarantee to [Insert "the Procurer" or "to each of the Procurers in the ratio of their then respective Allocated Contracted Capacities and rounded off to the nearest Rupees [Insert amount] with the principle that amounts below Rupees [Insert amount] shall be rounded down and amounts of Rupees [Insert amount] and above shall be rounded up", as applicable], in lieu of the Contract Performance Guarantee, of an amount of Rupees [Insert amount calculated at Rs. 30 lakhs per MW of the total Contracted Capacity].

3.6 Renewal of Performance Guarantee

- 3.6.1 The Seller shall ensure the extension of the validity period of the Contract Performance Guarantee to the Procurer(s) before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.
- 3.6.2 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer(s) shall have the right to encash the then existing Contract Performance Guarantee.

4 ARTICLE 4 : COMMENCEMENT OF SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurer(s)

- 4.1.1 The Seller is responsible, at its own cost and risk, the commencement of supply of power, up to the Contracted Capacity, to the Procurer(s) no later than the Scheduled Delivery Date.

4.2 Scheduled Delivery Date

- 4.2.1 The Scheduled Delivery Date is *[insert the date specified by the Procurer / Authorized Representative in the RFP]*, when the Seller shall cause commencement of the entire Contracted Capacity to the Procurer(s) at the Delivery Point in accordance with the provisions of this Agreement and the Law, failing which the Procurer(s) shall have the right to terminate the Agreement in accordance with the provisions Article 10.

- 4.2.2 However, the Seller and the Procurer(s) can mutually agree, not later than *[Insert number of months]* months from the Effective Date, for commencement of supply of power in a phased manner, on a date earlier than the Scheduled Delivery Date (not being earlier than 'two (2) years' in case of long term power procurement, and three (3) months in case of medium term power procurement) depending upon the Unit size and configuration of the Power Station and the period required for commissioning the relevant units, subject to a maximum gap of a period of (.....) months *[Procurer / Authorized Representative to insert the number of months depending upon the size and configuration of the Power Station]* between commissioning of each Unit.

- 4.2.3 The Scheduled Delivery Date(s) as mutually agreed in writing between the Seller and the Procurer(s) pursuant to Article 4.2.2 shall be considered the Revised Scheduled Delivery Date(s) for the purpose of this Agreement.

4.3 Seller's Obligations

- 4.3.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for the following activities:
- a) The Seller shall provide on a timely basis, all relevant information to the Procurer/s which may be required for receiving power at the Delivery Point; and
 - b) *[Insert in case the Seller is responsible for obtaining open access]* The Seller shall be responsible for availability of the transmission capacity from the Injection Point to the Delivery Point;
 - c) The Seller shall fulfill all obligations undertaken by him under this Agreement.

4.4 Procurer(s)' Obligations

- 4.4.1 Subject to the terms and conditions of this Agreement, the Procurer(s) shall undertake to be responsible, at the Procurer's own cost and risk, for the following activities:

- a) Ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date;
- b) The Procurer shall be responsible for payment of the Transmission Charges and applicable RLDC and SLDC charges;
- c) [Insert in case the Procurer is responsible for obtaining open access] The Procurer shall be responsible for availability of the transmission capacity from the Injection Point to the Delivery Point;
- d) The Procurer shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity; and
- e) The Procurer shall fulfill all obligations undertaken by them under this Agreement.

4.5 *Purchase and sale of Available Capacity and Scheduled Energy*

- 4.5.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurers, and the Procurers undertake to pay Tariff for all of the Available Capacity up to the Contracted Capacity and Scheduled Energy, throughout the term of this Agreement.
- 4.5.2 Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity up to the Contracted Capacity to each Procurer in proportion of each Procurer's then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.

4.6 *Right to Contracted Capacity and Scheduled Energy*

- 4.6.1 Subject to other provisions of this Agreement, the entire Contracted Capacity shall at all times be for the exclusive benefit of the Procurer(s) and the Procurer(s) shall have the exclusive right to purchase the entire Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy.
- 4.6.2 Notwithstanding Article 4.6.1, the Seller shall be permitted to sell power, being a part of the Available Capacity to third parties if
 - a) there is a part of Available Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer'); and
 - b) [Insert further in case of multiple procurers "such part has first been offered, at the same Tariff, to the other Procurer(s) (by the RLDC and/or the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part."]
- 4.6.3 [*Insert in case of multiple Procurers*] If a Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to such Procurer's Allocated Contracted Capacity, and the provisions of Article 4.6.2 have been complied with, the

Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the Capacity Charges from the Concerned Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Concerned Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the relevant Procurer whose capacity is being sold pursuant to this Article. If more than one Procurers do not avail fully of their Allocated Contracted Capacity, provisions of this Article shall be applicable to them mutatis mutandis and in such case, fifty percent (50%) of the excess over Energy Charges recovered by the Seller from sale to third party shall be retained by the Seller and the balance fifty percent (50%) shall be provided by the Seller to the Concerned Procurer(s) in the ratio of their Available Capacity not dispatched by such Concerned Procurer(s) and sold by the Seller to third parties. During this period, the Seller will also continue to receive the Capacity Charges from such Procurers.

- 4.6.4 ***[Insert in case of multiple Procurers]*** Upon the Procurers or any Procurer who has not availed of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part of the Available Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Concerned Procurer(s) from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurer(s) or the time for commencement of supply specified in such notice.
- 4.6.5 ***[Insert in case of a single Procurer]*** If the Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to the Contracted Capacity, and the provisions of Article 4.6.2 have been complied with, the Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the Capacity Charges from the Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Procurer. During this period, the Seller will continue to receive the Capacity Charges from the Procurer.
- 4.6.6 ***[Insert in case of a single Procurer]*** Upon the Procurers intimating to the Seller of its intention and willingness to avail of the part of the Available Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and said third party, commence supply of such capacity to the Procurer from the later of two (2) hours from receipt of notice in this regard from the Procurer or the time for commencement of supply specified in such notice.
- 4.6.7 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.7 Extensions of Time

4.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Scheduled Delivery Date, due to:

- a) any Procurer Event of Default; or
- b) Force Majeure Events affecting the Procurer, or
- c) Force Majeure Events affecting the Seller,

the Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.3, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer(s), till such time such default is rectified.

4.7.2 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 13.

4.7.3 In case of extension occurring due to reasons specified in Article 4.7.1(a), the original Scheduled Delivery Date of the Seller would not be extended by more than [*twelve (12) months' in case of long term procurement/ two (2) months' in case of medium term procurement*] or the date on which the Seller elects to terminate this Agreement, whichever is later.

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

4.8 Liquidated Damages for delay in commencement of supply of power to Procurer(s)

4.8.1 If the Seller is unable to commence supply of power to the Procurer(s) by the Scheduled Delivery Date, other than for the reasons specified in Article 4.7.1, the Seller shall pay to Procurer [insert further as applicable "each Procurer"] Liquidated Damages, proportionate to their then existing Allocated Contracted Capacity, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by such date. The sum total of the liquidated damages payable by the Seller to the Procurer(s) for such delayed supply shall be calculated as follows:

$$SLDb = [CC * d * DR1], \quad \text{if } d \leq 60$$

$$SLDb = [CC * 60 * DR1] + [CC * (d - 60) * DR2], \quad \text{if } d > 60$$

where:

- a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date up to and including the day on which supply of power to the Procurer(s) actually commences;
- b) "CC" is the Contracted Capacity;

- c) "d" is the number of days in the period beginning with the day after the Scheduled Delivery Date up to and including the day on which supply of power to the Procurer(s) actually commences;
- d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is more than 60 days.

4.8.2 The Seller's maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to [*twelve (12) months' in case of long-term procurement / 'two (2) months' in case of medium term procurement*] of delay for commencement of supply of power from the Scheduled Delivery Date.

Provided that in case of failure of the Seller to start supply of power to Procurers even after expiry of [*twelve (12) months' in case of long-term procurement / 'two (2) months' in case of medium term procurement*] from its Scheduled Delivery Date, the provisions of Article 10 shall apply.

4.8.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurers within ten (10) days of the earlier of:

- a) the date on which the supply of power to the Procurers is actually started, or
- b) expiry of the [*twelve (12) months' in case of long-term procurement / 'two (2) months' in case of medium term procurement*] period mentioned in Article 4.8.2.

4.8.4 If the Seller fails to pay the amount of Liquidated Damages within the said period of ten (10) days, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurers under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount.

4.8.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 10 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date.

4.8.6 If the Seller is unable to start supply of power to the Procurer(s) by the [Insert as applicable Scheduled Delivery Date or "Revised Scheduled Delivery Date"] other than for the reasons specified in Article 4.7.1, the Seller shall pay to Procurer [insert further if applicable "or each Procurer"] Liquidated Damages, *proportionate to their then existing Allocated Contracted Capacity*, for delay in making the Contracted Capacity available for dispatch by such date. The sum total of the Liquidated Damages payable by the Seller to the Procurer(s) for such delay in commencement in supply of power shall be equivalent to the damages payable by the Procurer(s) to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement as may be entered by the Procurer(s) with CTU/ STU for establishment of transmission system from the Injection Point. Provided however, the Liquidated

Damages payable by the Seller to the Procurer(s) in case of delay under this Article 1.1.1 shall not be more than twenty percent (20%) of Liquidated Damages computed in the manner mentioned in Article 4.8.1. Provided further, in case of delay beyond "Scheduled Delivery Date", the provisions of Article 4.8.1 to 4.8.5 will apply for such delay beyond Scheduled Delivery Date.

4.9 *Liquidated Damages for delay due to Procurer Event of Default and Non Natural Force Majeure Events and Natural Force Majeure Event (affecting the Procurer)*

4.9.1 If the Seller does not provide supply of power to a Procurer by the Scheduled Delivery Date, due to a Procurer Event of Default or due to Non Natural Force Majeure Event or (Natural Force Majeure affecting the Procurer) provided such Non Natural Force Majeure Event or (Natural Force Majeure affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Non Natural Force Majeure Event or (Natural Force Majeure affecting the Procurer) no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the [Insert as applicable "Contracted Capacity" or "Allocated Contracted Capacity"] and to this extent, be deemed to have been providing supply of power with effect from the [Insert as applicable "Scheduled Delivery Date" or "Revised Scheduled Delivery Date"], and shall be treated as follows.

- a) In case of delay on account of the Procurer Event of Default, the Procurer(s) shall make payment to the Seller of Capacity Charges calculated on Normative Availability of [Insert as applicable "Contracted Capacity" or "Allocated Contracted Capacity"] for and during the period of such delay. Provided however, if the Seller is unable to commence supply by its [Insert as applicable "Scheduled Delivery Date" or "Revised Scheduled Delivery Date"] due to unavailability of transmission system, the Procurer(s) shall make payment to the Seller of an amount equivalent to the amounts paid by the CTU/ STU (as the case may be) to the Procurer(s) as per the terms of agreement to be entered into by the Procurer(s) with CTU/ STU for establishment of transmission system for the period of delay up to [Insert as applicable "Scheduled Delivery Date" or "Revised Scheduled Delivery Date"].
- b) In case of delay due to Direct and Indirect Non Natural Force Majeure Events or (Natural Force Majeure affecting the Procurer/s), the Procurer shall make payment to the Seller of Capacity Charges calculated on Normative Availability of [Insert as applicable "Contracted Capacity" or "Allocated Contracted Capacity"] for the period of such events in excess of three (3) continuous or non-continuous Months.
- c) In case of delay due to Direct and Indirect Non Natural Force Majeure Events (or Natural Force Majeure affecting the Procurer/s), the Procurer shall be liable to make payments mentioned in (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.9.1 shall be paid by the Procurer(s) in proportion to their then Allocated Contracted Capacity.

4.9.2 In every case referred to in Article 4.9.1 hereinabove, the Seller shall be in a position to provide supply of the Contracted Capacity to the Procurers as soon as reasonably practicable [and in no event later than two (2) weeks or such longer period as mutually agreed between the Seller and the Procurers (jointly)] after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as appropriate). If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

- a) the Seller shall repay to the Procurers, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and
- b) If the Seller fails to provide supply of power to Procures by the Scheduled Delivery Date, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.8.

4.10 *Limit on amounts payable due to default*

4.10.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 11), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.4.1 shall be to pay the Seller the amounts specified in Article 4.9 and Article 10.

4.10.2 Similarly, Seller's only liability for any loss suffered by the Procurers of any kind or description whatsoever (except claims for indemnity under Article 11), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date, shall be as per Article 4.8 and Article 10.

4.11 *Transmission Losses*

4.11.1 The Seller acknowledges and agrees that all or any transmission losses in relation to the supply of the Contracted Capacity up to the Injection Point shall be charged to their account. Any revision in the notified transmission losses up to the Injection Point shall be borne by the Seller.

4.11.2 Transmission losses, beyond the Injection Point upto the Delivery Point would be borne by the Procurer(s), and any change in the quantum of power lost on account of transmission loss would be to the account of the Procurer(s). Additionally, any revision in the notified transmission losses by the concerned regulatory authority beyond the Delivery Point shall also be borne by the Procurer(s).

5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1 *Obligation to Supply the Contracted Capacity*

- 5.1.1 Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating unit(s) and /or of the transmission system, the Seller shall offer for sale the Contracted Capacity to the Procurer(s) at the Injection Point.

5.2 *Allocation of Generation Capacity*

- 5.2.1 The Seller shall provide ... [Insert number] % of the Power Station's Net Capacity to the Procurer(s) as per the terms of this Agreement.

5.3 *Availability*

- 5.3.1 The Seller 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.
- 5.3.2 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 power station in a Settlement Period being less than Normative Availability, the Allocated Contrated Capacity available to the Procurer(s) for dispatch shall be reduced proportionately. However, the Seller has the option to offer more than such reduced Allocated Contrated Capacity for dispatch by the Procurer(s).

5.4 *Dispatch*

- 5.4.1 The Seller shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to Dispatch and the matters incidental thereto.
- 5.4.2 The Seller further agrees that the Availability entitled to the Procurer(s) for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Article 4.6.1. The Seller authorises the RLDC/ SLDC to regulate its supply to any third party in case conditions under Articles 5.3.2 and 5.4.2 are not honoured by the Seller.

5.5 *Performance Tests*

- 5.5.1 The Procurer/(s) [Insert "(jointly)", in case of multiple Procurers] may from time to time during the Operating Period, but only if the Available Capacity has not been one hundred percent (100%) of the Contracted Capacity even for one continuous period of at least three (3) hours during any last three (3) continuous months, require the Seller to demonstrate the Power Station's net Tested Capacity by carrying out a Performance Test in accordance with this Article 5.5. Provided that if the Tested Capacity after such test is less than one hundred percent (100%) of the Power Station's Net Capacity (as existing on the Effective Date), the Seller shall also have a right to conduct not more than two Performance Tests within a period six months, by giving a notice of not less than fifteen (15) days to the Procurer/(s) for each such test. Provided that the Procurer/(s) shall have a right to require deferment of each such re-tests for a period

not exceeding five (5) days, without incurring any liability for such deferment, if the Procurer/(s) are unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurer/(s) or due to inadequate demand in the Grid.

- 5.5.2 The Procurer/(s) *[Insert “(jointly)”, in case of multiple Procurers]* shall give the Seller not less than seven (7) days’ advance written notice of the time when a Performance Test of the Power Station is to begin. A Performance Test may not be scheduled for any period when a unit of the Power Station is due to undergo a Scheduled Outage.
- 5.5.3 The Procurer/(s) *[Insert “(jointly)”, in case of multiple Procurers]* and Seller shall jointly appoint the Independent Engineer to monitor the Performance Test and to certify the results.
- 5.5.4 If the Seller wishes to take any unit of the Power Station or the Power Station, out of service for repair before a Performance Test, it shall inform *[Insert “the Procurer” in case of single Procurer and “all the Procurers” in case of multiple Procurers]* in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurer/(s), requiring the Performance Test, shall defer the Performance Test until such unit or the Power Station is returned to service following that maintenance outage.
- 5.5.5 The Procurer/(s) requiring the Performance Test, may *[Insert “jointly” for multiple Procurers]*, for reasonable cause, defer any Performance Test for up to fifteen (15) days from the date originally notified to the Seller in accordance with Article 5.1.2 if such Procurer/(s) *[Insert “jointly” for multiple Procurers]* notify the Seller in writing at least one (1) day before the Performance Test starts of the reason for the deferral and when the test is to be rescheduled.

Provided that, such deferment at the joint request of the Procurers shall be permitted only once in respect of each of the Repeat Performance Tests.

- 5.5.6 The Seller (individually), the Procurer(s) *[Insert “jointly” for multiple Procurers]* and the Independent Engineer (individually) shall each have the right to designate qualified and authorised representatives (but not more than three each) to monitor the Performance Test.
- 5.5.7 Testing and measurement procedures applied during the Performance Test shall be in accordance with the codes, practices of procedures as generally/normally applied for the Performance Tests.
- 5.5.8 Within five (5) days of a Performance Test, the Seller shall provide *[Insert “each of” in case of multiple Procurers]* the Procurer(s) and the Independent Engineer with copies of the detailed test results.

Derating

5.5.9 A Performance Test shall be concluded when [Insert “the Procurer” in case of single Procurer and “all the Procurers” in case of multiple Procurers] receive the Final Test Certificate of the Independent Engineer stating that the Performance Test has been carried out satisfactorily and certifying the Power Station’s then current Tested Capacity as demonstrated by the results of the Performance Test.

(i) If the Power Station’s then current Tested Capacity as established by the most recent Performance Test and the Final Test Certificate issued by the Independent Engineer, is less than the Power Station’s Net Capacity existing on the Effective Date, the Seller shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Tested Capacity, in which case:

- a) The Power Station’s Net Capacity shall be reduced to its most recent Tested Capacity and Quoted Capacity Charges for the Contracted Capacity shall be paid with respect to such reduced net capacity.
- b) Further, the Quoted Non–Escalable Capacity Charge shall be reduced by the following:

$\text{Rs. } 0.25/\text{kwh} \times [1 - \{(\text{Tested Capacity of the Power Station})/(\text{Power Station’s Net Capacity at the Effective Date})\}]$;

- c) the Availability Factor shall be calculated by reference to the proportionately reduced Contracted Capacity, in each case with effect from date on which all the Procurers jointly first notified the Seller of their intention to carry out a Performance Test of the Power Station.
- d) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Contracted Capacity as a result of that derating;

(ii) The consequences mentioned in sub-Article (i) above shall apply from the completion date of each recent Performance Test. If at the end of a Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 5.1.1, whichever is earlier, the Tested Capacity is less than the Power Station’s Net Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 5.2.2 shall apply for a period of at least one year after which the Seller shall have the right to undertake a Performance Test. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of second Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 5.1.1, whichever is earlier

5.5.10 If the Independent Engineer certifies that it is unable to give a Final Test Certificate because events or circumstances beyond the Seller’s reasonable control have prevented the Performance Test from being carried out, the Procurers shall reschedule a Performance Test as soon as reasonably practicable.

6 ARTICLE 6: METERING AND ENERGY ACCOUNTING

6.1 *Meters*

- 6.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time. In addition, the Seller shall also allow and facilitate CTU in installation of one set of required main and standby special energy meters for accurate recording of energy supplied by Seller. For these CTU meters (110V, 1A, 4-wire), the Seller shall provide the required connection from EHV current transformers/ bushing CTs/ voltage transformers/ CVTs on EHV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better. The Seller may install any further meters for its own comfort at its own cost.

6.2 *RLDC / SLDC Charges*

- 6.2.1 All scheduling and RLDC / SLDC charges applicable shall be borne by the Procurer(s).

7 ARTICLE 7: BILLING AND PAYMENT

7.1 General

- 7.1.1 From the Scheduled Delivery Date, Procurers shall pay the Seller the monthly Tariff payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 7 and Schedule 4. All Tariff payments shall be in Indian Rupees.

Provided however, if the Procurer(s) avails of any electrical output from the Seller prior to the Scheduled Delivery Date (“Infirm Power”) of the Unit, then such Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned in such Contract Year), for Infirm Power generated by such Unit. The quantum of Infirm Power generated by any of the Units shall be computed from the energy accounting and audit meters installed at the power station as per Central Electricity Authority (installation and operation of meters) Regulations 2006 as amended from time to time.

7.2 Delivery and Content of Monthly Bills

- 7.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month.

Provided that:

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

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

- 7.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and energy account for the relevant Month as per REA for Monthly Bill and RLDC's daily energy account for Provisional Bill;
- ii. the Seller's computation of various components of the monthly Tariff payment in accordance with Schedule 4; and
- iii. supporting data, documents and calculations in accordance with this Agreement.

7.3 Payment of Monthly Bills

7.3.1 Procurers shall pay the amount payable under Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 7.3.4 below.

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

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

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

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

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rupees [*Insert amount calculated as Rs. 2.5 lakhs per MW of Contracted Capacity*] only, except on account of payments under sub Article (i) above.

7.3.4 The Seller shall open a bank account at [*Identified Place*] (the "Designated Account") for all Tariff Payments to be made by Procurers to the Seller, and notify Procurers of the details of such account at least ninety (90) days before the dispatch of the first Monthly Bill. Procurers shall also designate a bank account at [*Identified Place*] for payments to be made by the Seller (including Supplementary Bills) to Procurers and notify the Seller of the details of such account ninety (90) days before the Scheduled Delivery Date. Procurers shall instruct its banker to make all payments under this Agreement to the Designated Account and shall notify the Seller of such instructions on the same day.

7.3.5 In the event of delay in payment of a Monthly Bill by any Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two (2) percent in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay.

7.3.6 For payment of any Bill before Due Date, the following rebate shall be paid by the Seller to the Procurer in the following manner. [*Note: These rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the Bid Documents*]

- a) Provisional Bill will be raised by the Seller on the last Business day of the Month where the Capacity Charges shall be based on the Declared Capacity for the full Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.
- b) Applicable rate of rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller's account. Any delay in transfer of money to the Seller's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurers.
- c) Two percent (2%) rebate for credit of payment to Seller's account made within one (1) Day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- d) For credit to Seller's account made on other days the rebate on Monthly Bill shall be as under:

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

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

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

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

7.4 Payment Mechanism

Letter of Credit:

7.4.1 Each Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by each Procurer, which may be drawn upon by the Seller in accordance with this Article. The Procurer(s) shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller [Insert 'six (6) months' in case the Scheduled Delivery Date is more than 4 years from Effective Date/ 'one (1) month' otherwise] before the Scheduled Delivery Date. Further, the Letter of Credit shall be provided from the bank which is appointed as Default Escrow Agent under the Default Escrow Agreement.

7.4.2 Not later than [Insert 'three (3) months' in case the Scheduled Delivery Date is more than 4 years from Effective Date/ 'one (1) month' otherwise] before the Scheduled Delivery Date, each Procurer shall through a scheduled bank at [Identified Place] open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year based on Normative Availability.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 7.4.2 otherwise than by reason of drawal of such Letter of Credit by the Seller, the relevant Procurer shall restore such shortfall within seven (7) days.

7.4.3 The Procurers shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

7.4.4 In case of drawal of the Letter of Credit by the Seller the amount of the Letter of Credit shall be reinstated in accordance with the terms of Article 7.4.2.

7.4.5 If any Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 7.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from

the Procurer, an amount equal to such Monthly Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 7.3.5 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

7.4.6 [Insert in case of multiple procurers “Further, on the occurrence of such an event as envisaged herein, the Seller shall immediately inform all the Procurers of the said failure of the Procurer to pay the Monthly Bill or part thereof and shall send regular updates to all the Procurers, which shall not be less than one (1) in every two (2) days, containing details of the amount claimed by the Seller as per the provisions of this Article and payments made by the Procurer pursuant to such claim.”]

7.4.7 For the avoidance of doubt it is clarified that the Seller shall not be entitled to drawdown on the Letter of Credit for any failure of any Procurer to pay a Supplementary Bill.

7.4.8 The Procurers shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

7.4.9 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurers, however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

7.4.10 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurers and the Seller.

7.4.11 Upon fulfilment of the conditions mentioned under Article 7.4.12.2 the Letter of Credit amount as mentioned in Article 7.4.12.1 shall be changed to one (1) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year.

7.4.12 Collateral Arrangement

7.4.12.1 As further support for each Procurers' obligations, on or prior to the Effective Date, each Procurer and the Seller shall execute separate Default Escrow Agreement (referred as “Default Escrow Agreement”) for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement. Each of the Procurers and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby each Procurer shall agree to hypothecate, to the Seller, effective from forty five (45) days prior to the Scheduled Delivery Date, the amounts to the extent as required for the Letter of Credit as per Article 7.4.2 routed through the Default Escrow Account and the Receivables in

accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 7.4.2.

Provided that the Procurers shall ensure that the Seller has first ranking charge on the revenues routed through the Default Escrow Account and the 'Receivables' in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreement,

7.4.12.2 [Insert only in case of long term procurement] On the occurrence of all of the following events in respect of any Procurer:

- i. A period of not less than [*twelve (12) months' in case the Scheduled Delivery Date is more than 4 years from Effective Date/ 'two (2) months' otherwise*] from Scheduled Delivery Date, has elapsed; and
- ii. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency mutually agreed between Seller and the Lender/s, consistently for a period of at least three (3) years; and
- iii. Immediately prior to the three (3) year period mentioned in sub-article (ii) above,, for a period of at least [*twelve (12) months' in case the Scheduled Delivery Date is more than 4 years from Effective Date/ 'two (2) months' otherwise*] there has been no Procurer Event of Default under Article 10 of the PPA,

such Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the concerned Procurer in writing within thirty (30) days of receipt of intimation from the concerned Procurer and in such case the Seller shall be liable to bear the costs of continuation of the Collateral Arrangement with effect from such date. In case the Seller fails to respond or agrees to discontinue, the Collateral Arrangement shall forthwith cease and the Default Escrow Agreement and the routed through the Default Escrow Account and the 'Receivables' in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation shall stand terminated as per terms thereof.

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 7.4.12.2 ceases to be true, then within ninety (90) days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

7.4.12.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be

reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement.

7.5 Third Party Sales on Default

7.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this Agreement, the Seller shall follow the steps as enumerated in Articles 7.5.2 and 7.5.5.

7.5.2 [Insert in case of multiple Procurers] On the occurrence of the event mentioned in Article 7.5.1 and after giving a notice of at least seven (7) days to the defaulting Procurer(s), the Seller shall have the obligation to offer twenty five (25) per cent of the Contracted Capacity pertaining to such defaulting Procurers⁸ to the other non-defaulting Procurers. The non defaulting Procurers have the right to receive the whole or any part of such Default Electricity by giving a notice within a further two (2) Business Days, in the following manner

a) In ratios equal to their then existing Allocated Contracted Capacities at the same Tariff as would have been applicable to the defaulting Procurer. Provided that, if any of the non-defaulting Procurer(s) does not elect to receive the Default Electricity so offered, the Seller shall offer the balance of the Default Electricity to other non-defaulting Procurer(s) at the same Tariff in proportion to their additional requirement as intimated.

b) At a lower tariff as may be specified by non-defaulting Procurer(s) to the extent of their capacity requirements, in descending order of the tariff. Provided that, the Seller has the right to obtain tariff quotes from third party(s) for sale of Default Electricity not requisitioned under (a) above. The tariff quotes received from the non-defaulting Procurer(s) and such third party(s) shall be ranked in descending order of the tariff and the Seller shall sell Default Electricity in such descending order and in compliance with Article 7.5.5, to the extent applicable.

7.5.3 In case of both (a) and (b) above if non-defaulting Procurer(s) receive Default Electricity, then, subject to applicability of Article 7.5.2 of this Agreement, such non defaulting Procurer(s) shall within seven (7) days of exercising the right of election, either open an additional Letter of Credit/ enhance the existing Letter of Credit in accordance with the principles set forth in Article 7.5 or increase the value of escrow cover under the Default Escrow Agreement and related security under Agreement to Hypothecate cum deed of Hypothecation secure payment for that part of the Default Electricity as such non- defaulting Procurer elects to receive.

Provided further within two (2) Months of such election by the non-defaulting Procurer(s), unless the event outlined in Article 7.5.9 has occurred, such Procurer(s) shall open a Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 7.4 and shall increase the value of escrow cover under the Default Escrow Agreement and related Agreement to Hypothecation cum Deed of Hypothecation. Provided that in case the events mentioned in Article 7.4.12.2

⁸ The reference to and sale of default electricity to non-defaulting procurers will be applicable only in case of procurement by more than one Procurers. In case of the contrary, the reference may be deleted and consequential changes undertaken in the RFP Documents.

(i), (ii) and (iii) are true, then the requirement with respect to Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation in this Article 7.5.3 shall be applicable as per Article 7.4.12.2.

7.5.4 If all the non defaulting Procurers do not make the election to receive the Default Electricity or a part thereof, within two (2) Business Days of it being so offered under and as per Articles 7.5.2 and 7.5.3, or all such Procurers expressly waive their first right to receive the same, the Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

- a) any consumer, subject to applicable Law; or
- b) any licensee under the Electricity Act, 2003;

7.5.5 If the Collateral Arrangement is not fully restored by the Defaulting Procurer within thirty (30) days of the non-payment by a Procurer of an Invoice by its Due Date, the provisions of Article 7.5.2 and Article 7.5.4 shall apply with respect to one hundred (100) per cent of the Contracted Capacity. Provided that in case the events mentioned in Article 7.4.12.2 (i), (ii) and (iii) are true, then this Article 7.5.5 shall be applicable as per Article 7.4.12.2.

7.5.6 In the case of Article 7.5.4 or 7.5.5, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Energy Charges.

7.5.7 In case of third party sales or sales to any other non-defaulting Procurers as permitted by this Article 7.5, the adjustment of the surplus revenue over Energy Charge (applicable to the defaulting Procurer) attributable to such electricity sold, shall be adjusted as under :

- a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the defaulting Procurer towards the Seller; and
- b) the surplus if any above the Tariff shall be retained by the Seller.

7.5.8 The liability of the defaulting Procurer towards making Capacity Charge payments to the Seller even for electricity sold to third parties or other non- defaulting Procurers or remaining unsold during such periods will remain unaffected.

Provided such Capacity Charge payment liability shall cease on the date which occurs on the Expiry of a period of [Insert "three (3) years and hundred (100) days" for long-term and "one (1) year" for medium-term procurement] from the date of occurrence of a Procurer Event of Default under Article (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of electricity for a period of at least ninety (90) continuous days has not occurred.

7.5.9 Sales to any person or Party, other than the defaulting Procurer under Article 7.5, shall cease and regular supply of electricity to the defaulting Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:

- a) the day on which the defaulting Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 7.4.12.1; or
- b) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

7.6 Disputed Bill

- 7.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party within thirty (30) days of receiving it, such Bill shall be taken as conclusive.
- 7.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
 - i) the details of the disputed amount;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its claim.
- 7.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment, refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received.
- 7.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a bill disagreement notice to the disputing Party providing:
 - i) reasons for its disagreement;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its counter-claim.
- 7.6.5 Upon receipt of bill disagreement notice under Article 7.6.4, authorized representative(s) or a director of the board of directors/member of board of each Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receiving such bill disagreement notice.
- 7.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of bill disagreement notice pursuant to Article 7.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 13.

- 7.6.7 In case of Disputed Bills, it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 13 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.
- 7.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 7.6 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 7.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 7.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months invoices (being the undisputed portion of such three Months invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

7.7 *Quarterly and Annual Reconciliation*

- 7.7.1 Parties acknowledge that all payments made against Monthly Bills, Provisional Bill and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments, Tariff rebate payments, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and each Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 13.

7.8 *Payment of Supplementary Bill*

- 7.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:
- i) Adjustments required by the Regional Energy Account (if applicable);

- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
 - iii) Change in Law as provided in Article 9,
- and such Bill shall be paid by the other Party.

- 7.8.2 Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurers by the Due Date to concerned Procurer's designated bank account and notify such Procurer/s of such payment on the same day. For such payments by the Procurer, rebates as applicable to Monthly Bills pursuant to Article 7.3.6 shall equally apply.
- 7.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 7.3.5.
- 7.9** [Insert in case of multiple Procurers] The copies of all notices/offers which are required to be sent as per the provisions of this Article 7, shall be sent by either Party, simultaneously to all Parties.

8 ARTICLE 8 : FORCE MAJEURE

8.1 Definitions

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

8.2 Affected Party

8.2.1 An affected Party means any of the Procurer or the Seller whose performance has been affected by an event of Force Majeure.

8.2.2 An event of Force Majeure affecting the CTU/ STU or any other agent of the Procurer, which has affected the transmission facilities from the Injection Point to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Procurer(s).

8.2.3 Any event of Force Majeure affecting the performance of the Seller or affecting the transmission facilities from the power station to the Injection Point shall be deemed to be an event of Force Majeure affecting the Seller only if the event affects and results in interruptible or no power supply to the Procurer(s).

8.2.4 Any event of Force Majeure affecting the performance of the Seller's contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

a) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Power Station; or

b) a delay in the performance of any of the Seller's Contractors.

8.2.5 Similarly, any event of Force Majeure affecting the performance of the Procurers' contractor for the setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer/s only if the Force Majeure event is resulting in a delay in the Performance of Procurer's contractors.

8.3 Force Majeure

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

i. Natural Force Majeure Events

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather

conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. Non-Natural Force Majeure Events

1. Direct Non-Natural Force Majeure Events

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Seller; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any consent required by the Seller or any of the Seller's contractors to perform their obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the development/operation of the power station. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Seller to the Procurer. Provided that an appropriate court of law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Indirect Non-Natural Force Majeure Events

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or

b) Radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site by the Affected Party or those employed or engaged by the Affected Party.

c) Industry wide strikes and labor disturbances having a nationwide impact in India.

8.4 Force Majeure Exclusions

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

a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the power station;

b. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 8.2;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or any other RFP Documents.

8.5 Notification of Force Majeure Event

- 8.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Seller's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.
- 8.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

8.6 Duty to Perform and Duty to Mitigate

- 8.6.1 To the extent not prevented by a Force Majeure event pursuant to Article 8.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

8.7 Available Relief for a Force Majeure Event

- 8.7.1 Subject to this Article 8:
 - (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurers for the part of Contracted Capacity affected by a Natural Force Majeure Event affecting the Seller, for the duration of such Natural Force Majeure Event. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event, the balance part of the power station is declared to be available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer(s);
- (d) If the average Availability of the power station is reduced below [Insert 0.8* Normative Availability] percent for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of [*'sixty (60) months' in case of long term procurement / 'twelve (12) months' for medium term procurement*], as a result of an Indirect Non Natural Force Majeure, then, with effect from the end of that period and for so long as the daily average Availability of the power station continues to be reduced below [Insert 0.8* Normative Availability] percent as a result of an Indirect Non Natural Force Majeure of any kind, the Procurer(s) shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability, relatable to such Unit, which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer(s) from the Seller, in the form of an increase in Capacity Charge. Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure had not occurred.

Provided that the Procurers will have the above obligation to make payment for the Debt Service only (a) after supply of power from the Unit(s) affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of such Commissioned Unit(s) would have resulted in Capacity Charges equal to Debt Service.

- (e) If the average Availability of the power station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of [*'sixty (60) months' in case of long term procurement / 'twelve (12) months' for medium term procurement*], as a result of a Direct Non Natural Force Majeure Event, then, with effect from the end of that period and for so long as the daily

average Availability of the Seller continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure of any kind, the Seller may elect in a written notice to the Procurers, to deem the Availability to be equal to Normative Availability from the end of such period, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure had not occurred.

8.8 *Additional Compensation and Procurer's Subrogation*

- 8.8.1 If the Seller is entitled, whether actually or contingently, to be compensated by any person other than the Procurer as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer/s) for which it has received compensation from the Procurer pursuant to this Article 8, including without limitation, payments made which payments would not have been made in the absence of Article 4.9.1, the Procurers shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurers to the Seller.

Provided that in case the Seller has actually received compensation from the any person other than the Procurers as well as the Procurers as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurers), then the Seller shall forthwith refund the compensation received by it from the Procurer but only to the extent of the compensation received by the Seller from any person other than the Procurers.

9 ARTICLE 9: CHANGE IN LAW

9.1 Definitions

In this Article 9, the following terms shall have the following meanings:

9.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any 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

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

9.1.2 "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 supply of power under this Agreement.

9.2 Application and Principles for computing impact of Change in Law¹⁸

9.2.1 While determining the consequence of Change in Law under this Article 9, 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 9, the affected Party to the same economic position as if such Change in Law has not occurred.

a) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate 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 Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.

9.3 Notification of Change in Law

9.3.1 If the Seller is affected by a Change in Law in accordance with Article 9.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurers of

¹⁸ Shall be defined by the Procurer. For valid reason, the procurer may choose different principles at the time of issuing the Bid documents.

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.

- 9.3.2 Notwithstanding Article 9.3.1, the Seller shall be obliged to serve a notice to the Procurers under this Article 9.3.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material.

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

- 9.3.3 Any notice served pursuant to this Article 9.3.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and
- (b) the effects on the Seller of the matters referred to in Article 9.2.

9.4 *Tariff Adjustment Payment on account of Change in Law*

- 9.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) 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.

- 9.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 7.8. 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 Seller after such change in Tariff shall appropriately reflect the changed Tariff.

10 ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION

10.1 Seller Event of Default

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

- (i) the failure to commence supply of power to the Procurer(s) by the date falling [Insert 'twelve (12) months' in case of long-term procurement/ 'three (3) months' in case of medium-term procurement] after the Scheduled Delivery Date, or
- (ii) after the commencement of supply of power, the interruption of power supply by the Seller for a continuous period of two (2) Months and such default is not rectified within thirty (30) days from the receipt of first notice from any of the Procurers in this regard, or
- (iii) after Scheduled Delivery Date, the Seller fails to achieve Average Availability of [Insert number in percentage] (... %), for a period of [twelve (12) incae of long term procurement/ six (6) in case of medium-term procurement] consecutive Months or within a non-consecutive period of twelve (12) Months within any continuous aggregate period of ['thirty six (36) months' in case of long-term procurement / 'twelve (12) months' otherwise]; or
- (iv) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore required to be made to Procurer/s under this Agreement, within three (3) Months after the Due Date of an undisputed invoice /demand raised by the said Procurer/s on the Seller or (b) of an amount up to Rupees [Insert amount] required to be made to Procurer/s under this Agreement within six (6) Months after the Due Date of an undisputed invoice/ demand, or
- (v) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Selected Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation; Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days, or
- (vi) if the Seller:
 - a) assigns or purports to assign any of its assets or rights in violation of this Agreement; or
 - b) transfers or novates any of its rights and/or obligations under this agreement, in violation of this Agreement; or
- (vii) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is

..... [Insert name of Procurer(s)] cc

passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

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

- (viii) the Seller repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurer in this regard; or
- (ix) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by any of the Procurers or Procurers (jointly) the Procurers to the Seller or by the Lead Procurer (or Procurer, as applicable) on behalf of the Procurers.
- (x) the Seller fails to complete/ fulfill the activities/conditions specified in Article 3.1.1, beyond a period of [Insert 'six (8) months' in case the Scheduled Delivery Date is more than 4 years from Effective Date/ 'one (1) month' otherwise] from the specified period in Article 3.1.1 and the right of termination under Article 3.4.2 is invoked by the Procurers (jointly); or
- (xi) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- (xii) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or
- (xiii) Occurrence of any other event which is specified in this Agreement to be a material breach/default of the Seller.

10.2 Procurer Event of Default

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

- (i) a defaulting Procurer fails to meet any of its obligations, as specified in Article 4.4; or
- (ii) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/Supplementary Bill for a period of ninety (90)

days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or

- (iii) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is/are in material breach of any of its obligations pursuant to this Agreement or of any of the RFP Documents where the Procurers and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to all the Procurers; or
- (v) any representation and warranties made by any of the Procurers in Schedule 6 of this Agreement. being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the concerned Procurer in writing of at least thirty (30) days; or
- (vi) if (a) any Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Procurer, or (c) the Procurer goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, except where such dissolution or liquidation of such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to such Procurer and expressly assumes all obligations of such Procurer under this Agreement and is in a position to perform them; or;
- (vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurers.

10.3 Procedure for cases of Seller Event of Default

10.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 10.1, the Procurers jointly shall have the right to deliver to the Seller a Procurer Preliminary Default Notice, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

10.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.

10.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

- 10.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, the Lenders may exercise or the Procurers may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurers would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 12. Alternatively, in case the Lenders do not exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by 20% for the period of Seller Event of Default.

10.4 Termination for Procurer Events of Default

- 10.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 10.2.1(i), the Seller shall follow the remedies provided under Article 7.5.2.
- 10.4.2 Without in any manner affecting the rights of the Seller under Article 10.4.1, on the occurrence of any Procurer Event of Default specified in Article 10.2 the Seller shall have the right to deliver to all the Procurers, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 10.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.
- 10.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 10.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have been remedied, the Seller shall be free to sell the then existing Allocated Contracted Capacity and corresponding available capacity of Procurer/s committing Procurer Event of Default to any third party of his choice.

Provided such Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period three (3) years from the eighth day after the expiry of the Consultation Period.

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

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

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

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

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

11 ARTICLE 11: LIABILITY AND INDEMNIFICATION

11.1 Indemnity

11.1.1 The Seller shall indemnify, defend and hold Procurer(s) harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Procurer(s) for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer(s), its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer(s) from third party claims arising by reason of (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 11 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer(s), its contractors, servants or agents or (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

11.1.2 Procurer(s) shall indemnify, defend and hold the Seller harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer(s) of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Seller from third party claims arising by reason of (i) a breach by Procurer(s) of any of its obligations under this Agreement (Provided that this Article 11 shall not apply to such breaches by Procurer(s), for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents or (ii) any of the representations or warranties of the Procurer(s) under this Agreement being found to be inaccurate or untrue.

11.2 Monetary Limitation of Liability

11.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 11 for any indemnity claims made in a Contract Year only up to an amount of Rupees [Insert amount]. With respect to each Procurer(s), the above limit of Rupees [Insert amount] shall

..... [Insert name of Procurer(s)] CO

be divided in the ratio of their Allocated Contract Capacity existing on the date of the indemnity claim.

11.3 Procedure for claiming Indemnity

11.3.1 Third party Claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 11.1.1(a) or 11.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 11.1.1(a) or 11.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 11.3.1 (b) below; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

- b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 11.1.1(a) or 11.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

11.4 Indemnifiable Losses

- 11.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 11.1.1(b) or 11.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 11.4, such event shall constitute a payment default under Article 10.

11.5 *Limitation on Liability*

- 11.5.1 Except as expressly provided in this Agreement, neither the Seller nor Procurer(s) nor its/their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns (or their respective insurers) for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation production or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer(s), the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise. Procurer(s) shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholder of Procurer(s), or any Affiliate of Procurer(s) or any of its officers, directors or shareholders for such claims excluded under this Article.

12 ARTICLE 12: ASSIGNMENTS AND CHARGES

12.1 Assignments

12.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to Article 12.2, this Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

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

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

12.2 Permitted Charges

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

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

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

Provided that:

- I the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule 12 of this Agreement; and
- II any encumbrances granted by the Seller in accordance with this Article 12.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurer(s) to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the Procurer(s) to claim its right of subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurer(s) as well as compensated by any person other than the Procurer(s) for the same event.

12.2.3 Article 12.1 does not apply to :

- a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the Seller developing the Power Station;
- b) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of the Seller developing the Power Station;; or
- c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the Seller developing the Power Station;.

13 ARTICLE 13: GOVERNING LAW AND DISPUTE RESOLUTION

13.1 *Governing Law*

13.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in [Procurer/Authorized Representative to insert the name of the place]

13.2 *Amicable Settlement*

13.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively "Dispute") by giving a written notice to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

13.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.2.1, furnish:

- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

13.2.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 13.2.1 if the other Party does not furnish any counter claim or defence under Article 13.2.2 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 13.2.3, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.3.

13.3 *Dispute Resolution*

13.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.9.1, 9.2, 14.1 or Article 26.9.4 of Schedule 12 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

13.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 13.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 13.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- i) The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
- ii) The place of arbitration shall be [insert place]. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
- v) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

13.4 *Parties to Perform Obligations*

13.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 13.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

14 ARTICLE 14: MISCELLANEOUS PROVISIONS

14.1 [Insert this article only in case of joint procurement] Lead Procurer

14.1.1 The Procurers hereby appoint and authorise “.....” [Insert name of the Procurer with the maximum capacity allocation of the Contracted Capacity] [hereinafter referred to as the “Lead Procurer”] to represent all the Procurers for discharging the rights and obligations of the Procurers, which are required to be undertaken by all the Procurers. All the Procurers shall follow and be bound by the decisions of the Lead Procurer on all matters specified in the Schedule 17 of this Agreement. Accordingly each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on such matters shall be deemed to have been on its/his behalf and shall be binding on each of the Procurer. The Seller shall be entitled to rely upon any such action, decision or communication or notice from the Lead Procurer. It is clarified that provisions under this Article 14.1 are not intended to and shall not render the Lead Procurer liable to discharge tariff payments due to Seller from the other Procurers.

14.1.2 The Procurers hereby also appoint and authorise “.....” [Insert name of the Alternate Procurer, which has the second major capacity allocation of the Contracted Capacity] (hereinafter referred to as the “Alternate Lead Procurer”), to act as Lead Procurers as per the provisions of this Article 13, on the occurrence of any Event of Default specified in Article 10.2 by the Lead Procurer. In such an event, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Seller’s Preliminary Default Notice referred to in Article 2.6.2.1 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the Alternate Lead Procurer shall thereafter act as the Lead Procurers. In such a case, if the Seller so notifies, the Alternate Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under Article 14.1.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the [Insert Name of the Lead Procurer] appointed under Article 14.1.1, in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.

14.1.3 In the event of “.....” [Insert Name of the Alternate Procurer] becoming the Lead Procurer as per this Article, all the Procurers shall also appoint any of Procurers, other than “.....” [Insert Name of the Lead Procurer] as an Alternate Lead Procurer and thereafter the provisions of Article 14.1.1 shall be applicable.

14.1.4 Notwithstanding anything contained above, any decision which is required to be taken by the Long Procurers jointly under the provisions of Article 14, shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers, as defined in Article 14.1.5 below.

14.1.5 Any decision taken by Procurers, who taken together constitute sixty five percent (65%) of the Contracted Capacity and constitute in number at least fifty percent (50%) of the total number of Procurers (hereinafter referred to as “Majority Procurers”), shall be binding on the Lead Procurer and all other Procurers. Majority

Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice. All decisions taken by the Majority Procurers in this Agreement shall be conveyed by the Lead Procurer.

14.2 *[Insert only in case the Seller is a Project Company] Minimum Equity holding/ Equity Lock-In*

14.2.1 The minimum shareholding requirements specified in this Article shall apply to any of the entity/ entities mentioned in 2 of Format 4.6 of the RFP, which have invested in the Project Company.

14.2.2 The aggregate equity share holding of the Lead Member in the issued and paid up equity share capital of the Project Company shall not be less than the following:

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

14.2.3 All Members of the Project Company (other than the Lead Member) shall be allowed to divest their equity as long as the other remaining Members (which shall always include the Lead Member) hold the minimum equity specified in Article 14.2.2.

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

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

14.3 *Amendment*

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

14.4 *Third Party Beneficiaries*

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

14.5 *No Waiver*

14.5.1 A valid waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by any Party to insist on the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by any Party to the other Parties shall act as a waiver of such

breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

14.6 *Entirety*

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

14.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the sale or purchase of electrical output up to the Contracted Capacity under this Agreement to the Procurer by the Seller shall stand superseded and abrogated.

14.7 *Confidentiality*

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

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

without the prior written consent of the other Parties.

14.7.2 Provided that the Seller agrees and acknowledges that any of the Procurer(s) may at any time, disclose the terms and conditions of the Agreement and the RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

14.8 *Affirmation*

14.8.1 The Seller and Procurer(s), both affirm that:

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

14.9 *Severability*

14.9.1 The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this

Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

14.10 Relationship of the Parties

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

14.11 Counterparts

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

14.12 Notices

14.12.1 All notices to be given under this Agreement shall be in writing and in the English Language.

14.12.2 If to the Seller, all notices or other communication which are required must be delivered personally, by registered or certified mail post or any method duly acknowledged or facsimile to the addresses below:

Address :
Attention:
E – Mail:
Fax No:
Telephone No:

14.12.3 If to the Procurer(s), all notices or other communication which are required must be delivered personally, by registered or certified mail post or any method duly acknowledged or facsimile to the addresses below:

i. [Insert name of the Procurer 1]

Address :
Attention:
E – Mail:
Fax No:
Telephone No:

ii. [Insert name of the Procurer 2]

Address :
Attention:
E – Mail:
Fax No:
Telephone No:

iii. [Insert name of the Procurer n]

Address :.....

Attention:.....

E – Mail:.....

Fax No:.....

Telephone No:.....

14.12.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the post authorities..

14.12.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

14.13 *Language*

14.13.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

14.13.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

14.14 *Breach of Obligations*

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

14.15 *Nomination Restriction*

14.15.1 Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer(s) to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

14.16 *Commercial Acts*

14.16.1 The Procurer(s) and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and those agreements

..... [Insert name of Procurer(s)] 71

included in the Collateral Arrangement to which it is a Party constitute private and commercial acts rather than public or governmental acts.

14.17 *Restriction of Shareholders/Owners Liability*

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

14.17.2 The provisions of this Article shall supercede any other prior agreement or understanding, whether oral or written, that may be existing between the Procurer, Seller, shareholders/ owners of the Seller, shareholders/ owners of the Procurers or the Selected Bidder before the date of this Agreement, regarding the subject matter of this Agreement.

14.18 *Taxes and Duties*

14.18.1 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/levied on the Seller, its contractors or their employees, that are required to be paid by the Seller as per the Law in relation to the execution of the Power Station and for supplying power as per the terms of this Agreement.

14.18.2 Procurer(s) shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer(s) in relation to the matters set out in Article 14.18.1.

14.18.3 Procurer(s) shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurer(s) on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurer(s) for such work, which consent shall not be unreasonably withheld.

14.19 *No Consequential or Indirect Losses*

14.19.1 The liability of the Seller and the Procurer(s) shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurer(s) or the Seller claim from one another any indirect or consequential losses or damages.

14.20 *Discretion*

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

14.21 *Order of priority in application*

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of

priority as between them shall be the order in which they are placed below::

- applicable Law, rules and regulations framed thereunder,
- this Agreement

14.22 *Independent Entity*

14.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

14.22.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurer(s) and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurer(s).

14.23 *Compliance with Law*

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[Procurer]

For and on behalf of
[Seller]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

1.

2.

Witness:

1.

2.

..... [Insert name of Procurer(s)]

For and on behalf of
[Procurers]

Signature with seal

Witness:

1.

2.

For and on behalf of
[Procurers]

Signature with seal

Witness:

1.

2.

15 SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)

Sl. No.	Name of the Procurer(s)	Address of the Procurer(s)	Contracted Capacity (MW)	Delivery Point (respective STU Pooling Point)

..... [Insert name of Procurer(s)]

16 SCHEDULE 2: CALCULATION OF 'X' DAYS

(Refer Article 7.5.9)

Percentage of Monthly Invoice which is the subject of default under Article 7.4 as notified in the Notice (issued under Article 7.5.2) relatable to the present occurrence	Number of times a Notice has been issued under Article 7.5.2 to the defaulting Procurer prior to present occurrence			
	1 st time	2 nd time	3 rd time	4 th time and onwards
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = 90 days

..... [Insert name of Procurer(s)]

17 SCHEDULE 3: AVAILABILITY FACTORS

17.1.1 The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a) Availability declaration and calculation of Availability or Availability Factor;
- b) Requirement for Spinning Reserves;
- c) Procedure for revision of Availability;
- d) Consequences of failure to demonstrate capacity or misdeclarations of capacity;
and
- e) Other matters which may be related to Availability or Availability Factor.

18 SCHEDULE 4: TARIFF

18.1 General

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Tariff shall be paid in [Insert as applicable “two parts comprising of Capacity and Energy Charge” or “as a single-part Tariff, as mentioned in Schedule 8 of this Agreement”].
- iii) For the purpose of payments, the Tariff will be Quoted Tariff, escalated as provided in this Schedule 4 for the applicable Contract Year as specified in Schedule 8.
- iv) [Insert in case of base load requirement] The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond [Insert number in percentage (...%)] as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Seller as provided in this Schedule.

18.2 Monthly Tariff Payment

18.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Capacity Charge Payment in accordance with Article 18.2.2 below;
- ii) Monthly Energy Charge for Scheduled Energy in accordance with Article 18.2.3 below;
- iii) Incentive Payment determined in accordance with Article 18.2.4 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year);
- iv) Penalty Payment determined in accordance with Article 18.2.5 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year);

18.2.2 Monthly Capacity Charge Payment²¹

18.2.2.1 The Monthly Capacity Charge Payment for any Month m in a Contract Year n shall be calculated as below:

²¹ In case of Hydro Power Plant the Monthly Capacity Charges will be determined by multiplying the Normative Capacity Index by the Quoted Tariff. In a given month in a contract year, . Additionally, Incentive calculation for Hydro Power Plant will be with respect to Normative Capacity index and as specified in the CERC (Terms and Conditions of Tariff), Regulations

If $CAA \geq NA$, $FC_m = \sum_j (NA * AFC_{Cyn} * CC * L * N_{actual}/N_{contract}) - \sum C(m-1)$

Else:

$FC_m = \sum_j (AFC_{Cyn} * AA * CC * L) - \sum C(m-1)$

where:

- a) \sum_j is the summation of all the relevant values separately for each Settlement Period from the start of the contract year in which Month “m” occurs up to and including Month “m”
- b) FC_m is the Capacity Charge payment for the Month m (in Rupees)
- c) AFC_{Cyn} is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges $AEFC_{Cyn}$ and b) Payable Non Escalable Capacity Charges $ANEF_{Cyn}$ for the month in which the relevant Settlement Period occurs in the Contract Year n (in Rs/ kWh) and computed as mentioned hereunder;
- d) $AEFC_{Cyn}$ is the Payable Escalable Capacity Charges for month “m” in which the relevant Settlement Period occurs in the Contract Year “n”, expressed in Rs/ kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 8 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$AEFC_{Cyn} = QAEFC_{Cyn} * p/q$

where,

- a) $QAEFC_{Cyn}$ is the Quoted Escalable Capacity Charges (in Rs/ kWh) in the first Contract Year as per Schedule 8;
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month in which the relevant Settlement Period occurs.(expressed as a number);
- c) q is the Escalation Index as per Schedule 6 applicable as at the beginning of the first Contract Year mentioned in Schedule 8 (expressed as a number);
- d) $ANEF_{Cyn}$ is the Payable Non Escalable Capacity Charges for the Month “m” in which the relevant Settlement Period occurs, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such month occurs, as provided in Schedule 8;
- e) CAA is the cumulative Availability, as per REA, from the first day of the Contract Year “n” in which month “m” occurs up to and including Month “m”;

- f) AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage;
- g) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);
- h) L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);
- i) Nactual is the number of hours of power supply in a day (24 in the case of base load and seasonal load requirement);
- j) Ncontract is the number of hours of power supply in a day as per the contract;
- k) NA Normative Availability; and
- l) $\sum C(m-1)$ is the cumulative Capacity Charge payable from the first day of the Contract Year "n" in which month "m" occurs up to and including Month "m-1" but not including month "m", (in Rupees).

Provided, no Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the power station due to Sellers failure to operate it as per the provisions of Grid Code.

18.2.3 **Monthly Energy Charges**²²

18.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined considering the supply from the type of plant, as detailed hereunder:

[Select in case of Seller has chosen domestic coal-based plants with captive coal block, as source for its supply of power]

The Monthly Energy Charges (in Rupees) for Month "m" shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

where:

- a) MEP_m is the Monthly Energy Charges for Month m (in Rs.); and
- b) AEO_m is the Scheduled Energy during the Month m (in kWh).

MEP_n is the Energy Charge, in Rs/ kWh, and is the sum of (a) Payable Escalable Energy Charges ($MEEP_n$) and (b) Payable Non-Escalable Energy Charges

²² This component of tariff will not be applicable for Hydro Plants

(MNEEP_n) for the Contract Year “n” in which month “m” occurs and computed as mentioned hereunder:

MEEP_n is the Payable Escalable Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is calculated as:

$$\text{MEEP}_n = \text{QMEEP}_n * p/q$$

where:

- a) QMEEP_n is the Quoted Escalable Energy Charges (Rs/ kWh) quoted for the first Contract Year as per Schedule 8;
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “m” (expressed as a number); and
- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number).

MNEEP_n is the Payable Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen domestic coal-based plants having linkage based coal, as source for its supply of power]

18.2.3.2 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\text{MEP}_m = \text{AEOM} * \text{MEP}_n$$

where:

- a) MEP_m is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOM is the Scheduled Energy during the Month m (in kWh); and
- c) MEP_n is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP_n is the sum of the following: (i) Payable Escalable Energy Charges (MEEP_n), (ii) Payable Escalable Transportation Energy Charges (METEP_n), (iii) Payable Non Escalable Energy Charges (MNEEP_n) and (iv) Payable Non Escalable Transportation Energy Charges (MNETEP_n) for the Contract Year “n” in which month “m” occurs and computed as mentioned hereunder:

where:

$$\text{MEEP}_n = \text{QMEEP}_n * p(\text{EE})/q(\text{EE})$$

$$\text{METEP}_n = \text{QMETEP}_n * p(\text{ET})/q(\text{ET})$$

where:

- a) QMEEP_n is the Quoted Escalable Energy Charges quoted in the first Contract Year as per Schedule 8;
- b) QMETEP_n is the Quoted Escalable Inland Transportation Energy Charges quoted in the first Contract Year as per Schedule 8;
- c) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- d) q(EE) is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number);
- e) p(ET) is the Escalation Index for Inland Coal Transportation as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- f) q(ET) is the Escalation Index for Inland Coal Transportation as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number);
- g) MNEEP_n is the Payable Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8; and
- h) MNETEP_n is the Payable Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen coastal plants using imported coal, as generation source]

18.2.3.3 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\text{MEP}_m = \text{AEOM} * \text{MEP}_n$$

where:

- a) MEP_m is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOM is the Scheduled Energy during the Month m (in kWh); and
- c) MEP_n is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following: (i) Payable Escalable Fuel Energy Charges (MEFEPn), (ii) Payable Escalable Transportation Energy Charges (METEPn), (iii) Payable Escalable Fuel Handling Energy Charges (MEFHEFPn), (iv) Payable Non Escalable Fuel Energy Charges (MNEFEPn), (v) Payable Non Escalable Transportation Energy Charges (MNETEPn), and (vi) Payable Non Escalable Fuel Handling Energy Charges (MNEFHEFPn) for the Contract Year “n” in which month “m” occurs and computed as mentioned hereunder:

$$\text{MEFEPn} = \text{QMEFEPn} * [(p1/q1 + p2/q2 + + px/qx)/x] * \text{FX}$$

where:

- a) QMEFEPn is the Quoted Escalable Fuel Energy Charges mentioned in the first Contract Year as per Schedule 8 (in US\$/ kWh);
- b) p1 is the simple average value of the Barlow Jonker coal index for the immediately preceding 12 month period prior to the beginning of the Contract Year in which month “m” occurs;
- c) q1 is the simple average value of the Barlow Jonker Coal Index for the immediately preceding 12 month prior to two months before the Bid Deadline;
- d) p2 is the simple average value of the South African Coal Index for the immediately preceding 12 month period prior to the beginning of the Contract Year in which month “m” occurs;
- e) q2 is the simple average value of the South African Coal Index for the immediately preceding 12 month prior to two months before the Bid Deadline;
- f) p3 is the simple average value of the Japanese Power Utility Index for the immediately preceding 12 month period prior to the beginning of the Contract Year in which month “m” occurs;
- g) q3 is the simple average value of the Japanese Power Utility Index for the immediately preceding 12 month prior to two months before the Bid Deadline;
- h) p4 is the simple average value of the Argus/ McCloskey Coal Index for the immediately preceding 12 month period prior to the beginning of the Contract Year in which month “m” occurs;
- i) q4 is the simple average value of the Argus/ McCloskey Coal Index for the immediately preceding 12 month prior to two months before the Bid Deadline;
- j) p5 is the simple average value of the TFS AP4 Coal Index for the immediately preceding 12 month period prior to the beginning of the Contract Year in which month “m” occurs;
- k) q5 is the simple average value of the TFS AP4 Coal Index for the immediately preceding 12 month prior to two months before the Bid Deadline;
- l) x is the number of coal indices which are being used for the calculation of the Payable Indexed Energy Charges; and

- m) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\text{METEP}_n = \text{QMETEP}_n * p/q * \text{FX}$$

where:

- a) QMETEP_n is the Quoted Escalable Transportation Energy Charges mentioned in the first Contract Year as per Schedule 8 (in US\$/ kWh);
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “m” (expressed as a number);
- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number); and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\text{MEFHEP}_n = \text{QMEFHEP}_n * p/q$$

where:

- a) QMEFHEP_n is the Quoted Escalable Fuel Handling Energy Charges mentioned in the first Contract Year as per Schedule 8 (in Rs/ kWh);
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “m” (expressed as a number); and
- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number).

$$\text{MNEFEP}_n = \text{QMNEFEP}_n * \text{FX}$$

where:

- a) QMNEFEP_n is the Quoted Non Escalable Fuel Energy Charges of the Contract Year “n” in which month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Indexed/ Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8; and
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\text{MNETEP}_n = \text{QMNETEP}_n * \text{FX}$$

where:

- a) QMNETEP_n is the Quoted Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8; and
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

MNEFHEP_n is the Payable Non Escalable Fuel Handling Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8.

18.2.3.4 For the purpose of the above calculation of Payable Indexed Energy Charges:

- a) Barlow Jonker Coal Index shall mean FOB spot price index related to prevailing price of thermal coal from New South Wales, Australia as aggregated and published by Barlow Jonker Pty. Ltd.;
- b) South African Coal Index shall mean the weekly FOB index that indicates the price of thermal coal bound for Europe from Richards Bay, as published in South African Coal Report and aggregated and published by Barlow Jonker Pty. Ltd.;
- c) TFS AP4 means the index of the average of the Argus FOB Richards Bay assessment as published in both the Argus Coal Daily International and Argus Coal Daily on Friday and McCloskey's Coal Report and the SACR Europe spot price indicator as published in the monthly South African coal report and weekly in 'From the Coal Face';
- d) Argus/ McCloskey Coal Index means the index which an average of the Argus FOB New Castle assessment as published in the Argus Coal Daily International on Friday and McCloskey's FOB New Castle assessment as published in both McCloskey's FOB Fax on Friday and McCloskey's Coal Report as published in SACR, From the Coal Face, Fax on Friday, Argus McCloskey Coal Price Index Report as aggregated by the Argus Media Group; and
- e) If at any time, any coal index mentioned above is not being published, the average of the remaining indices shall be taken, if there is no remaining coal index, the same shall be decided by CERC.

[Select in case the Seller has chosen gas-based plants having domestic (pipeline) gas, as source for its supply of power]

18.2.3.5 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

..... [Insert name of Procurer(s)] or

where:

- a) MEPM is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOM is the Scheduled Energy during the Month m (in kWh); and
- c) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following: (i) Payable Escalable Energy Charges (MEEPn), (ii) Payable Escalable Transportation Energy Charges (METEPn), (iii) Payable Non Escalable Energy Charges (MNEEPn) and (iv) Payable Non Escalable Transportation Energy Charges (MNETEPn) for the Contract Year “n” in which month “m” occurs and computed as mentioned hereunder:

where:

$$\text{MEEPn} = \text{QMEEPn} * \text{p(EE)/q(EE)}$$

$$\text{METEPn} = \text{QMETEPn} * \text{p(EGT)/q(EGT)}$$

where:

- a) QMEEPn is the Quoted Escalable Energy Charges (in Rs/ kWh) quoted in the first Contract Year as per Schedule 8;
- b) QMETEPn is the Quoted Escalable Transportation Energy Charges (in Rs/ kWh) quoted in the first Contract Year as per Schedule 8;
- c) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- d) q(EE) is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number);
- e) p(EGT) is the Escalation Index for Inland Gas Transportation as per Schedule 6 at the beginning of Month “m” (expressed as a number); and
- f) q(EGT) is the Escalation Index for Inland Gas Transportation as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number).

MNEEPn is the Payable Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8

MNETEPn is the Payable Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Transportation Energy Charges of the Contract Year “n” in which month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen gas-based plants using imported R-LNG, as generation source]

18.2.3.6 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

where:

- a) MEP_m is the Monthly Energy Charges for Month m (in Rs.);
- b) AEO_m is the Scheduled Energy during the Month m (in kWh);
- d) MEP_n is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP_n is the sum of the following: (i) Payable Escalable Energy Charges ($MEEP_n$), (ii) Payable Escalable Transportation Energy Charges ($METEP_n$), (iii) Payable Escalable Fuel Handling Energy Charges ($MEFHEP_n$), (iv) Payable Non Escalable Energy Charges ($MNEEP_n$), (v) Payable Non Escalable Transportation Energy Charges ($MNETEP_n$) and (vi) Payable Non Escalable Fuel Handling Energy Charges ($MNEFHEP_n$) for the Contract Year “n” in which month “m” occurs and computed as mentioned hereunder:

$$MEEP_n = QMEEP_n * (p/q) * FX$$

where:

- a) $QMEEP_n$ is the Quoted Escalable Energy Charges mentioned in the first Contract Year as per Schedule 8 (in US\$/ kWh);
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “m” (expressed as a number);
- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number); and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$METEP_n = QMETEP_n * p/q * FX$$

where:

- a) $QMETEP_n$ is the Quoted Indexed Transportation Energy Charges mentioned in the first Contract Year as per Schedule 8 (in US\$/ kWh);
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “m” (expressed as a number);

- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number); and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “ m ” for which such exchange rates are published by SBI.

$$MEFHEP_n = QMEFHEP_n * p/q$$

where:

- a) $QMEFHEP_n$ is the Quoted Escalable Fuel Handling Energy Charges mentioned in the first Contract Year as per Schedule 8 (in Rs/ kWh);
- b) p is the Escalation Index as per Schedule 6 at the beginning of the Month “ m ” (expressed as a number); and
- c) q is the Escalation Index as per Schedule 6 as at the beginning of first Contract Year mentioned in Schedule 8 (expressed as a number).

$$MNNEEP_n = QMNNEEP_n * FX$$

where:

- a) $QMNNEEP_n$ is the Quoted Non Escalable Energy Charges of the Contract Year “ n ” in which month “ m ” occurs expressed in US\$/ kWh and is equal to the Quoted Indexed/ Non Escalable Energy Charges of the Contract Year “ n ” in which month “ m ” occurs, as provided in Schedule 8
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “ m ” for which such exchange rates are published by SBI

$$MNETEP_n = QMNETEP_n * FX$$

where:

- a) $QMNETEP_n$ is the Quoted Non Escalable Transportation Energy Charges of the Contract Year “ n ” in which month “ m ” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Transportation Energy Charges of the Contract Year “ n ” in which month “ m ” occurs, as provided in Schedule 8
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “ m ” for which such exchange rates are published by SBI

$MNEFHEP_n$ is the Payable Non Escalable Fuel Handling Energy Charges of the Contract Year “ n ” in which month “ m ” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Energy Charges of the Contract Year “ n ” in which month “ m ” occurs, as provided in Schedule 8

18.2.4 Contract Year Energy Incentive Payment²³

18.2.4.1 If and to the extent the Availability in a Contract Year exceeds [Insert number (...%)],, an incentive at the rate of forty (40%) of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 8 subject to a maximum of twenty five (25) paisa /kWh, shall be allowed on the energy (in kWh) corresponding to the Availability in excess of [Insert number (...%)],.

18.2.5 Contract Year Penalty for Availability below [Insert number (...%)] during the Contract Year²⁴

18.2.5.1 In case the Availability for a Contract Year is less than [Insert number (...%)], the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between [Insert number (...%)],and Availability during such Contract Year.

18.3 *Deviation from the Schedule*

18.3.1 Variation between Scheduled Energy and actual energy at the Delivery Point shall be accounted for through Unscheduled Interchange (UI) Charges as detailed in the Grid Code and ABT.

18.4 *Transmission/Wheeling Charges and Scheduling Charges*

18.4.1 The payment of transmission/wheeling charges, from the Injection Point onwards shall be settled between the CTU/STU and the Procurer. The payment of scheduling charges to the respective nodal agency (RLDC or SLDC) shall be the responsibility of the Procurer.

18.5 *Penalty and rights relating to Minimum Guaranteed Quantity of Fuel [applicable in case of imported coal based power station or imported LNG based power station].*

18.5.1 In case Seller has to pay penalty to the fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year Availability of Seller is greater than the Minimum Offtake Guarantee but the Procurer has not Scheduled Energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amount, on the Procurer, if it has not achieved

²³ This has to be decided by the Procurer and one of the options could be to link it with the rate specified in clause 23 Of the CERC (Terms and Conditions of Tariff) Regulations, 2004 norms i.e. for thermal power plants. These incentives could be a different figure for thermal and hydro plants. Further, , in no case the incentive shall be higher than the 40% of the non-escalable capacity charges quoted by the Bidder. For hydro power plant, if the Actual Capacity Index is greater than the Normative Capacity Index then the formula used for payment of incentive may be as follows: $0.65 * AFC * (CI_a - CI_n)$. Where AFC is the annual capacity charges and CI_a & CI_n are the actual and normative capacity index respectively. But the Procurer may decide on some other rates or mechanism to determine the incentive payment.

²⁴ In case of hydro plants units generated will be calculated taking into account the availability of water i.e. no hydrological risk to the Bidder. For Hydro plants separate penalty mechanism linked to Capacity Index needs to be decided by the Procurer. For Hydro Plants to hedge the Hydrological risks the penalty shall be paid by the Seller for not supplying the Energy corresponding to minimum offtake guarantee only if Actual Capacity Index is lower than the Normative Capacity Index.

Minimum Off-take Guarantee during that Contract Year, in proportion to its difference between Scheduled Energy assuming offtake corresponding to Minimum Offtake Guarantee and Scheduled Energy for the following amount:

- i) penalty paid to the fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or
- ii) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) for the Procurer made for all the months in that Contract Year multiplied by $(1 - X/Y)$ where:

X is the Scheduled Energy during the Contract Year (in kWh); and

Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kWh).

Provided, within ten (10) days of the end of each Month after the Scheduled Delivery Date, the Seller shall provide a statement to the Procurer, providing a comparison of the cumulative dispatch for all previous Months during the Contract Year with the Minimum Offtake Guarantee of the Procurer. Further, such statement shall also list out the deficit, if any, in the Fuel offtake under the Fuel supply agreement, due to cumulative dispatch being less than the Minimum Offtake Guarantee. In case of a Fuel offtake deficit, within a period of fifteen (15) days from the date of receipt of the above statement from the Seller and after giving a prior written notice of at least seven (7) days to the Seller, the concerned Procurer shall have the right to avail such deficit at the same price at which such deficit fuel was available to the Seller under the Fuel supply agreement and to sell such deficit to third parties.

18.6 *Tariff for the period prior to Scheduled Delivery Date and for Contract Years beyond the 25 years from the Scheduled Delivery Date*

- 18.6.1 The Tariff for the period prior to Scheduled Delivery Date shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25 years from the Scheduled Delivery Date shall be the Quoted Tariff of the 25th year from the Scheduled Delivery Date with applicable escalation.

18.7 *Settlement of Bills*

- 18.7.1 The penalty of actual Availability shortfall during the Contract Year, Deviation from the schedule, Transmission & Scheduling Charges, and Penalty to be paid to fuel supplier will be settled as detailed in Articles 18.2.2, 18.2.5, 18.3, 18.41 and 18.5 of this Schedule.
- 18.7.2 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.

19 SCHEDULE 5: DETAILS OF INJECTION POINT / DELIVERY POINT

19.1 General

- 19.1.1 The Injection Point shall be the point [*insert point chosen by the Seller in its Submitted Bid, from the list of possible points in Format 5.10 in the RFP*], at which the Seller shall supply power to the Procurer, as per the provisions of this Agreement.
- 19.1.2 The Delivery Point shall be the point [*insert the STU pooling point specified by the Procurer(s) in Format 5.1 in the RFP*]

20 SCHEDULE 6: ESCALATION INDEX

- 20.1.1 The index ("Escalation Index") to be applied for escalation of Quoted Escalable Capacity Charges and Quoted Escalable Energy Charges (excepting "Transportation Energy Charges") shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges), the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges), the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of escalable (or indexed) capacity charge and escalable energy charge, as per the provisions of the Competitive Bidding Guidelines.
- 20.1.2 For the avoidance of doubt, if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e. $(100 + 4.7/12)$] for Quoted Escalable Energy Charges. Thereafter, at the end of the second month beyond such first Month, the value of the Escalation Index shall be 100.7834 [i.e. $(100.3917 + 4.7/12)$] and so on. The value of the escalation index shall be calculated up to the fourth decimal point.
- 20.1.3 The different per annum inflation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:
- a) Quoted Escalable Capacity Charges;
 - b) Quoted Escalable Energy Charges;
 - c) Quoted Escalable Fuel Energy Charges;
 - d) Quoted Escalable Transportation Energy Charges, separately for linkage based coal, imported coal, domestic gas and imported R-LNG; and
 - e) Quoted Escalable Fuel Handling Energy Charges, separately for imported coal and imported R-LNG.
- 20.1.4 The inflation rates for the components (d) and (e) above shall be applicable only to coastal coal-based plants using imported coal and imported R-LNG based thermal plants.
- 20.1.5 In case due to some reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurer and the Seller shall replace the above inflation rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.

21 SCHEDULE 7: REPRESENTATION AND WARRANTIES

21.1 *Representations and Warranties by the Procurer*

The Procurer hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

21.1.1 The Procurer has all requisite powers authorising and has been duly authorized to execute and consummate this Agreement ;

- i) This Agreement is enforceable against the Procurer in accordance with its terms;
- ii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- iii) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- iv) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- v) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines

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

21.2 *Representation and Warranties of the Seller*

21.2.1 The Seller hereby represents and warrants to and agrees with the Procurer as follows and acknowledges and confirms that the Procurer is relying on such representations and warranties in connection with the transactions described in this Agreement:

- i) The Seller has all requisite power authorising and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Seller in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease,

agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;

- iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- vi) The Seller/ Selected Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

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

21.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 10.1 of this Agreement and the Procurers shall have the right to terminate this Agreement in accordance with Article 10 of this Agreement.

22 SCHEDULE 8: QUOTED TARIFF

(Quoted Tariff from Format 4.12 of RFP of the Selected Bid to be inserted here)

23 SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

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

In consideration of the[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and [Insert name of Procurer(s)](herein after referred to as Procurer(s)), agreeing to execute the RFP Documents with the Successful Bidder for **procurement of power on [Procurer/Authorized Representative to insert 'medium' or 'long', as applicable] term basis through tariff based competitive bidding process for meeting the requirements of the Procurer(s)** and the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer(s) at[Insert address of Procurer(s)] forthwith on demand in writing from the Procurer(s) or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees crores only [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with the respect to Contracted Capacity of [Insert as applicable: "Procurer"/"each Procurer"]] in respect of the Procurer(s) as per the terms of PPA] on behalf of M/s. [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including[Insert date of validity of CPG] and shall not be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. crores (Rs. crores only). Our Guarantee shall remain in force until [Insert the date of validity of the Guarantee as per Clause 2.13 of the RFP]. The Procurer(s) shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee.

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

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India.

..... [Insert name of Procurer(s)] ~

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

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

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

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

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

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

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

Witness:

1.
Name and Address.
2.
Name and Address

Signature
Name:
Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [Insert name of Procurer(s)] 07

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

Banker's Stamp and Full Address:

Dated this day of 20.....

Notes:

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

24 SCHEDULE 10: SELECTED BID

25 SCHEDULE 11: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

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

Nationalised Banks

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Bank of Baroda
6. Canara Bank
7. Central Bank of India
8. Corporation Bank
9. Dena Bank
10. Indian Bank
11. Indian Overseas Bank
12. Oriental Bank of Commerce
13. Punjab National Bank
14. Punjab and Sind Bank
15. Syndicate Bank
16. Union Bank of India
17. United Bank of India

18. UCO Bank

19. Vijaya Bank

2. Foreign Banks

1 BNP Paribas

2 Citi Bank N.A.

3 Deutsche Bank A.G.

4 The Hongkong and Shanghai Banking Corporation Ltd.

5 Standard Chartered Bank

6 ABN Amro Bank N.V.

7 UFJ Bank Ltd.

8 Sumitomo Mitsui Banking Corporation

9 Societe Generale

10 Barclays Bank

11 Bank of Novascotia

3. Scheduled Private Banks

1 ING Vysya Bank Ltd.

2 ICICI Bank Ltd.

3 HDFC Bank Ltd.

4 IDBI Bank Ltd

5 Axis Bank

6 Kotak Mahindra Bank

[Note: The Procurer/Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]

26 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS

26.1 *Substitution of the Seller*

26.1.1 Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the total debt amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

26.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other Bid Documents executed between Procurer(s) and the Seller in favour of the Selectee, the Procurer(s) and the Seller shall cooperate with the Lenders to carry out such substitution.

26.2 *Procurers Notice of Default*

26.2.1 The relevant Procurer(s) (i.e. the Procurer(s) who serve(s) the Preliminary Default Notice on the Seller as per this Agreement), shall simultaneously also issue a copy of the same to the Lenders.

26.3 *Substitution Notice*

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

26.4 *Interim operation of Power Station*

26.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 26 of this Agreement.

26.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer(s) to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the total debt amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurer(s). If the Procurer(s), at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurer(s) shall be compensated for rendering such services in accordance with Article 26.9.4.

26.4.3 If the Procurer(s) refuse to takeover the Power Station on request by the Lenders in accordance with Article 26.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

26.4.4 The Lenders and the Procurer(s) shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

26.5 *Process of Substitution of Seller*

26.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer(s) and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the [Insert "Procurer" or "Lead Procurer", referred to in Article 14.1 as applicable], such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurers, in accordance with these terms of substitution.

26.5.2 The Lenders and the Seller shall ensure that, upon the Lead Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer(s) in favour of the Selectee as mentioned in Article 26.1.2.

26.6 *Modality for Substitution*

Criteria for selection of the Selectee.

26.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

(a) if the Seller is proposed to be substituted prior to the Scheduled Delivery Date, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.

(b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer(s) under and in accordance with the PPA and also payment of the total debt amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and [Insert "the Procurer" or "any of the Procurers", as applicable], involving sums greater than Rupees twenty

(20) crores at any time in the last two (2) years as on the date of the substitution of the Seller.

- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

26.7 Modalities

26.7.1 The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

26.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer(s) (the "Proposal") pursuant to Article 26.7.3 below, the name of the Selectee for acceptance, seeking:

- (a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the Selectee (as substitute for the Seller);
- (b) amendment of the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurer(s) and the Seller; and
- (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.

26.7.3 The Proposal shall contain the particulars and information in respect of the Selectee, the data and information as Procurer/ All Procurers (insert as applicable) may reasonably require. The Procurer(s) may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

26.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer(s) of the Proposal:

- (a) observe, comply, perform and fulfil the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurer(s) or a new power purchase agreement or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and
- (b) be liable for and shall assume, discharge and pay the total debt amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer(s) as if such Selectee was the Seller originally named under such Financing Agreements.

26.7.5 At any time prior to taking a decision in respect of the Proposal received under Article 26.7.2, the Procurer(s) may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer(s) as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

26.7.6 The Procurer/ All Procurers (insert as applicable) shall convey their approval or disapproval of such Proposal, through the Lead Procurer, to the Selectee. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

- (a) the date of receipt of the Proposal by the Procurers; or
- (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under Article 26.7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer(s) or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Article 26.6.1.

26.7.7 Upon approval of the Proposal and the Selectee by the Procurers, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

26.7.8 Following the rejection of a Proposal, the Lenders and/or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

26.7.9 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurers and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurers and upon transfer of ownership and complete possession of the Power Station by the Procurers or the Seller, as the case may be, to the Selectee. The Procurers shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurers shall in no way be responsible to bear the same.

26.7.10 Upon the substitution becoming effective pursuant to Article 26.7.9 above, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurers against the erstwhile Seller or the Selectee.

26.7.11 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) days to rectify any breach and/ or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Seller.

26.7.12 The decision of the Lenders and the Procurer(s) in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

26.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurer(s) shall not be liable for the same.

26.7.14 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

26.8 Seller's Waiver

26.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer(s) or exercise of their rights under and in accordance with these terms.

26.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Article 26.7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

26.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer(s). The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

26.9 Interim Protection Of Service And Preservation Of Security

Appointment of a Receiver

26.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurer(s) refusing to takeover the Power Station and the Seller failing to operate the Power Station in accordance with Article 26.4.3 and the Procurers not electing to act as Receiver as per

Article 26.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

- 26.9.2 If the assets of the Power Station are, in the opinion of the Procurer(s), necessary and required for the operation and maintenance of the Power Station, the Procurer(s) shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer(s) so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.
- 26.9.3 Upon appointment of the Court appointed Receiver or the Procurer(s) acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer(s) and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.
- 26.9.4 When acting as a Receiver or operator in accordance with Articles 26.9 or 26.4.2, Procurer(s) shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer(s) shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer(s).

26.10 Substitution Consideration

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

26.11 Change in the Procurers or Lenders

- 26.11.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Procurer(s) may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis such Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Procurer ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under

the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

27 SCHEDULE 13: LIST OF ARTICLES

List of Articles under which rights and obligations of the Procurers (including all matters incidental thereto and related follow-up), which are required to be undertaken by the Procurers jointly, will be performed by Lead Procurer for and on behalf of all the Procurers

- Article 1.1
- Article 2.3
- Article 3.1.1
- Article 3.4.2
- Article 3.3.3
- Article 3.4.3
- Article 4.5.2
- Article 5.5.3
- Article 5.5.9 (c)
- Article 9.3.2
- Article 10.1 (ii)
- Article 10.1 (viii)
- Article 10.1 (ix)
- Article 10.1 (x)
- Article 10.3.1

and any other Articles of this Agreement not specifically mentioned herein, which provide for a joint action by all the Procurers.



STANDARD GAS TRANSPORTATION AGREEMENT
QUEENSLAND GAS PIPELINE

Contract Reference: [Q-XXX-YY-ZZ]

18 August 2008

Revision 1.1

STANDARD GAS TRANSPORTATION AGREEMENT

QUEENSLAND GAS PIPELINE

FIRM GAS TRANSPORTATION SERVICE/BACKHAUL SERVICE/AS AVAILABLE GAS TRANSPORTATION SERVICE

(Delete inapplicable Services)

AGREEMENT made on 20

BETWEEN

(1) Jemena Queensland Gas Pipeline (1) Pty Ltd ABN 97 083 050 284 and Jemena Queensland Gas Pipeline (2) Pty Ltd ABN 70 083 050 104, both of 321 Ferntree Gully Road, Mount Waverley, Victoria 3149, together (**Transporter**);

(2) (ABN), of
(**Shipper**).

1. BASIC INFORMATION ABOUT THIS AGREEMENT

(1) *This Agreement consists of:*

This Standard Gas Transportation Agreement

and

Exhibit A

and

The Standard Terms and Conditions of Service a copy of which is attached to this Gas Transportation Agreement.

By signing this agreement, you acknowledge that you have received, read, are aware of and agree to all of the above terms and conditions.

(2) *The Service covered by this agreement is:*

Firm Gas Transportation Service/Backhaul Service/As Available Gas
Transportation Service (Delete inapplicable Services)

(3) *Commencement Time and Date:*

See Exhibit A.

(4) *Expiration Time and Date:*

See Exhibit A.

(5) *MDQ under this agreement:*

See Exhibit A.

2. RATES AND CHARGES

Rates and Charges payable by the Shipper to the Transporter that apply under this agreement are the Service Charges specified in the following table:

Service Charges	Rate or Charge
Capacity Reservation Rate	[\$0.00]/GJ of MDQ*
Backhaul Rate	[\$0.00]/GJ or MDQ]
As Available Rate	[\$0.00]/GJ per Day
Capital Surcharge	[\$0.00]/Month
Minimum Service Charge	[\$0.00]/Month
Odourisation Charge	[\$0.00]/GJ per Day

* As at [1 January 2008], and escalated in accordance with the Standard Terms and Conditions of Service.

SIGNED for and on behalf of
JEMENA QUEENSLAND GAS
PIPELINE (1) PTY LTD ABN 97 083
050 284

by an authorised officer in the
presence of:

.....
Witness
Name (printed):

.....
Authorised officer
Name (printed):

SIGNED for and on behalf of
JEMENA QUEENSLAND GAS
PIPELINE (2) PTY LTD ABN 70 083
050 104

by an authorised officer in the
presence of:

.....
Witness
Name (printed):

.....
Authorised officer
Name (printed):

SIGNED for and on behalf of
[insert] ABN [..]
by an authorised officer in the
presence of:

.....
Witness
Name (printed):

.....
Authorised officer
Name (printed):

FIRM GAS TRANSPORTATION SERVICE /BACKHAUL SERVICE/ AS AVAILABLE GAS TRANSPORTATION SERVICE

(Delete inapplicable Services)

SHIPPER: **[SHIPPER NAME]** – **[CONTRACT REFERENCE]**

EXHIBIT A

COMMENCEMENT TIME AND DATE: 08:00 hrs on [dd/mm/yyyy]

EXPIRATION TIME AND DATE: 08:00 hrs on [dd/mm/yyyy]

RECEIPT AND DELIVERY POINTS AND MDQ

Path	Receipt Points	Delivery Points	MDQ [#] (GJ/Day)	Rate/ Charge*
1				
2				
3				
4				

Note The following section does not need to be signed when your Gas Transportation Agreement is first executed. This section is signed when the Shipper and the Transporter agree to make changes to Exhibit A during the term of the Shipper's GTA.
The section must be signed by an authorised officer. The authority must be in writing, and must be signed by the Shipper's Chief Executive Officer or Managing Director or Authorised Officer, or be properly executed under your corporate seal. If the Transporter asks, the Shipper must give it a copy of any authority.
For Firm Gas Transportation Service only.
* As at 1 January 2008, and escalated in accordance with the Standard Terms and Conditions of Service

SIGNED for and on behalf of
JEMENA QUEENSLAND GAS
PIPELINE (1) PTY LTD ABN 97 083
050 284

by an authorised officer in the
presence of:

.....
Witness
Name (printed):

SIGNED for and on behalf of
JEMENA QUEENSLAND GAS
PIPELINE (2) PTY LTD ABN 70 083
050 104

by an authorised officer in the
presence of:

.....
Witness
Name (printed):

.....
Authorised officer
Name (printed):

.....
Authorised officer
Name (printed):

SIGNED for and on behalf of)
ABN [.. ..])
by an authorised officer in the)
presence of:

.....
Witness
Name (printed):

.....
Authorised officer
Name (printed):



USAID
FROM THE AMERICAN PEOPLE



National
Association of
Regulatory
Utility
Commissioners

Gas-to-Power Workshop: Enhancing Private Investment in Natural Gas-Fired Electricity Generation

Our Commitment to You

- We are here to do the best possible job of getting you what you need to be a success
- We understand how this has been a very long road for you and that you have had marked successes that Nigeria can be proud of.
- We know that the US experience is not always directly transferable and we want to help you find what works for Nigeria.
- We can be flexible and tailor this workshop for you.
- We thrive on feedback.

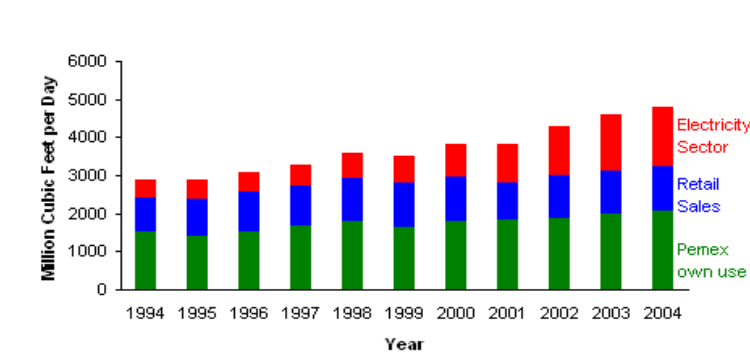
Regional Gas Markets in Key World Markets

Gas-powered generation is the largest source of growth in electricity production in the world.

- Some of these plants have been traditional thermal plants, either newly constructed or conversions.
- By far, most new capacity has relied on gas-fired turbines either straight or combined cycle or combined heat and power.

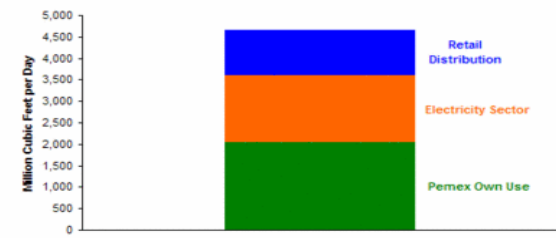
Growth in Gas Demand and Supply

Mexico's Natural Gas Consumption, by End Use, 1994-2004



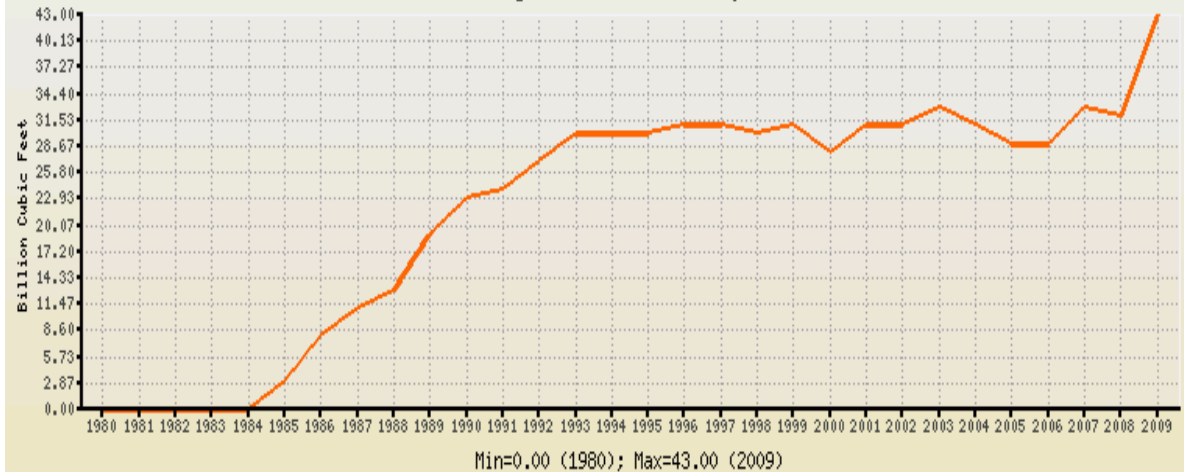
Source: Pemex

Mexico's Natural Gas Consumption, by End Use, 2005



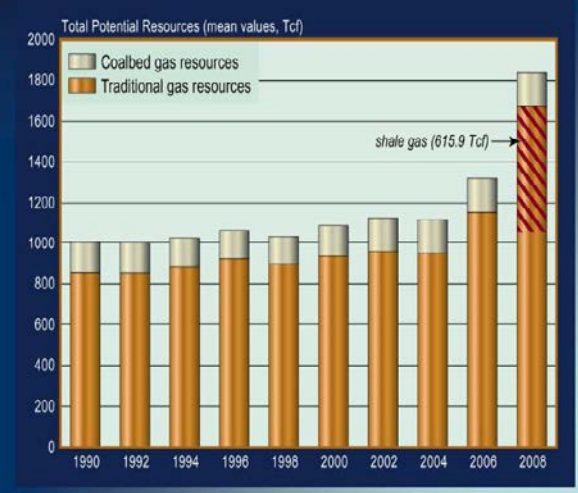
Source: Pemex

Sweden: Dry Natural Gas Consumption



TitiTudorancea.com

Total Potential Gas Resources (mean values)



Data source: Potential Gas Committee (2009)

Gas to Electric Generation is Growing

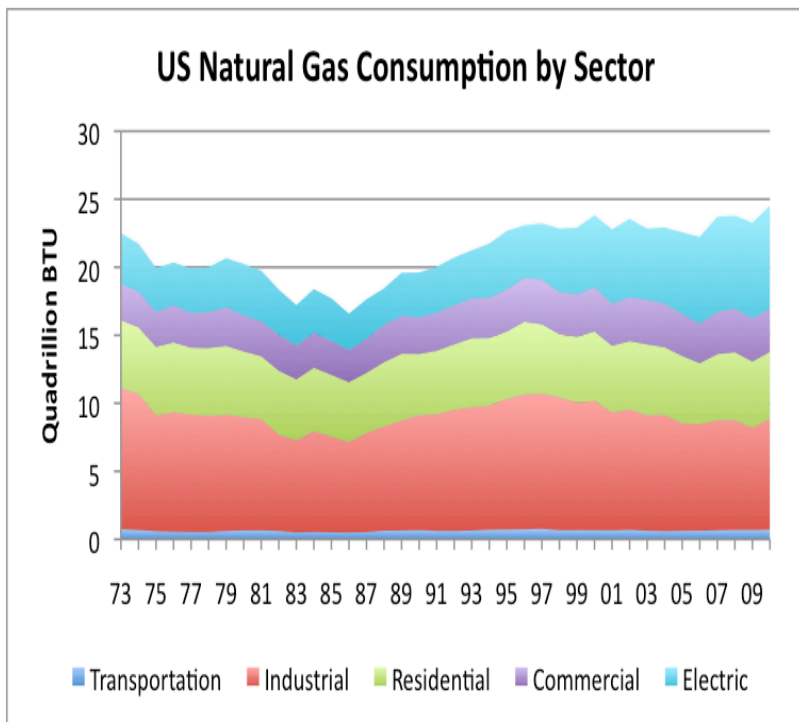
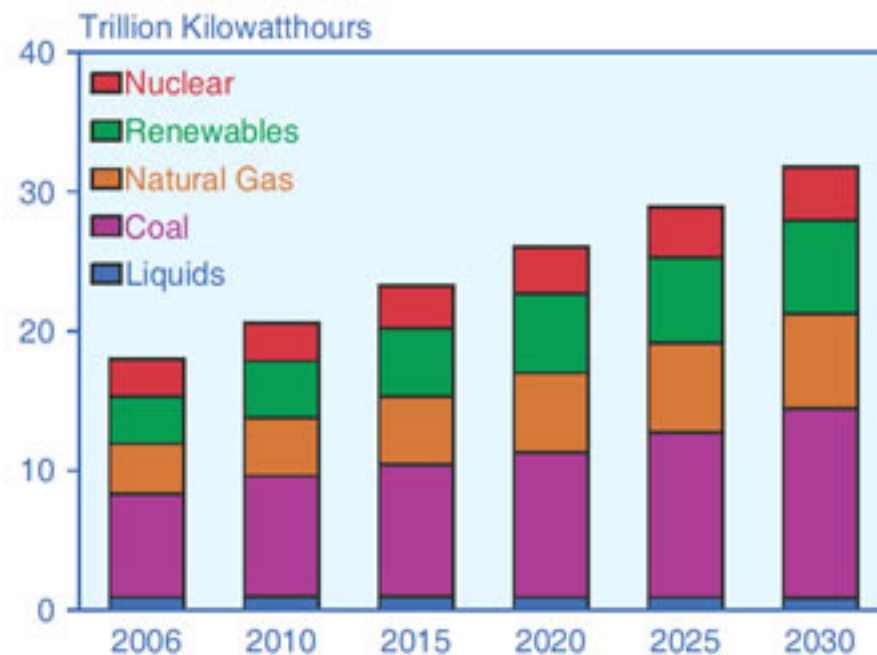


Figure 6. World Electricity Generation by Fuel, 2006-2030



Sources: **2006:** Energy Information Administration (EIA), *International Energy Annual 2006* (June-December 2008), web site www.eia.doe.gov/iea. **Projections:** EIA, *World Energy Projections Plus* (2009).



Source: ABARE 2009a, 2010

Gas-fired Generation is Increasing Worldwide

Factors affecting gas-fired generation include

- Liberalization of gas and electricity regulation
 - Lessons learned from US markets
 - At one time wellhead prices were regulated this led to shortages.
 - In 1977 President Carter proposed the Powerplant and Industrial Fuel Use Act of 1978 that regulated gas-burning facilities--beginning with a ban on new gas-fired power plants.
 - Thanks to some smart policy folks at FERC and elsewhere (Dr. Alfred Kahn, Elisabeth Moler), wellhead controls were removed and gas has become steadily more plentiful.
 - In 1978 the Public Utility Regulatory Policy Act (PURPA) required utilities to buy power from independent companies for the “avoided cost.” Renewables were favored as were natural gas-fired “cogeneration” plants, where steam is produced along with electricity.
- (Continued)

Factors Affecting gas-fired generation include (continued):

- Advances in generation technology
 - Advances in jet engines, largely developed for aircraft, have spun off applications in power generation.
 - Combined cycle applications have yielded increased efficiency in converting gas to electricity and allow efficiencies to approach 60%.
- Modular component size tends to be financeable, sitable and scalable
- Increased environmental regulation
 - CO₂ conscious world: C versus CH₄
- Revised choices with respect to generation methods,
 - Elimination of oil, coal and nuclear
- Most recently, new and plentiful supplies of natural-gas obtained using new drilling and production technology.
 - Deep drilling, directional drilling and hydraulic fracturing
 - Pipelines are bigger exploiting scale economies
 - More storage has been developed as well

Sweden from Gas Famine...

- “There is no natural gas extraction in Sweden, which imports all the natural gas consumed there from Denmark via a pipeline that links these two countries.”, Eskilstuna, The Swedish electricity and natural gas markets 2010, The Swedish Energy Markets Inspectorate, 9/6/2011.

...to Gas Feast

- “Last month the company Gripen Gas completed test drillings outside Motala in the south-east of Sweden. ...Research shows that there is potential in Sweden to generate 12,800 terawatt hours. That is a very large amount of gas. It would allow Sweden to keep up its current gas usage rate for 1,000 years.” Anna Nordling 13/11/2012

Investment Drivers in the Gas-to-Power Business

- What are the important factors that investors are looking for when they choose to build and operate an electric power plant?
- How do investors choose between alternative projects?
- What other considerations are important besides financial returns?
- How do long-term commitments upstream and downstream play into the considerations?
- How do factors such as risk, security, and political stability influence decisions?

Exercise: Investor Role Playing

- You are the Board of Directors of Benron. Your company is considering investing in the gas-to-power business in Nigeria by constructing and operating a 400 MW combined cycle generation facility, consisting of a 270 MW gas turbine coupled to a 130 MW steam turbine.
- What should you be thinking about?
- What challenges need to be overcome?
- What do we look to from the NERC and the gas regulator?
- What are some other considerations?
- Key words: License? Location? Risk? Takeaway Capacity? Who are customers? Grid? Contract? Dispatchable? Gas Supply Take or pay? What happens if plant does not run? Spot market or contract? Mixture? Financing? Security? Local partner? More..

You have 2 years (24 months) to conduct all of your development activities, successfully negotiate a PPA and construct and interconnect the project.

Identify the order in which you will undertake the following activities, as well as when you will begin and end each activity. It is likely that some of your development steps will overlap with each other. All steps must be completed by the end of the 24th month.

Example:

1. Activity A – Months 1 – 5
2. Activity B – Months 3 – 12
3. Activity C – Months 3 – 8
4. Etc.

Activities:

- A. Developer seeks out and secures (closes on) financing
- B. Developer begin talks with the utility regarding the PPA
- C. Developer identifies general area for possible project development
- D. Developer obtains environmental review and approval
- E. Developer acquires long term land rights
- F. Developer conducts detailed solar energy resource assessment
- G. Utility interconnects the project
- H. Developer constructs the project
- I. Utility and developer sign PPA. Is NERC approval required?
- J. Utility studies and determines extent of interconnection construction & upgrades needed
- K. Developer applies for and obtains license
- L. Developer signs contracts for generation equipment and turbines, down payment of 40% of cost due on signing
- M. Developer obtains licenses from necessary authorities: NERC? Local state? Other licenses?
- N. Right-of-ways are obtained.
- O. A local partner is brought in.
- P. The developer chooses the location of the plant.
- Q. A gas pipeline is constructed.

In addition to putting these activities in order over a 24 month timeline, please answer the following questions about each step:

1. What would cause you to abandon the project at this stage?
2. What must you have in order to complete this step?
3. What concerns you most about this step? What could go wrong?
4. What key things do you need to decide at this step? What major factors will influence your decision?
5. What would cause you to contact NERC or the Ministry of Energy at some point in this process? When and why?



USAID
FROM THE AMERICAN PEOPLE



National
Association of
Regulatory
Utility
Commissioners

Gas-to-Power Workshop: Enhancing Private Investment in Natural Gas-Fired Electricity Generation Day 3

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

Recap and Takeaways from Days 1 and 2

- Day 1
 - We learned about the development of Gas to Power from NERC
 - We learned about the West African Gas Pipeline Authority (WAGPA) and the West African Gas Pipeline Company (WAGPCo)
 - Regional Gas Market in Key World Markets
 - We began to discuss Investment Drivers in the Gas to Power Business
 - Exercise: Investor Role Playing
 - Began to look at the Integrated Natural Gas Value Chain
 - Process of collaboration and debate
- *Day 2 Cost Recovery in the Natural Gas Business*
 - Achieving sustained private sector participation in gas to power
 - Company and institutional requirements
 - Advantages and disadvantages of various types of regulatory structure
 - The theory in practice: developing tariffs
 - The art of rate design
 - Real experience developing tariffs
- Your list...
- Certificates of Completion

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

Measurement and Influence of Utility Performance: Introducing Benchmarking and Incentives

- Comparing the company's performance to other companies and assessing penalties awarding benefits based on relative performance.
- For instance, the regulator might identify a number of comparable companies compare their cost efficiency.
- The most efficient operators would be rewarded with extra profits and the least efficient operators would be penalized.
- Since the companies are most likely in different markets, it is important to control for differences the operators have no control over.

Measurement and Influence of Utility Performance: Introducing Benchmarking and Incentives (cont.)

- Benchmarking
- Comparison between different utilities
- Number of employees per unit of output
- Administrative costs per unit of output
- Compare costs of similarly situated utilities
- Customer Density/Characteristics key factor in comparing utilities with benchmarks because it is a main determinant of system costs
- Can rely on Ratio Analysis comparison

Measurement and Influence of Utility Performance: Introducing Benchmarking and Incentives

Incentive Regulation

Rewarding of superior performance

Revenue Requirement= $(V-D)^r+E-d$

where V = valuation

D = accumulated depreciation

r = rate of return

E = Annual Expenses

d = annual depreciation

No incentives for superior performance

Opportunity not guarantee.

Incentives for Superior Performance

- How can you adapt structure to encourage superior performance?
- Carrot versus/and stick
- U.K. Office of the Gas and Electricity Markets (Ofgem) combines elements of rate of return regulation and price cap regulation to create their form of RPI - X regulation.
- Specific improvement goal: A company has a poor record of service and receives many complaints. The regulatory commission has made improvement a priority and adopted the following “Sliding Scale” for complaints per 1000 customers: 0-5 then +.05, 5-10 then 0, 10+ -.05
- Regulatory lag.

Contract Management and Commercial Operations Issues

The legal framework and structure of contracts for gas to power integration by utilities and third party owner-operators. Contract structures can be fixed or variable, depending on such factors as dispatchability, fuel adjustment clauses, take or pay requirements, performance measures and a multitude of other possible factors.

The types and structure of tariffs and the relevancy of contracts and tariffs to recover the generation costs of various gas consuming technologies available to generate electricity will be considered.

Power Purchase Agreement PPA

Avoided Cost

Escalation

Force Majore

Dispatchability

Minimum capacity availability

Take or pay

Gas Purchase Agreements (GPA) or Gas Sales Purchase Agreement (GSPA)

Fuel Adjustment Clause (FAC) or Fuel Escalation Charge (FEC)

Tariff

Currency Risk

Security

Dr. Cale Case, Tel.(307)332-7623
ccase@wyoming.com,
<http://CaleCase.com>

Contract Management and Commercial Operations Issues

- Technical requirements...
- Depending on the type of transaction, operators and the regulator will require
 - implementation and administration of market rules,
 - drafting and implementation the market procedures,
 - administration of the commercial metering system;
 - that each trading point has adequate metering systems;
 - administration of the market settlement system;
 - administration of the payment system and commercial arrangement of the energy market, including ancillary services;
 - periodic reporting on the implementation of the market rules;
 - training of participants on the market rules, procedures and trading arrangements;
 - and supervising participants' compliance with market rules and the grid technical and financial requirements.

**STANDARD
POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF POWER
FOR
[INSERT ‘MEDIUM TERM’ OR ‘LONG TERM’, as applicable]
BASIS
Under Case – 1 Bidding Procedure
THROUGH
TARIFF BASED COMPETITIVE BIDDING PROCESS
(As per Guidelines for Determination of Tariff by Bidding Process for Procurement of
Power by Distribution Licensees)
FOR MEETING THE [INSERT BASE LOAD / SEASONAL LOAD /
DIURNAL LOAD] REQUIREMENTS
OF
[INSERT NAME OF THE PROCURER(S)]
Between
[Insert Name of Distribution Licensee 1]
("Procurer 1")
and
[Insert Name of Distribution Licensee 2]
("Procurer 2")
and
.....
[Insert Name of Distribution Licensee n]
("Procurer n")
And
[Insert Name of the Seller]
("Seller")
Issued by
[Insert Name and Address of
Procurer / Authorized Representative]**

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

..... [Insert name of Procurer(s)] 2

INDEX
SECTION CONTENTS PAGE NO.

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	5
2 ARTICLE 2 : TERM OF AGREEMENT.....	18
3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER/ PROCURER(S).....	20
4 ARTICLE 4 : COMMENCEMENT OF SUPPLY OF POWER.....	25
5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH.....	32
6 ARTICLE 6: METERING AND ENERGY ACCOUNTING.....	36
7 ARTICLE 7: BILLING AND PAYMENT.....	37
8 ARTICLE 8 : FORCE MAJEURE	48
9 ARTICLE 9: CHANGE IN LAW.....	53
10 ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION	55
11 ARTICLE 11: LIABILITY AND INDEMNIFICATION	60
12 ARTICLE 12: ASSIGNMENTS AND CHARGES.....	63
13 ARTICLE 13: GOVERNING LAW AND DISPUTE RESOLUTION.....	65
14 ARTICLE 14: MISCELLANEOUS PROVISIONS.....	67
15 SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)	75
16 SCHEDULE 2: CALCULATION OF ‘X’ DAYS.....	76
17 SCHEDULE 3: AVAILABILITY FACTORS	77
18 SCHEDULE 4: TARIFF.....	78
19 SCHEDULE 5: DETAILS OF INJECTION POINT / DELIVERY POINT	91
20 SCHEDULE 6: ESCALATION INDEX.....	92
21 SCHEDULE 7: REPRESENTATION AND WARRANTIES	93
22 SCHEDULE 8: QUOTED TARIFF.....	95
23 SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE.....	96
24 SCHEDULE 10: SELECTED BID.....	99
25 SCHEDULE 11: LIST OF BANKS.....	101
26 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS.....	103
27 SCHEDULE 13: LIST OF ARTICLES.....	110

Keep it Simple

- Build on simplicity in your generation system
- Since most new generation will use similar technology do not worry about over complications.
- Pay a single base rate for energy designed to be remunerative to an efficient operator.
- Allow for start up issues via a sliding scale
- Encourage combine cycle or cogeneration to prevent waste of resource.
- Reward demonstrated dual-fuel capability with higher rates reflecting firmness and reliability.
- Compensate for operators who agree to be dispatched

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

Keep it Simple (continued)

- Encourage operators to reach new locations with gas infrastructure by adding a gas transportation rider that decreases over time. Encourage sharing of facilities and third party ownership.
- Allow for the case by case approval of a transmission rider when extraordinary costs are required for transmission interconnection.
- Absent a showing that the project is not in the public interest, require the transmission utility to interconnect (and take power) and allow for recovery of those interconnection costs.

Exercise: Retail Electricity Tariffs and Disco Regulation

What changes in the structure and level of retail electricity rates will be necessary to accommodate private investment in gas-fired electric generation?

- IPPs will require compensatory payments. Unless subsidies are continued, retail rates will also need to cover the cost of delivered power.
- Unless retail electric rates cover all of the economic costs, resources will be misdirected and the economy will not achieve its full potential.
- Generation costs will be out of the control of the Discos, but lots of costs and customer issues are within their control.

Social concern about increases in electricity prices is a big issue. Protests have brought down many a reform movement

People are most concerned when rates increase, but service and reliability does not improve.

The existence of very expensive private networks shows that customers' value reliability.

Is there a role for geographic differentiation to match increased supplies and reliability with tariff increases regionally?

Phase in?

Dr. Cale Case, Tel.(307)332-7623
ccase@wyoming.com,
<http://CaleCase.com>

Challenges

- After falling three spots, Nigeria ranks at the very bottom of this year's Index. Although the number of positive developments is limited, Nigeria does possess a relative strength in terms of financial sector liberalization (29th). Conversely, its business environment (58th) re-mains highly underdeveloped.
- The quality of Nigeria's overall infrastructure (57th) is quite poor and the costs associated with starting a business (60th) and registering property (60th) in the country are extraordinarily high. As such, Nigeria lacks many of the foundational elements necessary for successful financial development.
- Moreover, financial intermediation is lacking across its banking financial services (56th), non-banking financial services (58th), and financial markets (55th). Finally, overall financial access remains low (58th), despite Nigeria's advantages in foreign direct investment (20th) and loan accounts at microfinance institutions (21st), (World Economic Forum 2011: 27).



USAID
FROM THE AMERICAN PEOPLE



National
Association of
Regulatory
Utility
Commissioners

Gas-to-Power Workshop: Enhancing Private Investment in Natural Gas-Fired Electricity Generation Day 3

Dr. Cale Case, Tel. (307) 332 7623,
ccase@wyoming.com,
<http://calecase.com>

Recap and Takeaways from Days 1 and 2

- Day 1
 - We learned about the development of Gas to Power from NERC
 - We learned about the West African Gas Pipeline Authority (WAGPA) and the West African Gas Pipeline Company (WAGPCo)
 - Regional Gas Market in Key World Markets
 - We began to discuss Investment Drivers in the Gas to Power Business
 - Exercise: Investor Role Playing
 - Began to look at the Integrated Natural Gas Value Chain
 - Process of collaboration and debate
- *Day 2 Cost Recovery in the Natural Gas Business*
 - Achieving sustained private sector participation in gas to power
 - Company and institutional requirements
 - Advantages and disadvantages of various types of regulatory structure
 - The theory in practice: developing tariffs
 - The art of rate design
 - Real experience developing tariffs
- Your list...
- Certificates of Completion