

[NOTE: To be executed on an appropriate stamp paper]

INVESTMENT AGREEMENT

FOR

**INVESTMENT OF REQUIRED EQUITY TOWARDS
PROCUREMENT OF POWER THROUGH OPEN ACCESS
BY BPCL, MUMBAI REFINERY**

Between

**BHARAT PETROLEUM CORPORATION LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)
("Procurer / Procurer Company")**

AND

THE PROMOTER

AND

***[Name of Successful Bidder]*
("Seller Company")**

Dated _____, 2018

Place: Mumbai

THIS INVESTMENT AGREEMENT IS MADE AT _____ ON THE] DAY
[OF [] 2018

BETWEEN:

1. Bharat Petroleum Corporation Limited, a Government of India Enterprise, having its registered office at Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai - 400001 and its Mumbai Refinery located at Mahul, Chembur, Mumbai -400074 (hereinafter referred to as the "**Procurer Company / Procurer**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns) of the **FIRST PART**

AND

2. **THE PROMOTERS**, whose names and particulars are listed in **Annexure [1]**, (hereinafter collectively referred to as the "**Promoters**" and individually as a "**Promoter**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include their respective heirs, executors and administrators or successors in interest and permitted assigns (as the case may be)) of the **SECOND PART**;

AND

3. [**•**], a Company incorporated under the Companies Act, 1956, having its registered office at [**•**] (hereinafter referred to as the "**Seller**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in interest and permitted assigns) of the **THIRD PART**

(The Procurer, the Promoters and the Seller Company are individually referred to as a "**Party**" and collectively as the "**Parties**").

WHEREAS

- A. The Procurer, had initiated a competitive bidding process through issue of Request for Proposal (RFP) for procurement of power through short/ medium term Open Access by BPCL, Mumbai Refinery;
- B. Pursuant to the said bidding process [**Insert name of the Successful Bidder**] has been selected by the Procurer as the Seller for sale and supply of electricity in bulk to the Procurer, for the Contracted Capacity of 12 MW, in accordance with the terms of Power Purchase Agreement (PPA)

- C. The Successful Bidder (“Seller”) has offered, under its Bid and response to RFP, to supply power to Bharat Petroleum Corporation Limited (“Procurer”) under Group Captive mode;
- D. The Parties agreed to execute Power Purchase Agreement (PPA) setting out the terms and conditions for the sale of power up to the Contracted Capacity by the Seller to the Procurer;
- E. The Parties hereby also agreed to execute this Investment Agreement on the same date on which PPA shall be executed. The Procurer has also agreed to invest an amount equal to Rs. [●] for the purpose of purchasing Equity Shares from the Promoters as per the terms and conditions mentioned in this Investment Agreement;
- F. The Procurer agrees, on the terms and subject to the conditions of PPA, to procure power up to the Contracted Capacity and pay the Seller the Tariff (as defined in PPA);
- G. The Seller is promoted by the Promoters whose equity shares shall be utilized for the purpose of this Investment Agreement, as mentioned under Annexure 1
- H. The Seller has discussed with the Procurer, the sale, by the Seller to the Procurer, of some Equity Shares held by Promoters, as mentioned under Annexure [●];
- I. The Procurer recognizes that its adherence to the terms and conditions in this Investment Agreement is a fundamental requisite for the Seller to supply power to the Procurer;
- J. The Promoter has agreed to transfer the Equity Shares of the Seller to the Procurer. The Promoter has provided a Bank Guarantee (*as per Annexure 5*) to the Procurer, for a value equal to the Purchase Price, and valid up to three months after completion of term of the PPA, as a security against the purchase of Equity Shares by the Procurer.

If the Term of the PPA is extended by the Procurer, the Promoter shall submit a new Bank Guarantee for a value equal to the Purchase Price before expiration of existing Bank Guarantee based on the amount of power to be procured in the month of Mar 2019 with validity up to three months after completion of the extended period of agreement. The existing Bank Guarantee pertaining to the Term of the PPA shall be returned back to the Seller on submission of new Bank Guarantee;

- K. The Procurer further agrees that during the term of this Investment Agreement to hold the specified percentage of the shareholding in the issued and subscribed equity share capital of the Promoter based on the consumption by the Procurer of the gross power generated on an annual basis in the unit and in accordance with the Electricity Rules 2005;

- L. The Parties agree that the primary objective of this Investment Agreement is the sale of power by the Seller to the Procurer under the Group Captive mode under which the Procurer shall not be liable to pay the Cross Subsidy Surcharge (CSS) for procurement of power under Open Access;
- M. The Seller agrees that it had communicated to the Procurer, under its Technical and Financial Bid, the number of Equity Shares to be purchased by the Procurer corresponding to Contracted Capacity as per the Equity Equivalent Capacity (EEC) of MW;
- N. The Promoter and the Seller agree that they shall be responsible to maintain the adequate equity shareholding, in accordance with the Electricity Rules 2005, to avail the benefits under Group Captive mode including non-applicability of CSS.
- O. The Seller and the Promoters further agree that the Procurer shall not be held responsible and accountable for any change in equity shareholding of the Seller and the Seller shall indemnify the Procurer in all respects in any such eventualities including but not limited to any impact of Cross Subsidy Surcharge (CSS). If the CSS is levied upon the Procurer due to any reason, not attributable to the Procurer, by the Discom/ any other party, then it shall be on the account of Seller as per the provisions of this Investment Agreement ;
- P. The capital structure of the Seller, as on 30th December 2016, is as provided in Annexure [2] hereto;
- Q. Upon purchase of the Equity Shares of the Promoter, the Procurer will be a minority shareholder of the Seller Company, with certain rights as detailed in this Investment Agreement; and
- R. The Parties are entering into this Investment Agreement in order to set out the rights and obligations of the Parties in relation to the acquisition of the Equity Shares (*as defined hereinafter*) by the Procurer and other matters in connection therewith, which they agree will be interpreted, acted upon and governed solely in accordance with the terms and conditions of this Investment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, Representations and Warranties and indemnities set forth in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

The terms used in this Investment Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the PPA, Companies Act, 1956, Companies Act, 2013, the Electricity Act, 2003, the CERC (Terms and Conditions of Tariff) Regulations 2009, applicable Grid Code 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.

"Act" means the Electricity Act, 2003, as amended from time to time and shall include any statutory replacement or re-enactment thereof;

"Affiliate" shall mean and include, in respect of a Party, any Person existing as of the date of this Investment Agreement or at any time in the future:

- (a) who Controls, is controlled by, or is under the common Control of, the relevant Party; or
- (b) where 50% or more of the voting securities of the Party are directly or indirectly owned, legally and beneficially, by such Person;

"Applicable Laws" means any Indian statute, law, regulation, ordinance, rule, judgment, order, notification, decree, by-law, approval from the concerned authority including MERC, MSEDCL, MSETCL or any other body dealing with matters pertaining to electricity, government resolution, order, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India including the Electricity Act, 2003 and the rules made thereunder including the Electricity Rules 2005;

"AoA" means the Article of Association of the Seller as amended from time to time;

"Bidder" means a Bidding Company submitting the Bid. Any reference to the Bidder includes Bidding Company including its successors, executors and permitted assigns as the context may require;

"Bidding Company" shall refer to such company that has submitted the Bid in accordance with the provisions of the RFP;

"Board" or "Board of Directors" or "BoD" means the board of directors of the Seller which shall be deemed to include any Committee of the Board;

"Business Day" means any day excluding Saturdays and Sundays and holidays declared under the provisions of the Negotiable Instruments Act, 1881;

"Captive Generating Plant (CGP)" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

"Charter Documents" mean the MoA and the AoA of the Seller, or equivalent under applicable law;

"Claim" shall have the meaning ascribed to it in Clause 9.1.1;

"Confidential Information" means any and all confidential or proprietary information and materials, as well as all trade secrets, belonging to a Party to this Investment Agreement and/or its Affiliates or customers which is furnished to the other Party(s) to this Investment Agreement, in relation to or pursuant to this Investment Agreement, with expectations of confidentiality to the extent the Receiving Party(s) knows or reasonably should know of such expectations, regardless of whether such information or material is expressly identified as confidential or proprietary or not or whether it is stored in any medium or not. Parties agree that such Confidential Information may include

- (a) business information and materials, including but not limited to financial information, business plans, business proposals, customer contract terms and conditions, pricing and bidding methodologies and data, sales data, customer or Procurer lists, customer or contact information, customer preferences and other business information, supplier lists, supplier contact information, supplier preferences and other business information, vendor lists, vendor contact information, vendor preferences and other business information, business partner lists, business partner contact information, business partner preferences and other business information, and similar items;
- (b) information and materials relating to future plans, including but not limited to marketing strategies, new materials research, pending projects and proposals, proprietary production processes, research and development strategies, and similar items;
- (c) any information or material that gives the Seller (or other discloser of information, as applicable) an advantage with respect to its competitors by virtue of not being known by those competitors;
- (d) original information supplied by the Seller or the Promoters or the Procurer;
- (e) information relating to the Seller or the Promoters or the Procurer which is obtained whether (without limitation) in writing, pictorially, in machine-readable form, on floppy diskettes or orally, and whether or not marked "confidential" by any Party or its representatives from either the Seller or the Promoters or any of their respective representatives, in each case in connection with the business relationship between the Seller, the Promoters and the Procurer;
- (f) other valuable, confidential information and materials and/or trade secrets that are customarily treated as confidential or proprietary, whether or not specifically identified as confidential or proprietary;

Provided, however that, no information shall constitute a Confidential Information if it is independently developed by a Receiving Party or its Affiliates or was otherwise publicly known and/or is in the public domain at the time when it is disclosed to the Receiving Party(s), or comes into the public domain due to no fault of the Receiving Party(s);

“Contracted Capacity” (as also defined in PPA) shall mean the aggregate power of 12 MW (net) on Round the Clock basis made available by the Seller at the Delivery Point as per terms of PPA.

During the term of the Contract, Procurer may increase Contracted Capacity up to 24 MW at Delivery Point on round-the-clock basis subject to capacity available with the Seller and approvals from authorized agency for grant of Open Access. In such case, the Seller shall revise the Contracted Capacity up to 24 MW at the Tariff and Terms agreed between Procurer and Seller under the PPA. Appropriate revisions may be incorporated under Investment Agreement to accustom the increase in Contracted Capacity. Subsequent process of purchasing further Equity Shares, in accordance with the increase in Contracted Capacity, by the Procurer from the Seller shall take place on same terms as mentioned in this Investment Agreement.

"Control" together with its grammatical variations when used with respect to any Person, means and includes the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of the vote carrying securities, by contract or otherwise howsoever;

“Cross Subsidy Surcharge (CSS)” shall mean such surcharge leviable on a consumer availing Open Access as may from time to time be defined by Appropriate Commission;

“Discom” shall mean the incumbent power distribution company distributing electricity in the area of the Procurer, which is presently Tata Power Company Limited (TPC-D) and includes its successors, executors and permitted assigns as the context may require;

"Dispute" shall mean any dispute, controversy or claim between the Parties arising out of or in connection with this Investment Agreement, including the breach, termination or invalidity thereof;

“Electricity Rules 2005” means the Electricity Rules, 2005 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;

"Equity Shares" means the Class 'A' equity shares, of the Seller as held by its Promoters, issued and fully paid up, having a face value of [●] each and carrying voting rights;

"Equity Equivalent Capacity" (EEC) shall mean capacity of MW of Seller, equivalent to which the Procurer has purchased Equity Shares of the Seller held by the Promoters in accordance with this Investment Agreement executed between the Parties pursuant to the PPA;

"Encumbrance" means any encumbrance including but not limited to any claim, mortgage, pledge, charge (fixed or floating), hypothecation, lien, deposit by way of security, bill of sale, option or right of pre-emption, beneficial ownership, right of retention of title or any form of security interest or any obligation (including any conditional obligation) to create any of the same, including without limitation, any discretion on the use, voting, transfer, receipt of income or other attributes of ownership;

"Final Closing" means Transfer of title of the Equity Shares in favour of the Procurer;

"Final Closing Date" shall have the same meaning ascribed to it in Clause 0 hereto;

"Financial Year" means the twelve month period commencing on April 1 of a calendar year and ending on March 31 of the immediately succeeding calendar year;

"Governmental Authority" means and includes the President of India, the Government of India, the Governor and the Government of any State in India, any Ministry or Department of any of the foregoing or any governmental or political subdivision thereof, any legislative, executive, governmental or administrative body or agency, municipality or any local or other authority, trade agency, regulatory authority, court, tribunal or arbitral tribunal, exercising powers conferred by law in India or any other applicable jurisdiction (including the jurisdictions in which the Seller and/or its Subsidiaries are incorporated and/or carry on any business or activities), and shall include, without limitation, the Registrar of Companies ("RoC"), Securities and Exchange Board of India ("SEBI"), the Reserve Bank of India ("RBI"), Electricity Regulatory Commissions ("ERCs"), and Appellate Tribunal ("APTEL");

"Government Approvals" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, registration, declaration, filing, report or notice, of, with or to any Governmental Authority;

"Initial Closing" means the deposit of the Equity Shares by the Promoters with the Procurer, and the deposit of Purchase Price by the Procurer with the Promoters;

"Initial Closing Date" shall have the meaning ascribed to it in Clause 3.2;

"Investment Agreement" means this Investment Agreement together with its annexures and schedules, as may be amended from time to time in accordance with the provisions contained herein;

"LOI" means Letter of Intent as defined under the PPA;

"Losses" means and includes all losses, claims, costs, and damages (whether direct, indirect, general or special, absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including interests and penalties with respect thereto and out-of-pocket expenses, including reasonable attorneys' and accountants' fees and disbursements;

"Material Adverse Effect" means any:

- (a) event, occurrence, fact, condition, change, development or effect that is or may be materially adverse to the business, operations, prospects, condition (financial or otherwise), substantial properties (whether tangible or intangible) or liabilities of the Seller or the Promoters; or
- (b) material impairment of the ability of the Seller or the Promoters to perform their obligations hereunder.

"Promoter's Bank Guarantee" means the irrevocable unconditional bank guarantee submitted or to be submitted by the Promoters to the Procurer from a bank mentioned in Schedule [7] of the PPA in the formats attached hereto as per Annexure [5] to this Investment Agreement, in accordance with the terms of this Agreement;

"PPA" shall mean Power Purchase Agreement as entered into between the Seller and the Procurer, pursuant to which this Investment Agreement is entered into between the Parties;

"Procurer" shall mean Bharat Petroleum Corporation Limited, a company registered under the provisions of the Companies Act, 1956 having its Registered Office at Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai – 400001 and its Mumbai Refinery located at Mahul, Chembur, Mumbai – 400074 and shall be considered used interchangeably for Procurer in the context and relevance of the RFP and PPA. The term "Procurer" shall include Bharat Petroleum Corporation Limited and its successors and assigns;

"Person" means any individual, corporation, company, partnership, limited liability company, joint venture, association or trust or any other entity or organization;

'Promoter's Designated Bank Account' means the Designated Bank Accounts of each of the Promoters as stated in Annexure [1] and shall have the meaning ascribed to it in Clause 3.3.1;

"Promoters" means the Persons mentioned under Annexure [1] hereto;
"Purchase Price" means a sum of Rs. [●] only to be paid by the Procurer to the Seller as an aggregate consideration for the purchase of the Equity Shares;

"Open Access" shall mean Open Access (OA) as defined in the Electricity Act, 2003 and as may be amended from time to time;

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

"Receiving Party" means a Party which receives any information, communication or document from the other Party;

"Regulatory Asset Charges" means previously-incurred losses that are in the nature of deferred expenditure and that can be recovered from consumers in future provided allowed by concerned regulatory commission.

"RFP" means Request for Proposal and has the meaning ascribed to it in the PPA;

"Seller" shall mean [*Insert name of the Successful Bidder*], a special purpose vehicle with the main objective of operating the Power Station for supply of power. The term "Seller" shall include, unless repugnant to or inconsistent with the context and meaning thereof, its successors and assigns;

"Successful Bidder" means the Bidder selected by the Procurer pursuant to the RFP for supply of power to the Procurer as per the terms of Agreement and other RFP Documents, and to whom a Letter of Intent / PO/ Contract has been issued by the Procurer.

"Tax" or "Taxation" means all forms of taxation, duties, levies, imposts and social security charges, including without limitation corporate income tax, wage withholding tax, stamp duties payable in any jurisdiction, fringe benefit tax, provident fund, employee state insurance and gratuity contributions, value added tax, customs and excise duties, and other legal transaction taxes, dividend withholding tax, real estate taxes, other municipal taxes and duties, environmental taxes and duties and any other type of taxes or duties in any relevant jurisdiction, together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction;

"Transfer" shall mean (in either the noun or the verb form including, with respect to the verb form, all conjugations thereof within their correlative meanings) with respect to any Equity Shares, the sale, assignment, transfer, conveyance, setting over, or delivery (whether for or without consideration, whether directly or indirectly, and whether voluntary, involuntary or by operation of law) of any such Equity Shares and all interest therein;

"Warranties" means the representations and warranties provided by the Seller and the Promoter, including those set out in Clause 8 (*Representations and Warranties*) and Annexure 4 hereto.

2. PURCHASE OF THE EQUITY SHARES

- 2.1 Upon the terms and subject to the conditions set forth in this Investment Agreement, in consideration of the mutual rights and obligations of the Parties hereunder and relying on the Warranties, undertakings and indemnities to and for the benefit of the Procurer under this Investment Agreement, the Procurer agrees to purchase, and the Seller agrees to facilitate transfer and deliver in accordance with share transfer form at Annexure 9, the Equity Shares of the Promoters, free and clear of all Encumbrances and with all attached and accrued rights, for the consideration of, as full and final payment for the Equity Shares of the Promoters, the Purchase Price, to the Procurer;
- 2.2 The Equity Shares transferred to the Procurer by the Promoters shall rank *pari passu* with the Equity Shares of all other group captive users of the Seller, who are procuring power from the Seller under Group Captive Mode, in all respects, including, entitlement to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Seller.

3. CLOSING AND DELIVERIES

- 3.1 Initial Closing: Subject to the terms and conditions of this Investment Agreement, the Initial Closing shall take place at 10 A.M. (Indian Standard Time) on the Initial Closing Date at Mumbai or such other place as the Parties may mutually agree.
- 3.2 Initial Closing Date: Subject to the terms and conditions of this Investment Agreement, the Initial Closing shall occur on a date (the "**Initial Closing Date**") which shall be within 5 (five) Business Days after the fulfillment of three conditions, (i) date of issue of LOI; (ii) submission of Promoter's Bank Guarantee (as per Annexure 5), in accordance with the Recital J of this Investment Agreement, by the Promoters to the Procurer, for a value equal to the Purchase Price,; and (iii) Confirmation from the Procurer's Bank regarding the originality of the Promoter's Bank Guarantee, as discussed above, submitted by the Promoters;
- 3.3 Initial Closing Agenda: On the Initial Closing Date, the following events shall take place:
 - 3.3.1 Procurer shall transfer the Purchase Price by electronic transfer to Promoters Designated Bank Account at least 7 (seven) Business Days prior to the Initial Closing Date that has been notified to the Procurer in writing as Promoter's Designated Bank Account on the corporate letterhead of the Promoter; The Promoters and the Seller do hereby agree, declare and confirm that the Purchase Price shall not be deemed to have absolutely vested in the Promoters till the Final Closing occurs.

3.3.2 The Promoters shall transfer the Equity Shares to the Procurer.

The Procurer does hereby agree, declare and confirm that the Equity Shares shall not be deemed to have absolutely vested in the Procurer till the Final Closing occurs.

3.3.3 The Procurer shall provide to the Promoters and the Seller, an acknowledgement receipt evidencing receipt by the Procurer of the Equity Shares;

3.3.4 The Seller and the Promoters shall provide to the Procurer, an acknowledgement receipt, in a form and manner acceptable to the Procurer, evidencing receipt by the Promoter of the Purchase Price in the Promoter's Designated Bank Account paid towards transfer of Equity Shares of the Seller;

3.4 Final Closing: the Final Closing shall be deemed to have taken place immediately on date of receipt of intimation from the Seller by the Procurer that all required documents have been submitted to concerned Government Authority for record and necessary action, which shall, in no case, be later than 1 (one) day before the first date of commencement of power supply ("**Final Closing Date**"). For the sake of clarification, the Seller, the Promoters and the Procurer hereby agree and confirm that till the Final Closing has happened, the legal and beneficial title to the Equity Shares shall not be deemed to have been transferred in favour of the Procurer, nor shall the Promoters be entitled to the Purchase Price.

4. CONDITIONS PRECEDENT

Initial Condition Precedent:

4.1 This Investment Agreement and the obligation of the Promoters to deposit the Equity Shares with the Procurer and the Procurer to deposit the Purchase Price with the Promoters is subject to the Parties having met the conditions precedent set out in the following Sub-Clauses ("**Initial Condition Precedent**") in a form and substance reasonably satisfactory to the Procurer, unless otherwise expressly waived by the Procurer in its sole discretion:

4.1.1 Receipt of all corporate approvals and sanctions, including without limitation approval by the Board or shareholders, as may be required, of the Seller, for sale of the Equity Shares of the Promoters of the Seller to the Procurer for the Purchase Price agreed upon;

4.1.2 Receipt by the Procurer and the Seller of all the approvals to the extent required, for the Procurer to acquire the Equity Shares of the Promoters and to exercise its right and perform its obligations respectively under this Investment Agreement;

4.1.3 Receipt by the Procurer of the audited accounts of the Seller for the year ended 31st March 2018.

- 4.1.4 The proposed Transfer of the Equity Shares being determined as in compliance with all applicable laws, including without limitation, any proposed law or regulation as considered applicable;
- 4.1.5 No Governmental Authority in India,
- (i) having, or having indicated an intention to,
 - (ii) having requested (in writing or by way of any oral communication), any information in connection with, or instituting or threatening, any action or investigation which could,
- restrain, prohibit or otherwise challenge or adversely affect the Transfer of Equity Shares in a manner as contemplated under this Investment Agreement, the ownership of the Equity Shares or any similar transactions or ownership;
- 4.1.6 The Seller and the Promoter, to the extent applicable, having performed and complied in all material respects with all covenants and undertakings required to be performed or complied with by it at or prior to the Initial Closing Date;
- 4.1.7 The Seller having delivered an incumbency certificate/ Power of Attorney of the officer(s) of the Seller executing this Investment Agreement and any other documents furnished to the Procurer hereunder or pursuant hereto;
- 4.1.8 The Seller having delivered to the Procurer a certificate, in a form and manner acceptable to the Procurer, that the Seller have conducted their business in the normal course and have complied with the obligations imposed under Clause 5.1 and Clause 5.2, and that there has been no Material Adverse Effect on the Seller until the Initial Closing Date; and
- 4.1.9 The Seller having delivered certificate (s), in a form and manner acceptable to the Procurer, certifying that the Warranties and representations, by whatever name called and howsoever described, made under this Investment Agreement are true and complete in all respects as of the Initial Closing Date.
- 4.1.10 The Promoters having delivered certificate (s), in a form and manner acceptable to the Procurer, certifying that the Warranties and representations, by whatever name called and howsoever described, made under this Investment Agreement are true and complete in all respects as of the Initial Closing Date.

Final Condition Precedent:

- 4.2 The Transfer of title of the Equity Shares of the Promoters in favour of the Procurer and absolute vesting of the Purchase Price in favour of the Promoters shall take place subject to the condition that the Seller and the Promoters has completed all necessary formalities as required by relevant laws of the land (“**Final Conditions Precedent**”).

5 COVENANTS AND UNDERTAKINGS OF THE PROMOTERS AND THE SELLER

5.1 Conduct before Final Closing: The Seller and the Promoters agree, undertake and covenant that during the period between the signing of this Investment Agreement and the Final Closing Date, the Seller and the Promoters will not, without the prior written consent of the Procurer:

5.1.1.1 enter into any commitment or transaction that could potentially adversely impact the Transfer of the Equity Shares or have a Material Adverse Effect; or

5.1.1.2 do or permit to do anything which would constitute a breach of any of the Warranties or covenants;

5.2 Notification of Material Event: If, during the period between the signing of this Investment Agreement and the Final Closing Date, the Seller or the Promoters becomes aware that:

5.2.1 there has been or there is likely to be a Material Adverse Effect; or

5.2.2 the Seller and /or the Promoters are involved in, or has been threatened with, any material litigation filed or threatened to be filed against the Seller and/or the Promoters; or

5.2.3 there has been or is likely to be any breach of any of the Warranties;

then the Seller and the Promoters shall immediately notify the Procurer of that fact or event, as the case may be, in writing and shall provide all information in their possession in relation to such fact and/or event to the Procurer.

5.3 Amendment of the Charter Documents: The Seller shall amend its Charter Documents appropriately, if required, within three (3) Business Days of the Final Closing Date, so as to incorporate the terms of this Investment Agreement therein.

5.4 No Favorable Terms: The Seller shall not provide any new or potential procurer, desirous of making an investment in the equity shares of the Seller with (a) a purchase or investment price per equity share, which is less than the price of an Equity Share as agreed under this Investment Agreement; and (b) rights which are more favorable than those granted to the Procurer under this Investment Agreement, including without limitation, rights relating to voting and entitlement to dividend.

5.5 Post Final Closing Obligations:

5.5.1 The Seller shall, not later than 1 (one) day before the Final Closing Date, file all forms, declarations and reports with such Government Authority as may be required under applicable laws, in relation to or pursuant to the Transfer of the Equity Shares in a manner contemplated under this Investment Agreement and shall provide the Procurer with documentary evidence thereof;

5.5.2 The Seller shall, no later than thirty (30) days from the Final Closing Date, provide to the Procurer a statement of the shareholding pattern of the Seller

reflecting the Equity Shares held by the Procurer, which shall be duly certified by its Company Secretary;

- 5.6 Taxes: The Seller shall be responsible for the payment of all stamp duty charges attributable to the execution of this Investment Agreement;
- 5.7 Exercise of Voting Rights: The Seller agrees and undertakes that it shall exercise its voting rights in a meeting of its shareholders, so as to cause the Seller to give full legal effect to the terms of this Investment Agreement, including but not limited to, for the purposes of amending the Charter Documents of the Seller, if required, to incorporate the terms of this Investment Agreement.

6 COVENANTS AND UNDERTAKINGS OF THE PROCURER

- 6.1 The Procurer shall not be entitled to transfer the Equity Shares held by him to any person in any manner except to Promoters, upon expiry of the term of the PPA and this Investment Agreement unless the term of this Investment Agreement is extended with the term of the PPA, in the manner provided in Clauses 6.3 (Put Option), 6.4 (Buy-Back) or 6.5 (Third Party Sale) below, and where the Procurer is unable to exercise any of the manners so described, for failure on the part of the Seller or the Promoters, then the provisions of Clause 6.6 and 6.7 shall apply. In case if seller does not buy back the equity shares after the completion of the term of agreement then BPCL reserves the right to revoke the bank guarantee provided by Promoter for this purpose.
- 6.2 The Equity Shares shall have the same rights and obligations, in accordance with Clause 0 of this Investment Agreement, that are set out in the AoA of the Seller as amended from time to time.
- 6.3 **Put Option:**
- (a) The Procurer shall, subject to the terms and conditions herein contained, be entitled (at its sole option) to require the Promoters to purchase all or any number of Equity Shares held by the Procurer in the Seller company ("Put Securities"), and the Promoters shall be obliged to purchase, the Put Securities ("Put Option") at a price which would give the Procurer a consideration equal to at least the Purchase Price of the Equity Shares held by the Procurer (the "Put Price").
- (b) The Procurer shall exercise the Put Option by giving a written notice to the Promoters of its intention to exercise the Put Option ("Put Notice"). The Promoters shall be obliged to purchase, all the Put Securities, prior to the expiry of 30 (thirty) days from the date of the Put Notice ("Put Purchase Period") at the Put Price.
- (c) The sale and transfer of the Put Securities shall be completed in accordance with the provisions of this Agreement, to the extent applicable. All stamp duties and other costs and expenses in connection with the transfer of the Put Securities of the Procurer shall be borne and paid in full by the Promoters.

- (d) In the event any consent is required from any Governmental Authority for the consummation of the Put Option, such Consent shall be obtained by the Seller Company and/ or the Promoters, as the case may be.

6.4 Buy Back:

- (a) The Procurer shall be entitled to call upon the Seller, by sending a written notice (“Buy Back Notice”), to purchase/complete a buy- back of all or part of the Equity Shares held by the Procurer (“Buy Back Shares”) for an amount equal to at least the Purchase Price of the Equity Shares held by the Procurer;
- (b) Upon exercise of the aforesaid right by the Procurer, the Seller and the Promoters shall do all acts and execute all deeds and documents as may be necessary to complete the purchase of the Buy Back Shares by the Seller;
- (c) If due to Applicable Laws, the Seller is unable to purchase the Buy Back Shares in a Financial Year, the Seller company undertakes that the buyback obligation of the Seller shall be repeated for such number of years till the Seller has purchased all the Buy Back Shares, if so required by the Procurer; and
- (d) In the event any Consent is required from any Governmental Authority for the consummation of the purchase of the Buy Back Shares, such Consent shall be obtained by the Seller.

6.4 Third Party Rights

- (a) If the Promoters and the Seller fail for any reason whatsoever, to complete the purchase of shares from the Procurer in accordance with the provisions of Clause 6.3 and Clause 6.4 within the period specified therein, the Promoters shall within ([1]) months of the expiry of the said period identify a third party purchaser for the transfer of Equity Shares by the Procurer at a price which provides the Procurer a consideration equal to at least the Purchase Price of the Equity Shares held by the Procurer;
- (b) Upon receipt of an offer to purchase the Equity Shares of the Procurer, the Promoters shall give a written notice (“Sale Notice”) to the Procurer calling upon the Procurer to sell all but not less than all their Equity Shares in the Seller to the Proposed Purchaser (“Sale Along Securities”) at the Proposed Purchase Price.
- (c) In the event any consent is required from any Governmental Authority for the consummation of the sale of the Sale Along Securities to the Proposed Purchaser, such consent shall be obtained by the Seller or the Promoter, as the case may be, to the extent legally permissible.

6.6 Drag Along Right:

- (a) Notwithstanding anything to the contrary contained elsewhere in this Investment Agreement, if the Procurer continues to hold any Equity Shares after the expiry of Completion Date, then the Procurer shall be entitled to sell any or all of the Equity Shares held by it to any third party including a competitor on such terms and conditions as the Procurer may deem fit

("Trade Sale"). The Promoters, the Seller shall provide all the necessary assistance and co-operation to the Procurer and its agents to enable the Procurer to complete the Trade Sale.

- (b) The Procurer shall issue a notice in writing to the Promoter indicating the price per Equity Share, the name of the Person to whom the Equity Shares have to be transferred, the number of Equity Shares to be transferred by the Promoters and the rights to be assigned/ granted to the third party ("Drag Notice").
- (c) The Promoters and the Seller shall provide all customary representations and warranties regarding the Seller, the business and its operations to the third party.

6.7 Assisting Procurers Exit: The Seller shall, and the Promoters shall provide all co-operation required by the Procurer in connection with the events specified in Clause 6.3, 6.4 and 6.5 through, including but not limited to giving to the Procurer and to such Persons as the Procurer may direct, access to all the records and accounts of the Seller and providing further information and clarification upon request, for the purpose of carrying out detailed legal, business and financial due diligence. If after the exercise of the rights specified above, the Procurer continues to hold any Equity Shares in the Company, the Procurer shall be entitled to exercise any of its rights under this Clause 6.3 to 6.5 singly or in combination with its other rights without any priority and such number of times until the Procurer is able to sell all the Equity Shares of the Seller.

7 RIGHTS OF THE PROCURER

7.1 Access Rights: The Seller shall ensure reasonable access to the Procurer through its authorized representatives (including lawyers, accountants, auditors and other professional advisors) to visit and inspect all properties, assets, corporate, financial and other records, reports, books, contracts and commitments of the Seller, and to discuss and consult its business, actions plans, budgets and finances with the directors and executive officers of the Seller, upon reasonable notice.

8 REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE PROMOTERS

8.1 The Seller and the Promoters, for themselves represent and warrant to, and for the benefit of the Procurer, on the date of this Investment Agreement which Representations and Warranties shall be deemed repeated and be true, complete and accurate in all respects on a continuing basis, that:

8.1.1 It has been duly organized, and is validly existing and in good standing under the laws of India;

8.1.2 It has the power to execute, deliver and perform its obligations under this Investment Agreement and all necessary corporate, shareholder and other approvals (where applicable) have been validly obtained to authorize such execution, delivery and performance, and this Investment Agreement

constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

- 8.1.3 The execution, delivery and performance of any of their obligations under this Investment Agreement does not and will not:
- 8.1.3.1 contravene any law or breach or constitute a default under its Charter Documents;
 - 8.1.3.2 result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which it is a party or by which any of its properties or assets may be bound; or
 - 8.1.3.3 conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Seller or any of its properties or assets;
- 8.1.4 There are no pending actions, investigations, suits or proceedings against it or affecting any of its assets and there has been no event or occurrence, which in each case, might reasonably be expected to give rise to a Material Adverse Effect;
- 8.1.5 Any factual information provided by it or on its behalf for the purposes of this Investment Agreement is true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- 8.1.6 No Governmental Authority in India has:
- (i) indicated an intention to,
 - (ii) requested (in writing or by way of any oral communication), any information in connection with, or instituting or threatening, any action or investigation which could,
- restrain, prohibit or otherwise challenge or adversely affect Transfer of the Equity Shares in a manner as contemplated under this Investment Agreement, the ownership of the Equity Shares or any similar transactions or ownership;
- 8.1.7 The representations and Warranties set out under Annexure (4) are true and correct;
- 8.1.8 After the Final Closing Date, the Equity Shares shall be entitled to the same voting rights and shall be voted on together with the Equity Shares and not as a separate class.
- 8.2 The Seller and the Promoters agrees and acknowledges that each of the Warranties is separate and independent and none of the Warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Procurer or any of its agents, representatives, officers, employees or advisers.

- 8.3 The Seller and the Promoters agrees and acknowledges that the Procurer would not proceed with the investment contemplated herein but for the Warranties and covenants hereunder including to ensure the protection of the value of the Seller.
- 8.4 The Seller and the Promoters undertake to notify the Procurer in writing promptly if any of them become aware of any fact, matter or circumstance (whether existing on or before the date of this Investment Agreement or arising afterwards) which would cause any of the Warranties given by it, to become untrue or inaccurate or misleading in any respect.

9 INDEMNIFICATION

- 9.1 Indemnification Obligation: The Seller and / or the Promoters shall severally and jointly indemnify, defend and hold harmless, the Procurer, its Affiliates, directors, officers, representatives, employees and agents (collectively the "Indemnified Parties"), promptly upon demand at any time and from time to time, against any and all Losses relating to or arising out of or in connection with:
- 9.1.1 any actual or threatened claim, legal action, proceeding, pending suit, litigation, prosecution, mediation, arbitration or enquiry (together, a "Claim") by or against any Indemnified Parties arising out of or in connection with (collectively referred to as "Indemnification Events"):
- 9.1.1.1 an inaccuracy, misrepresentation or any breach of any Representation or Warranty;
- 9.1.1.2 a breach of any covenant or obligation of the Seller and/ or the Promoters contained herein; and/or
- 9.1.1.3 any liabilities (including contingent liabilities, whether or not known or contemplated at the time of execution of this Investment Agreement) of the Seller and / or the Promoter not completely disclosed to the Procurer in writing prior to the Initial Closing Date; and/or
- 9.1.2 any pending or threatened claims against the Seller and / or the Promoter or any claims which may be made against the Seller and or the Promoters and which relate to or arise out of, the period prior to the Initial Closing Date not completely disclosed to the Procurer in writing prior to the Initial Closing Date.
- 9.1.3 a breach of any representation or Warranty or undertaking or covenant made by the Seller and / or the Promoter in this Investment Agreement;
- 9.1.4 the non-performance (in whole or in part) by the Seller and / or the Promoters of any of its covenants or agreements contained in this Investment Agreement;
- 9.2 The Procurer shall be entitled, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any Claim (including without limitation, making claims or counterclaims against third parties).
- 9.3 Indemnification rights of the Procurer under this Investment Agreement are independent of, and in addition to, such other rights and remedies as the

Procurer may have at law or in equity or otherwise, including the right to seek specific performance, rescission, restitution or other injunctive relief against the Promoters and / or the Seller, as the case may be, and none of which rights or remedies shall be affected or diminished thereby.

10 CONFIDENTIALITY

10.1 The Parties undertake that they shall keep confidential (and shall use best endeavors to procure that their respective employees and agents keep confidential) any Confidential Information which is in their possession or which they may acquire and shall not disclose such information except in their usual course of business.

10.2 The obligations of each of the Parties contained in the Clause (10) shall continue without limit in point of time, but shall cease to apply to any Confidential Information required to be disclosed by an order of a court or under law;

Provided, however, that, the Seller and / or the Promoters, as the case may be, shall provide the Procurer with prior written notice thereof so that the Procurer may seek (with the cooperation and best efforts of the other Parties) a protective order, confidential treatment or other appropriate remedy, and in any event shall furnish only that portion of the information which is reasonably necessary for the purpose at hand and shall exercise best efforts to obtain reliable assurance that confidential treatment will be accorded to such information to the extent reasonably requested by the Procurer.

10.3 The Seller and / or the Promoters shall not without the prior written consent of the Procurer make any disclosure other than as required under law or by any stock exchange, in which case the disclosure will be made in compliance with provisions of Clause (10.2) above.

10.4 The Parties shall not issue any press release or make any public announcement or advertise or otherwise publicize in any manner whatsoever, the existence or consummation of this Investment Agreement except in their statutory disclosures and operational brochures.

10.5 The provisions under Clause 10 shall apply to the Parties till the period of one (1) year after the expiry of Investment Agreement and PPA.

11 INTENT AND EFFECT OF THIS INVESTMENT AGREEMENT

11.1 The Seller and / or the Promoters shall not act in any manner that is prejudicial to the rights of the Procurer under this Investment Agreement and the Seller and / or the Promoters shall not act in any manner or do any deed or thing under this Investment Agreement that would derogate or adversely affect the rights of the Procurer hereunder.

11.2 Each Party undertakes to fully and promptly observe and comply with the provisions of this Investment Agreement to the extent and effect that each and every provision thereof shall be enforceable by the Parties hereto inter se and in whatever capacity. In the event of any conflict between this Investment Agreement and the AoA, the provisions of this Investment Agreement shall prevail as between the Parties.

12 COSTS AND EXPENSES

- 12.1 Other than the stamp duty charges to be paid on this Investment Agreement, which shall be borne by the Seller and / or the Promoters jointly, each Party shall bear its own costs and expenses incurred in relation to this Investment Agreement and the transaction proposed herein.

13 SUNSET CLAUSE

- 13.1 The rights stated in Clause 8 (*Representations and Warranties*), Clause 9 (*Indemnification*), Clause 10 (*Confidentiality*), Clause 14 (*Notices*) and Clause 16 (*Governing Law, Jurisdiction and Dispute Resolution*) shall survive termination of this Investment Agreement.

14 NOTICES

- 14.1 Service of Notice: All notices or other communications to be given under this Investment Agreement shall be made in writing and by e-mail, letter or facsimile transmission (save as otherwise stated) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when dispatched (in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission and a hard copy of such notice or communication is forthwith sent by prepaid post to the relevant address set out below) or 10 (ten) days after being dispatched in the post, postage prepaid, by the quickest mail available and by registered mail if available (in the case of a letter) to such Party at its address or facsimile number specified in Clause 14.2, or at such other address or facsimile number as such Party may hereafter specify for such purpose to the others by notice in writing.
- 14.2 Details for Notices: The details for notices for the purpose of this Investment Agreement are as follows:

To the Procurer : Name: []
Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

To the Seller : Name: []
company Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

To the : Name: []
Promoters Address: [●]
Attention: [●]
Fax: [●]
E-mail: [●]

Any change in the address for notice shall be communicated in writing by the concerned party to the other Parties.

15 TERMINATION

15.1 This Investment Agreement may be terminated under the following conditions:

15.1.1 Upon coming of term of this Investment Agreement, in the manners provided in Clause 6.3, 6.4 or 6.5 (as the case may be) which is upon expiry of the term of the PPA, unless the PPA is extended, in which case this Investment Agreement may also be extended for such period as the PPA;

15.1.2 By the Procurer during the term of PPA as per the terms and conditions mentioned in PPA;

15.1.3 By the Procurer in the event of any breach of this Investment Agreement on part of the Seller and / or the Promoter; or

15.1.4 Upon expiry of the term of PPA i.e. 31st March 2019. If the term of the PPA is extended pursuant Article 2.2 therein, then the term of the Investment Agreement shall also be extended to coincide with the extended term of the PPA.

15.2 In case the Procurer terminating this Investment Agreement (in accordance with Sub-clause 15.1.1 and 15.1.3 above) shall do so by way of a written notice of such termination to the Seller and / or the Promoter hereto. If this Investment Agreement so terminates, it shall become null and void and have no further force or effect, except for the provisions that are intended to survive termination.

15.3 Upon termination of this Investment Agreement, the Seller and / or the Promoter shall:

15.3.1 Ensure Procurers Exit or Transfer of Equity Shares from the Procurer within one (1) month from the date of termination in the manner described in Clauses 6.3,

6.4 or 6.5 failing which the Procurer shall have the right to invoke the Promoters Bank Guarantee. The Seller and / or the Promoter, jointly and severally ensure that at least the Purchase Price shall be refunded to the Procurer i.e. at which price the Procurer purchased the Equity Shares;

- 15.3.2 Ensure that all records and documents shall be modified in such a manner, within three (3) months, that proves that the Procurer does not hold any Equity Shares of the Seller and has no obligations attached thereto, either to the Seller and / or the Promoters.

16 GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 16.1 Governing Law: This Investment Agreement shall be governed by, and construed in accordance with the laws of the Republic of India.

- 16.2 Jurisdiction: Subject to Clause 16.3, the competent courts in Mumbai, India shall have exclusive jurisdiction to settle any Dispute arising out of or in connection with this Investment Agreement. The Parties agree that such courts are the appropriate and convenient court to settle any Dispute and accordingly no Party will argue to the contrary.

- 16.3 Dispute Resolution:

- 16.3.1 Any and all claims, disputes, questions or controversies involving any or all Parties arising out of or in connection with this Investment Agreement, or the execution, interpretation, validity, performance, breach or termination hereof shall be first attempted to be resolved amicably through conciliation and negotiation between the Parties.

- 16.3.2 In case the dispute has not been resolved by the Parties within fifteen (15) calendar days of the arising of a dispute by conciliation and negotiation as mentioned above, the same shall be resolved by final and binding arbitration held in Mumbai in accordance with the Indian Arbitration and Conciliation Act, 1996 and the rules made there under as per Clause No. 41 of the General Terms and Conditions forming part of Tender No. **< Enter No.>**

- 16.3.3 All arbitration proceedings shall be conducted in the English language.

- 16.3.4 Except as otherwise required by law, the arbitration proceedings and the arbitration award shall not be made public without the joint consent of the disputing Parties and they shall maintain the confidentiality of such proceedings and the award.

- 16.3.5 Each disputing Party shall bear its respective costs incurred for arbitration, unless otherwise determined by the arbitral tribunal, and in case of common costs, the same shall be borne equally by the parties to the dispute.

- 16.3.6 All notices and other communications by any disputing Party to the other or by the arbitral tribunal to any such disputing Party in connection with the arbitration hereunder shall be in accordance with the provisions of Clause No. 14 above.

- 16.3.7 Each of the Parties expressly understands and agrees that the arbitration award shall be final, conclusive and binding upon the Parties.

17 MISCELLENEOUS PROVISIONS

- 17.1 Mechanism to deal with CSS:

If in any event, the Cross Subsidy Surcharge (CSS) is being levied upon the Procurer by the Discom then it shall be on the account of Seller. Such an arrangement can be done by the Seller via choosing either of the following options, and confirming the same on an affidavit before signing of the Agreement:-

Option # 1

The Seller shall furnish Bank Guarantees, in addition to CPG, in favor of the Procurer, a) one Bank Guarantee shall be for the amount equivalent to the product of estimated quantum of energy units to be consumed by BPCL under Open Access for the period from commencement of power supply up to March 31st of the first Contract Year and per unit CSS applicable in the month of May 2018; b) If the contract is extended than the another Bank Guarantee shall be for the second Contract Year for the amount equivalent to the product of estimated energy units to be consumed by BPCL under Open Access for the period starting from April 01 of the second Contract Year upto the Expiry Date of the PPA and per unit CSS applicable for the relevant Contract Year. This second bank guarantee has to be submitted before start of extension of second year contract i.e. in the month of March 2019.

The validity of each Bank Guarantee under the claim period shall be for 3 (three) years after the term of agreement or till the Seller obtains the specific communication addressed to Procurer from Discom and / or MERC for non-imposition of CSS for the respective term of the Agreement and subject to consent from Procurer within three years after the term of agreement, whichever is earlier. After completion of Financial Year, Seller shall submit the documents required for certification of Group Captive Status to Discom & MERC as per the guidelines within three months of completion of financial year. If the seller has submitted the documents as stated above towards compliance of Group captive and in event of non- certification by Discom and / or MERC then Bank

guarantee towards CSS will be returned after expiry of 3 year period but Seller has to provide indemnity bond to Procurer.

Explanation for above clauses:

The Bank Guarantees, as mentioned above, shall be initially valid and binding on the Guarantor Bank up to 3 (three) years from the end of the Term of the Agreement, i.e. 31st March 2022 for the first Bank Guarantee and 31st March 2023 for the second Bank Guarantee in case of extension of this agreement. The second Bank Guarantee shall be submitted provided if Term of Agreement is extended by Procurer in accordance with Article 2.2.2

The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days from the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

In case the Seller is not able to provide the documents as stipulated as below, which ascertain the Captive Status of Seller's generating units but is able to meet the following conditions within three months from the Expiry Date of the PPA, or at a later date as extended by the Procurer provided if validity of Bank Guarantee is also extended by the Seller for the same period which has been allowed to the Seller for fulfilling following conditions, then in such case, the Bank Guarantee corresponding to respective Contract Year shall be duly returned to the Seller one month after the expiry of validity of Bank Guarantee.

- i. Filing of necessary documents, by the Seller, with MERC , Discom showing compliance of Captive Rule;*
- ii. Filing a Petition with MERC , Discom, by the Seller, for declaration of Compliance of Captive Status for its Units for FY 2018-19 with a request to MERC , Discom for ascertaining the compliance of Captive Status for its generating units at its earliest;*
- iii. Certification by Maharashtra SLDC (MSLDC) for Seller's data for Captive Generation and Consumption for all its Captive Consumers;*

- iv. *Submission of an Indemnity Bond, by Seller to Procurer, providing indemnification to Procurer from any demand i.e. levy of CSS imposed on Procurer by Discom/ any other Statutory Authority on account of non-compliance of Captive Status of Seller for the term of the Agreement. The Indemnity Bond shall be submitted in the form attached hereto as Schedule 9.*

Proof of fulfilment of the above mentioned conditions, shall be submitted by the Seller to the Procurer within the prescribed timelines, and be subject to verification from the Procurer.

In case of extension of the Term of Agreement by the Procurer in accordance with Article 2.2.2 then the Seller shall submit additional Bank Guarantee towards CSS for such extended period within fifteen (15) days from the extension of the Term of Agreement by the Procurer in accordance with Article 2.2.2.

In case Seller chooses this option and CSS/ any other penalty/ charge is levied by the Discom/ any other Statutory Authority on account of non-compliance of Captive Status of Seller's generating units for the term of the Agreement, then the Procurer reserves the right to invoke the Bank Guarantee mentioned in this Article and return the balance amount, if any, to the Seller, as per the advice of the Procurer. If the Procurer is unable to recover the amount of actual CSS/ any other penalty/ charge imposed by Discom/any other Statutory Authority on account of non-compliance of Captive Status of Seller's generating units for the term of this Agreement, from the Bank Guarantee, then the amount of CSS not recovered from the Bank Guarantee shall be payable by the Seller to the Procurer within ten (10) days from invoking of the Bank Guarantee; or

Option # 2

The Seller shall provide its consent that the Procurer shall make monthly bill payment for every month after retaining the amount equivalent to CSS for the respective month (to be computed based on units billed during the respective month multiplied by CSS applicable for the term of this Agreement).

Such retained amount shall be refunded to the Seller after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement. In case the Seller fails to meet 13.23.4, in such a case, the Procurer shall reserve its right to hold the retained amount till three years after the expiry of term of this Agreement

Explanation for above clauses:

In case the Seller is not able to provide the documents as stipulated under 13.23.4, which ascertain the Captive Status of Seller's generating units, but is able to meet the following conditions within three months from the Expiry Date of the PPA, or at a later date as extended by the Procurer, then in such case, the retained amount shall be refunded to the Seller three years after the expiry of Term of Agreement.

- i. Filing of necessary documents, by the Seller, with MERC , Discom showing compliance of Captive Rule;*
- ii. Filing a Petition with MERC , Discom by the Seller, for declaration of Compliance of Captive Status for its Units (-----) for FY 2018-19 with a request to MERC/Discom for ascertaining the compliance of Captive Status for its generating units at its earliest;*
- iii. Certification by Maharashtra SLDC (MSLDC)/ Discom for Seller's data for Captive Generation and Consumption for all its Captive Consumers;*
- iv. Submission of an Indemnity Bond, by Seller to Procurer, providing indemnification to Procurer from any demand i.e. levy of CSS imposed on Procurer by Discom/ any other Statutory Authority on account of non-compliance of Captive Status of Seller for the term of the Agreement. The Indemnity Bond shall be submitted in the form attached hereto as Schedule 9.*

Proof of fulfilment of the above mentioned conditions, shall be submitted by the Seller to the Procurer within the prescribed timelines, and be subject to verification from the Procurer.

If retained amount by the Procurer is lesser than actual CSS/ any other penalty/ charge imposed by Discom/any other Statutory Authority on account of non-compliance of Captive Status of Seller for the term of this Agreement, the Procurer shall claim reimbursement for the difference through Supplementary Bill from Seller. If retained CSS amount is more than the actual CSS/ any other penalty/ charge imposed by Discom/any other Statutory Authority on account of non-compliance of Captive Status of Seller for the term of this Agreement, then the difference shall be refunded to the Seller as per terms of this contract for release of Bank Guarantee

- 17.2 Not a Promoter: The Parties acknowledge and agree that the Procurer is entering into the transaction hereunder merely as a Procurer of a minority shareholding in the Seller and shall not acquire control and management of the Seller. The Seller shall not classify the Procurer as a 'promoter' of the Seller for any reason whatsoever and the Equity Shares shall also accordingly not be subject to any transfer restriction or lock-in conditions which are applicable to Promoters under any applicable law.
- 17.3 No Partnership or Agency: Nothing in this Investment Agreement shall be deemed to constitute a partnership between the Parties, nor, except as may be expressly set out in it, constitute any Party as the agent of another Party for any purpose, or entitle any Party to commit or bind another Party in any manner.
- 17.4 Announcements: Subject to applicable laws and regulations, each Party hereto agrees that it shall make no written or other public disclosures regarding the transaction contemplated by this Investment Agreement or regarding the Parties hereto, to any person without the prior written consent of the other Party, provided that disclosures to advisors, agents, banks, employees and representatives of the Parties hereto shall be permitted hereby. The Seller will not use or refer to the name of the Procurer in any public statement or disclosure without the consent of the Procurer (which consent shall not be unreasonably withheld).
- 17.5 Entire Investment Agreement: This Investment Agreement sets out the entire agreement and understanding between the Parties with respect to the subject matter of it. Save for provisions of PPA, this Investment Agreement supersedes all prior discussions and correspondence, which shall not have any further force or effect.
- 17.6 Amendments: This Investment Agreement may be amended only by an instrument in writing signed by duly authorized representatives of each of the Parties.

17.7 Further Assurances: The Parties agree to do all such further and other things, execute and deliver all such additional documents, to give full effect to the terms of this Investment Agreement. The Seller undertakes that it will do or procure to be done all such further acts and things, execute or procure

the execution of all such other documents and exercise all rights and powers, direct and indirect, available to it in relation to any Person so as to ensure the complete and punctual fulfilment, observance and performance of the provisions of this Investment Agreement and generally that full effect is given to the provisions of this Investment Agreement.

17.8 Assignment: No Party shall be entitled to, nor shall they purport to, assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Investment Agreement nor grant, declare, create or dispose of any right or interest in it, in whole or in part;

17.9 Severability: Each of the provisions and restrictions as set out in this Investment Agreement is separate and distinct and is to be construed separately from the other such restrictions. The Seller acknowledges that it considers such provisions to be reasonable both individually and in aggregate and that the Purchase Price for the Equity Shares as paid by the Procurer adequately compensates the Seller. However, if any such restriction shall be found to be void or unenforceable, but would be valid or enforceable if some part of it were deleted or the period or area of application reduced, the Seller each, agrees that such restriction shall apply with such modifications as may be necessary to make it valid. If any provision of this Investment Agreement is held to be invalid or unenforceable, it shall not invalidate the remaining provisions of this Investment Agreement.

17.10 Waivers and Remedies: No failure or delay by the Parties in exercising any right or remedy provided by law under or pursuant to this Investment Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Parties under or pursuant to this Investment Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

17.11 Counterparts: This Investment Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Investment Agreement on the day and year first hereinabove written.

For and behalf of

Bharat Petroleum Corporation Limited

For and behalf of

(Insert name of Promoter)

For and behalf of

(Insert name of Seller)

ANNEXURE 1

PROMOTERS OF THE SELLER

No.	NAME OF THE PROMOTER	ADDRESS OF THE PROMOTER	DESIGNATED BANK ACCOUNT DETAILS	SHAREHOLDING IN THE SELLER AS ON

ANNEXURE 2

CAPITAL STRUCTURE OF THE SELLER

Part A

Authorised Share Capital on the date of the Investment Agreement

Rs. _____ million consisting of _____ equity shares of a face value of Rs.10 each.

Issued and Paid-Up Shareholding Pattern as on 30 December 2016:

Sl.No.	Name of the Shareholder	No. of Equity Shares of Rs.10/-	No. of Equity Shares of Rs.10/-	Amount – paid up (Rs.)	% to Total Equity

Part B

Issued and Paid-Up Shareholding Pattern immediately post Final Closing

Proposed Issued and Paid-Up Shareholding Pattern immediately post the Final Closing as per Clause 5.5.2 of Investment Agreement

Name of Shareholders	Number of Shares	Face value of holding (Rs. Million)	Percentage
Total			100%

ANNEXURE 3

DETAILS OF SHAREHOLDING FOR PROCURER

Generating Units and related plant capacity from which power is intended to be supplied under Group Captive Mode	Total no. of Equity Shares of the Plant (for Generating Units which are operating under Group Captive Mode)	% of Equity Shares to be purchased by Procurer	Total Number of Equity Shares to be purchased by Procurer	Face Value of Equity Share (INR/ per share)	Total amount to be invested by the Procurer for purchase of required Equity Shares (INR)

ANNEXURE 4

WARRANTIES

- I. **Standard Representations and Warranties:**
 1. **Organisation and Authority:** The Seller is a company limited by shares duly incorporated and validly existing under the laws of India and has the corporate power, and has obtained all necessary authority, to own its assets, conduct its business as presently conducted and to enter into, and comply with its obligations under this Investment Agreement;
 2. **Validity:**This Investment Agreement has been, or will be, duly authorized and executed by the Seller and constitutes, or will, when executed constitute, a valid and legally binding obligation of the Seller, enforceable in accordance with its terms;
 3. **No Conflict:** Neither the execution of this Investment Agreement nor the compliance with its terms by the Seller will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the Seller is a party or by which it is bound, or violate any of the terms or provisions of the Seller's Charter Documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to the Seller;
 4. **Status of Government Approvals:** The Seller has all Government Approvals (other than Government Approvals that are of a routine nature, are obtained in the ordinary course of business and the absence of which will not have any Material Adverse Effect on the Business) needed by the Seller to conduct its Business and to

comply with its obligations under, this SHA, and all such Government Approvals and are in full force and effect;

5. No Amendments to Charter Documents: The Seller's Charter Documents have not been amended since March 2018;
6. Authorised Share Capital: The authorised, issued and paid up share capital of the Seller is as provided in Annexure 2 of the Investment Agreement. The Equity Shares presently registered in the name of the Promoters are, fully paid-up and legally and beneficially owned by them, and there is no option, right to acquire, mortgage, charge, pledge, lien or other form of security or Encumbrance on, over or affecting these Equity Shares or any of them or any agreement or commitment to give or create any of the foregoing in respect of these Equity Shares, and the Promoters have not received notice of any claim by any Person to be entitled to any of the foregoing in respect of these Equity Shares.
7. Shares duly authorised: The Equity Shares are, and will be, in compliance with law. Upon Transfer of the Equity Shares in favour of the Procurer on the Final Closing Date, the Equity Shares will rank *pari passu* with the Equity Shares of the other group captive users, who are procuring power from the Seller under Group Captive Mode, of the concerned CGP, the Procurer will be the absolute legal and beneficial owners of Equity Shares and the Procurer will have a clear title thereto and will hold the Equity Shares free and clear of all Encumbrances.
8. No Immunity: Neither the Seller nor any of its property or asset enjoys any right of immunity from set-off, suit or execution proceedings with respect to its assets or its obligations under this Investment Agreement;
9. Financial Statements: The financial statements of the Seller for the period ending on March 31, 2016 (the "Accounts"):

(i) have been prepared in accordance with the Accounting Principles, and give a true and fair view of the financial condition of the Seller as of the date as of which they were prepared and the results of the Seller's operations during the period then ended; and

(ii) disclose all liabilities (contingent or otherwise) of the Seller, and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from commitments entered into by the Seller (whether or not such commitments have been disclosed in such financial statements);

10. Management Accounts: The management accounts of the Seller have been prepared with due care and attention in accordance with accounting principles used by the Seller in the course of preparing management accounts for the Seller during the two year period ending on the date of this Investment Agreement and on a basis consistent with that used in preparing the Accounts;
11. Taxes: The Seller has duly filed all tax returns and reports of the Seller required by law to be filed and all Taxes, obligations, fees and other governmental charges upon the Seller, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest;
12. Litigation: The Seller is not engaged in nor, to the best of its knowledge after due inquiry, threatened by, any litigation, arbitration, investigations or administrative proceedings that, if decided adversely, can be expected to have a Material Adverse Effect nor aware of any circumstances that may give rise to such litigation, arbitration or administrative proceedings;

13. All material facts disclosed: There are no facts or circumstances relating to the affairs of the Seller having, or likely to lead to, a Materially Adverse Effect which has not been disclosed to the Procurer which might reasonably have been expected to influence the decision of the Procurer to enter into this SHA.

II Operational Representations:

14. No Judgement Restricting the Seller's Business: There are no actions, suits, claims, proceedings or investigations pending or threatened against or by the Seller, in equity or otherwise, and whether civil or criminal in nature in, before, or by, any court, commission, arbitrator or other Government Authority, and there are no outstanding judgments, decrees, orders or awards of any such court, commission, arbitrator or other Governmental Authority that, in the case of any of the above, individually or in the aggregate, could be expected to have a Material Adverse Effect on the Seller and its Business, or that seek to prevent, restrict or delay consummation of the transactions contemplated by this Investment Agreement.
15. Books And Records complete: All statutory books, statutory registers and minutes books of the Seller are complete in all respects and have been kept properly and in compliance with law and no notice or allegation that any of them is incorrect or should be rectified has been received. All such statutory books, statutory registers and minutes' books are in the possession or under the control of the Seller.
16. Contracts Enforceable: Each agreement or arrangement to which the Seller is a party has been duly authorised, executed and delivered by the Seller and constitutes a valid and binding obligation of the Seller, enforceable against it in accordance with its terms. No agreement or arrangement to which the Seller is a party is invalid or *ultra vires* and there are no grounds for rescission, breach, avoidance or repudiation of any agreement or arrangement to which

the Seller is a party. The Seller is not in default of the performance, observance or fulfilment of any of its obligations, covenants or conditions contained in any of agreement or arrangement to which it is a party.

17. Complete Disclosure: All representations, warranties, information, documents or statements relating to or provided by the Seller to the Procurer are true, accurate, complete and correct in all respects. All information and documents material to the affairs of the Seller or the proposed purchase of the Equity Shares have been disclosed to the Procurer and the Seller has not omitted to disclose any matter the omission of which makes any of such representations and warranties misleading.

ANNEXURE 5

BANK GUARANTEE AGAINST PURCHASE PRICE

In consideration of the[Insert name of the Seller with address] agreeing to undertake the obligations under the Investment Agreement & PPA and [Insert name of Procurer] (herein after referred to as Procurer), agreeing to execute the SHA with the Seller for **purchase of Equity Shares of the Seller towards supply of power on short/ medium term basis under Group Captive mode for meeting the requirements of the Procurer as per the PPA**, 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 at[Insert address of Procurer] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [Insert the amount of the bank guarantee computed on the basis of Purchase Price of the Equity Shares] as per the terms of Investment Agreement on behalf of M/s. [Insert name of the Seller].

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

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until 3 (three) months from the date of expiry of the PPA.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format,

raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

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 or the Seller*]
and/ or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [*Insert name(s) of city (ies)*] shall have exclusive jurisdiction.

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

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

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer 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 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 and may be assigned, in whole or in part, (whether

absolutely or by way of security) by the Procurer 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 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 is three (3) months after the term of the Agreement], 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 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

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

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

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

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

ANNEXURE 6

BANK GUARANTEE FOR CLAIMING CROSS SUBSIDY SURCHARGE FROM SELLER

In consideration of the[Insert name of the Seller with address] agreeing to undertake the obligations under the Investment Agreement & PPA and [Insert name of Procurer] (herein after referred to as Procurer), agreeing to execute the SHA with the Seller **towards supply of power on short/ medium term basis under Group Captive mode for meeting the requirements of the Procurer as per the PPA**, 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 at[Insert address of Procurer] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [Insert the amount of the bank guarantee computed on the basis of product of estimated quantum of energy units to be consumed by BPCL under Open Access (i.e. MUs) and per unit CSS applicable for the First Contract Year or Second Contract Year¹ as applicable] as per the terms of Investment Agreement on behalf of M/s. [Insert name of the Seller].

This guarantee shall be valid and binding on the Guarantor Bank up to 3 (three) years from the end of the Term of the Agreement. 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.

¹Exact amount for the Bank Guarantee for First Contract Year and Second Contract Year to be discussed and ascertained with the Seller before the signing of PPA and SHA.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until 3 (three) years from the end of the Term of the Agreement. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

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

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 or the Seller*] and/ or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [*Insert name(s) of city(ies)*] shall have exclusive jurisdiction.

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

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

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer 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 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 and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer 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 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 3 (three) years from the end of the Term of the Agreement, 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 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
.....

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

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

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

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

ANNEXURE 7

CONSENT/UNDERTAKING FOR ADJUSTMENT OF CROSS SUBSIDY SURCHARGE

To,
Bharat Petroleum Corporation Limited

We,(insert name of the Seller), hereby certify to, during the term of PPA and Investment Agreement, undertake the compensation for Cross Subsidy Surcharge (CSS), if imposed on the Procurer by Discom or any other party , in regard with supply of power from the Seller to the Procurer, for any reason, not attributable to the Procurer, under the Group Captive mode.

For compensating the CSS, if levied on the Procurer by the Discom or any other party, we allow the Procurer to make monthly bill payment for every month after retaining the amount equivalent to CSS for the respective month (to be computed based on units billed during the respective month multiplied by CSS applicable for the term of this Agreement).

Such retained amount shall be refunded to the Seller as per the terms agreement

whichever is earlier, and subject to consent from Procurer. In case the Seller fails to meet above, in such a case, the Procurer shall reserve its right to hold the retained amount till next financial year.

If retained amount by the Procurer is lesser than actual CSS imposed by Discom/any other agency for the term of this Agreement, the Procurer shall claim reimbursement for the difference through Supplementary Bill from

Seller. If retained CSS amount is more than the actual CSS imposed by Discom/any other agency for the term of this Agreement, then the difference shall be refunded to the Seller after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement,

For, **(insert the name of the Seller)**

Designation:

(insert the address of the Seller)

(put seal of the Seller)

ANNEXURE 8

**CONSENT/UNDERTAKING FOR REFUND OF AMOUNT CHARGED FOR
ADJUSTMENT OF CROSS SUBSIDY SURCHARGE**

To,

[Name of the Successful Bidder]

We, Bharat Petroleum Corporation Limited, hereby certify to refund the amount collected/ adjusted from the Seller on account of CSS, if levied on the Procurer, in the event if the levied CSS on the Procurer is refunded by the concerned authorities to the Procurer.

For, (Bharat Petroleum Corporation Limited)

Designation:

Bharat Petroleum Corporation Limited

(Company seal of the Procurer)

ANNEXURE 9

SHARE TRANSFER FORM