

REPLIES TO PRE-BID QUERIES

Sl. No.	Queries	Reply
1	<p>Role of PTC Bidders requested clarification on role of PTC with respect to Contract, NOCs, and Trading Margin</p>	<p>Following revised provisions in the PPA to be followed: Recital - A, B; Definitions - "Contract Demand", "RFP Documents", "Seller", "Tariff"; Clause(s) - 4.4.1, 8.1.1 (v), 12.5 Schedule - 4</p>
2	<p>Tariff Bidder(s) requested that any increase or decrease in charges determining the Tariff would be on the account of the Procurer (BPCL).</p>	<p>Provisions in the RFP/PPA to be followed</p>
3	<p>Technical Capacity a. Bidder(s) requested that Trading Licensee be permitted to bid and supply power under group captive model. b. Bidder(s) requested BPCL to amend the Technical Capacity criteria by removing requirement of assured fuel supply agreement.</p>	<p>Provisions in the RFP/PPA to be followed.</p>
4	<p>Commercial a. Bidder(s) requested BPCL to provide adequate payment security mechanism for power supplied by the Successful Bidder. b. Bidder(s) requested BPCL that compensation for under scheduling shall be equal on either side. c. Bidder(s) request BPCL that compensation should not be considered in case Open Access approval is less than applied quantum.</p>	<p>Provisions in the RFP/PPA to be followed;</p>
5	<p>Contract Performance Guarantee Bidder(s) requested BPCL that the CPG of 10% of Contract value shall be exclusive of statutory costs payable by Procurer directly to Discom (TPCL) as the same is being adjusted in the payments to the Successful Bidder.</p>	<p>Provisions in the RFP/PPA to be followed.</p>
6	<p>Force Majeure a. Bidder(s) requested BPCL that strikes and labor disturbances are not to be considered as Force Majeure conditions; b. Bidder(s) requested BPCL to include network constraints as Force Majeure conditions;</p>	<p>Provisions in the RFP/PPA to be followed;</p>
7	<p>Change in Discom Tariff Bidder(s) requested BPCL that agreement may be temporarily suspended in case of reduction in discom tariff till the time discom tariff becomes higher than the quoted Tariff by Successful Bidder</p>	<p>Provisions in the RFP/PPA to be followed;</p>

Sl. No.	Queries	Reply
8	Bid Validity Bidder(s) requested in reduction of bid validity period.	Provisions in the RFP/PPA to be followed;
9	Bid Submission Date Bidder(s) requested for extension in Bid Submission Date.	Extended till 30.01.2017
10	Extension of Agreement Bidder(s) requested extension of agreement on mutual basis.	The revised clause (2.2.1 of PPA) may be read as: This Agreement shall be valid for a term commencing from the Effective Date till the Expiry Date, unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless extended mutually by the Procurer and Seller.
11	Contract Demand Bidder(s) requested BPCL for maintaining contract demand with TPC-D for minimizing impact of temporary charges.	Contract Demand defined in PPA shall be read as: Contract Demand shall mean as defined in MERC notified Distribution Open Access Regulations. Presently, Contract Demand maintained by BPCL with Discom is 7146 KVA for feeder-1, 7146 KVA for feeder-2 and 26195 KVA for feeder-3. For the purpose of this contract, BPCL will be maintaining the same Contract Demand.
12	Equity Investment (Applicable for Group Captive Only) Bidder(s) requested that for group captive transaction, the Contract Capacity for Group Captive Equity Investment would be higher than the Open access capacity as Generator shall include Plant load factor and Auxiliary consumption also.	Recital M of Investment Agreement shall be read as: 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. Definition of Equity Equivalent Capacity shall be read as: ‘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.
13	Networth Bidder(s) requested to include “Equity” and “Preference” share capital subscribe by the user members and other’s to ascertain Networth of company.	Provisions in the RFP/PPA to be followed; (Preference shares are included to ascertain Net-Worth, subject to the term of preference capital held)

Sl. No.	Queries	Reply
14	<p>Scheduled Delivery Date Bidder(s) requested BPCL to extend the Scheduled Delivery Date.</p>	<p>The revised clause (4.1.1 of PPA) may be read as:</p> <p>The Seller shall apply for STOA and is responsible to commence the supply of power upto the Contracted Capacity, in accordance with Clause 5.1 of this Agreement, by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is April 01, 2017. Simultaneously, the Seller shall apply for MTOA for the contracted period and quantum as per relevant SERC/ CERC Regulations and shall arrange MTOA within 6 (six) months of LOI. Till the time MTOA is not granted, the Seller shall be responsible to supply the power through STOA as per the applicable Regulations.</p>
15	<p>Bank Guarantee</p>	<p>Revised provision clause 13.23.4 (i) of PPA to be followed</p>

POWER PURCHASE AGREEMENT (PPA)

Between

**BHARATPETROLEUM CORPORATION LIMITED
MUMBAI REFINERY
("Procurer")**

And

**[~~PTC INDIA LIMITED~~ Name of Successful Bidder]
("Seller")**

FOR

**PROCUREMENT OF POWER UNDER OPEN ACCESS BY BPCL,
MUMBAI REFINERY**

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THIS AGREEMENT IS MADE ON THE [] DAY OF [] 2016

Between

Bharat Petroleum Corporation Limited, Mumbai Refinery (the “Procurer”)

and

~~[PTC India Limited/~~ Name of Successful Bidder], (the “Seller”)

The “Procurer” and the “Seller” are individually referred as “Party” and collectively to as the “Parties”.

Whereas:

- A. Bharat Petroleum Corporation Limited, Mumbai Refinery (the “Procurer”), had initiated a competitive bidding process through issue of RFP dated for procurement of power through short/ medium term Open Access for meeting power requirements of BPCL, Mumbai Refinery.

~~[Further, The Procurer vide letter no. P&GS: N 11, dated 23.05.2016 has appointed PTC India Limited as nodal agency for facilitating purchase and sale of the aforesaid power.] [Applicable for IPP]~~

- B. Pursuant to the aforesaid bidding process, [Insert name of the Successful Bidder] has been selected as the generating company for supply of electricity power in bulk to the Procurer, for the Contracted Capacity (as defined hereunder) of 12 MW, in accordance with the terms of this Agreement. For fulfilment of the aforesaid objective, ~~PTC India Limited~~ [Insert name of the Successful Bidder] (hereinafter called as “Seller”) and the Procurer has agreed to sign this Power Purchase Agreement for purchase and sale of the Contracted Capacity to the Procurer. ~~A back-to-back Power Purchase Agreement (“BPPA”) shall be signed between the PTC India~~

~~Limited and [Insert name of the Successful Bidder] for purchase of such Contracted Capacity for onward sale to the Procurer. [Applicable for IPP]~~

~~or~~

~~Pursuant to the aforesaid bidding process,[Insert name of Successful Bidder] (hereinafter called as “Seller”) has been selected by the Procurer as the Seller for sale and supply of electricity in bulk to the Procurer, for the Contracted Capacity (as defined hereunder) of 12 MW, in accordance with the terms of this Agreement]. [Applicable for Captive Generator]~~

- C. The “Seller” has provided to the Procurer, Contract Performance Guarantee(s) as per format specified in Schedule 5 of this Agreement;
- D. *The Procurer, the Seller and its Promoters hereby agree to limit the Open Access capacity sought for within the Equity Equivalent Capacity (EEC) (as defined hereunder) or MW, in accordance with the terms of this Agreement & Investment Agreement. [Applicable for Captive Generator]*
- E. The Parties hereby agree to execute this 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 Procureer.
- F. *[The Procurer, the Seller and its Promoters hereby also agree to execute the Investment Agreement. The Seller is promoted by the Promoters whose equity shares shall be utilized for the purpose of the Investment Agreement. The Procurer has also agreed to invest an amount equal to for the purpose of purchase of equity shares from the Promoters of Seller company.] [Applicable for Captive Generator]*
- G. The Procurer agrees, on the terms and subject to the conditions of this Agreement, to procure power up to the Contracted Capacity and pay the

Seller the Tariff (as defined hereunder) in accordance with the terms of this Agreement.

H. All the other RFP Documents have been executed by Procurer and the Seller simultaneously with the signing of this Agreement.

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

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003, 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.

"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Availability Based Tariff" or "ABT"	shall mean Availability Based Tariff (ABT) as a frequency based pricing mechanism to charge and regulate power to incentivise and dis-incentivise the grid participants against deviations in committed supplies;
"Bid"	shall mean the required documents and the Financial Bid as per the prescribed formats to be submitted by the Bidder, in response to the RFP, in accordance with the terms and conditions hereof;
"Bid Deadline"	shall mean the last date and time for submission of the Bid in response to the RFP;
"Bidder"	shall mean 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;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill i.e. a Provisional Bill, Supplementary Bill, Compensatory Bill or a Final Bill issued by the other Party;
“BPCL”	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 Agreement. For the purpose of this Agreement, the location for supply of electricity is Mumbai Refinery at the Delivery Point therein;
“Business Day”	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State of Maharashtra in which the Procurer’s registered office is located;
“Capacity Applied”	with respect to the Seller, shall mean the loss adjusted quantum of power (in MW) applied for STOA/ MTOA considering the Contracted Capacity;
“Capital Structure Schedule”	<i>shall mean sources of finance used to finance the Capital Cost of the Power Station as provided in the Financing Agreements; [Applicable for Captive Mode]</i>
“Captive Generating Plant”	<i>Shall mean 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 co-operative society or association; [Applicable for Captive Mode]</i>

"Central Transmission Utility" or "CTU" shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

"CERC" shall mean the Central Electricity Regulatory Commission of India, constituted under sub - section (1) of Section 76 of the Electricity Act, 2003, or its successors;

"Competent Court of Law" shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

"Consents" shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, NOC, concessions, concurrence or consent required to be obtained under Applicable Law for the purpose of delivering the Contracted Capacity at the Delivery Point under Open Access;

"Consultation Period" shall mean the period of ten(10) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 10 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

"Contract Demand" shall mean as defined in MERC notified Distribution Open Access Regulations. Presently, Contract Demand maintained by BPCL with incumbent Discom is 40MW. For the purpose of this contract, BPCL will be maintaining Contract Demand of 12MW and above with incumbent Discom during the Term of Agreement.

<p>“Contract Performance Guarantee”</p>	<p>shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurer from a bank mentioned in Schedule 7 of this Agreement in the form attached hereto as Schedule 5, in accordance with the terms of this Agreement and RFP;</p>
<p>“Contract Year”</p>	<p>shall mean the period commencing on the Scheduled Delivery Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of 12 months commencing on April 01 and ending on March 31; and provided that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;</p>
<p>"Contracted Capacity"</p>	<p>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 this in the Agreement; and in respect of each of the three 22 KV feeders of BPCL's Mumbai Refinery shall mean 4 MW each.</p> <p>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 this PPA. Accordingly the revised capacity (limited up to 24MW) shall be read as Contracted Capacity for the purpose of this PPA.</p>
<p>“Control Centre”</p>	<p>shall mean the RLDC and/or SLDC or such other load control centre through which the Dispatch Instruction shall be issued;</p>
<p>“Cross Subsidy Surcharge” or “CSS”</p>	<p>shall mean such surcharge leviable on a consumer availing Open Access as may from time to time be defined by Appropriate Commission;</p>

"Delivery Date"	shall mean the date on which the Seller commences supply of the Contracted Capacity to the Procurer;
"Delivery Point"	shall mean the interconnection/ metering point(s) of the Procurer (i.e. BPCL's Mumbai Refinery) with Discom interface operating at 22 kV voltage level in Maharashtra. Metering arrangement(s) (three nos.) for Procurer is situated at 22 kV Switchyard of TPCL in Trombay, Chembur;
<i>"Developer"</i>	<i>shall mean the owner of the Power Station from which the Seller shall supply the Contracted Capacity to the Procurer; [Not applicable for Captive Mode]</i>
"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;
"Discom Interface"	shall mean the point(s) on the Discom network at which the Procurer agrees to receive power corresponding to the Contracted Capacity. Metering arrangement(s) (three nos.) for Procurer is situated at 22 kV Switchyard of TPC-D in Trombay, Chembur;
"Dispatch Instruction"	shall mean any instruction issued by Procurer through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Dispute"	shall mean any dispute or difference of any kind between the Procurer and the Seller in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 12.3 of this Agreement;
"Due Date"	shall mean the tenth (10 th) day after any bill is received and duly acknowledged by the Procuer/ Seller (as the case may

be) or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Bill i.e Provisional Bill or Final Bill or Compensatory Bill or Supplementary Bill is payable by the Procurer/ Seller (as the case may be);

“Effective Date” shall have the meaning ascribed thereto in Article 2.1 of this Agreement;

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

“Electricity Laws” shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;

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

“Equity Equivalent Capacity” or “ECC” shall mean capacity of MW of Seller, equivalent to which the Procurer has purchased Equity Shares in accordance with the Investment Agreement executed between the Procurer, the Seller and its Promoters pursuant to this PPA; [Applicable for Captive Mode]

“Equity Shares” means the Class ‘A’ equity shares, of the Promoters, which shall be purchased by the Procurer as per the ~~SHA~~ Investment Agreement; [Applicable for Captive Mode]

“Event of Default” shall mean the events as defined in Article 10 of this Agreement;

“Expiry Date” shall mean the 31st March, 2018 or such extended period as

provided in Article 2.2 of this Agreement;

“Financing Agreements”

shall mean the agreements pursuant to which the Seller has sought financing for the Power Station including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurer; [Applicable for Captive Mode];

“Force Majeure” or
“Force Majeure
Event”

shall have the meaning ascribed thereto in Article 9.3 of this Agreement;

“Fuel”

shall mean the primary fuel used to generate electricity namely *[Insert name of the fuel as applicable, namely domestic coal, imported coal, domestic (pipeline) gas, imported gas (RLNG), etc.];*

“FY”

shall mean the Financial Year;

“Grid Code” / “IEGC”
or “State Grid Code”

shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;

“Independent Power Producer or IPP”

Shall mean power generating plants developed, owned and operated by private players in India and shall include a unit thereof; [Not applicable for Captive Mode]

“Indian
Governmental
Instrumentality”

shall mean the Government of India, Governments of state(s) of *[Insert the name(s) of the state(s) in India, where the Procurer, the Seller and the Power Station are located]* and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of

Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer;

"Injection Point" shall mean the [Insert Injection Point] as specified by the Successful Bidder;

"Installed Capacity" shall mean the sum of nameplate capacities of the units of the Power Station of the [Insert "Seller" if Successful Bidder is for Captive Mode, otherwise "Developer"] confirmed by the respective performance tests;

"Insurances" shall mean the insurance cover to be obtained and maintained by the [Insert "Seller" if Successful Bidder is for Captive Mode, otherwise "Developer"] in accordance with Article 7 of this Agreement;

"Interconnection Facilities" shall mean the facilities on the Procurers' side of the Delivery Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 4, the Metering System required for supply of power as per the terms of this Agreement;

"Interconnection Point" shall mean the point where the power from the Power Station switchyard bus of the [Insert "Seller" if Successful Bidder is for Captive Mode, otherwise "Developer"] is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);

"Invoice" or "Bill" shall mean Provisional Bill or Final Bill or Disputed Bill or

	Supplementary Bill or Compensatory Bill raised by any Party;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 8.4.8 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Intent" or "LOI"	shall mean the letter to be issued by the Procurer to the Successful Bidder for supply of power in accordance with the RFP and Agreement, copy of which is attached and marked as Schedule 6 of this Agreement;
"Meters" or "Metering System"	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	shall mean a monthly invoice raised by one Party to the other Party in accordance with Article 8 of this Agreement;
"MTOA"	shall mean the Medium Term Open Access for any period exceeding three months but not exceeding three years;
"NOC"	shall mean the No Objection Certificate/ Open Access permission/ Concurrence/ Approval issued by the concerned Distribution Licensee/ SLDC/ Transco/ any other relevant

authority as may be applicable from time to time;

“Nodal Agency” shall mean the authorised agency for grant of MTOA/ STOA as defined under prevailing MERC Distribution Open Access Regulations;

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

"Operating Period"; shall mean the period commencing from the Delivery Date, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;

“Other Charges” shall mean various charges and surcharges, other than Cross Subsidy Surcharge, and including additional surcharge, grid support charge, stand-by charge, reactive energy charge and any other applicable charges, levied on a consumer availing Open Access as may from time to time be defined by Appropriate Commission;

"Party" and "Parties" shall have the meaning ascribed thereto in the recital to this Agreement;

“Power Station” shall mean the [*Insert name of generation source specified by the Successful Bidder in its Bid*] power generation facility of installed capacity of[*Insert capacity*] MW, located at [*Insert name of the place*]in [*Insert name of the District and State*];

This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke [*if applicable*]; bay/s for transmission system in the switchyard, dam, intake, water conductor system [*if applicable*], and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power

	generation facility;
“Power Station’s Net Capacity”	<p>shall mean [.....] MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time;</p> <p>In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station’s Net Capacity shall be [.....] MW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;</p>
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 10 of this Agreement;
“Procurer”	shall mean the Bharat Petroleum Corporation Limited (BPCL) Mumbai Refinery at Mahul, Chembur, Mumbai 400073, Maharashtra;
“Promoters”	shall mean the persons mentioned under Annexure 1 of Investment Agreement.
“Provisional Bill”	shall mean the bill raised by the Seller as ascribed thereto in Article 8.2.1 and 8.2.3 of this Agreement;
"Prudent Utility Practices"	<p>shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station;</p>

	<p>b) the requirements of Indian Law; and the physical conditions at the site of the Power Station;</p>
"Rebate"	shall have the same meaning as ascribed thereto in Article 8.4.10 of this Agreement;
"Regional Energy Accounts" or "REA"	shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Regulations"	shall include the regulations and their amendments made or issued under Electricity Act 2003 and will also include but not limited to the Regulation made or issued by the Electricity Regulatory Commission and any circulars, directives, clarifications, policy matters issued by the Distribution Licensee, Transmission Licensee and SLDC relating to sale of electricity by the Seller to the Procurer under Open Access;
"RFP"	shall mean Request for Proposal document dated issued by the Procurer, along with all attachments, formats, PPA, Investment Agreement and other documents attached and shall include any modifications, amendments alterations or clarifications thereto and shall include any modifications, amendments or alterations and clarifications thereto;
"RFP Documents"	shall mean mean the following documents entered into in respect of the procurement of power, by the Parties to the respective agreements:- <ul style="list-style-type: none"> a) PPA; b) BPPA; [Not applicable for Captive Mode] c) <i>Investment Agreement [Applicable for Captive Mode]</i>
"RLDC"	shall mean the relevant Regional Load Dispatch Centre

	established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees" or "Rs."	shall mean Indian rupees, the lawful currency of India;
"Scheduled Delivery Date"	shall mean the date of commencement of supply of power as per Article 4.1 of this Agreement;
"Scheduled Energy" or "Scheduled Generation"	shall mean scheduled generation as defined in the ABT;
"State Energy Accounts" or "SEA"	shall have the same meaning as in the Grid Code and issued by the relevant SLDC or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Seller"	shall mean the [Insert PTC India Limited or Name of the Successful Bidder if Successful Bidder is for Captive Mode] who shall be responsible for supplying power to the Procurer at the Delivery Point for the term of the Agreement as per the terms and conditions specified therein;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"STOA"	shall mean the Short Term Open Access for any period not exceeding one month;

“SLDC”	shall mean the State Load Despatch Centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;
“SLDC Charges”	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
“STU Interface”	shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer’s State(s);
	For generation source in the same State as that of the Procurer, the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.
“Successful Bidder”	shall mean the Bidder selected by the Procurer pursuant to the RFP for supply of power as per the terms of the PPA and other RFP Documents, and to whom a LOI/ PO/ contract has been issued by the Procurer;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;
"Tariff"	shall mean the landed rate of electricity as quoted by the Successful Bidder at the Delivery Point under the Financial Bid, mentioned in Schedule 4 of this Agreement and shall be inclusive of all statutory charges and losses, transmission/ wheeling charges and losses, additional surcharge, cross subsidy surcharge, regulatory asset surcharge, <u>trading margin</u> , scheduling and operational charges, taxes, electricity duties

and any other applicable charges upto the Delivery Point, except for the Renewable Power Obligation charges which shall be borne by the Procurer;

"Tariff Payment" shall mean the payments to be made under Monthly Bills and the relevant Supplementary Bills;

"Termination Notice". shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.3, 10.5.1 and Clause 3.2.3 of Schedule 3 of this Agreement;

"Term of Agreement" shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

"Trading Licensee" shall mean the Seller which is a Category-I Electricity Trading License holder and has submitted an exclusive power purchase agreement executed with the Developer;

"Week" shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday.

1.2 Interpretation

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

1.2.1 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph/clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);

1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, notated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 The contents of Schedule 6 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 3.2.1(vi) of Schedule 3 hereof.

2 ARTICLE 2 : TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the “**Effective Date**”.

2.2 *Term of Agreement*

2.2.1 This Agreement shall be valid for a term commencing from the Effective Date till the Expiry Date, unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless extended mutually by the Procurer & Seller;

2.2.2 The Agreement may be extended by the Procurer with same rate, terms and conditions as per the Agreement for upto one more year i.e., starting from 1st April, 2018 upto 31st March 2019. The information for such extension shall be made by the Procurer to the Seller before a date, which is sixty (60) days prior to the Expiry Date;

2.2.3 If the Agreement is not extended, as mentioned above, it shall expire automatically at 24:00 Hrs on 31st March 2018.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if the Procurer exercises a right to terminate, pursuant to Articles 3.3.1, 3.3.2, 3.3.3, 3.3.4, 10.5, or Clause 3.2.3 of Schedule 3 of this Agreement; or
- ii. in such other circumstances as the Seller and the Procurer may agree, in writing.

2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.3.1, Article 9 (Force Majeure), Article 10 (Events of Default and Termination), Article 11 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 12 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

**3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/
PROCURER**

3.1 *Satisfaction of conditions subsequent by the Seller*

- a. The Seller has to apply for Medium Term Open Access (MTOA) for the Term of Agreement and delivery of Contracted Capacity at the Delivery Point(s), as per the provisions of Regulation 27 of CERC (Grant of connectivity, long term access and medium term open access in the Inter-State Transmission and related matters) regulation 2009 (Open Access Regulations), as amended or revised from time to time.
- b. In case the Power Station is located in the State of Maharashtra, the Seller shall have to apply for MTOA for the contracted period and quantum as per the provisions for Intra-State Open Access to the concerned Nodal Agency. Till the time MTOA is being granted, the Seller shall be responsible to supply the power through STOA as per the applicable Regulations.
- c. It shall be the responsibility of the Seller to take Consents/ NoC/ Open Access approval (both MTOA & STOA) for supplying Contracted Capacity upto the Delivery Point(s).
- d. The Seller shall be responsible to initiate the process of getting Consents for Open Access from concerned agencies within one working day after receipt of LOI.
- e. The Seller shall be responsible for execution of an agreement, if required, among the Seller, the Procurer, the Discom, any other person as per the requirements of MERC regulations for Open Access.

3.2 Satisfaction of conditions subsequent by the Procurer

3.2.1 The Procurer shall maintain its energy meters, compliant as per relevant Open Access Regulations, at Delivery Point(s) in working condition at all times.

3.3 Consequences of non-fulfillment of conditions subsequent

3.3.1 If any one or more of the conditions specified in Article 3.1 and is not duly fulfilled by the Seller, even within two (2) months after the time specified under Article 3.1, otherwise than for the reasons directly attributable to the Procurer or Force Majeure event in terms of Article 3.3.2, then the Procurer shall have the right to terminate this Agreement by giving a Termination Notice to the Seller in writing of at least seven (7) days in advance. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period ("Termination Date"). If the Procurer elects to terminate this Agreement in the event specified in this Article, the Seller shall be liable to pay to the Procurer on the Termination Date an amount of Rupees equivalent to 10% of the contract value as applicable for a period from the Effective Date till the Expiry Date, as liquidated damages. The Procurer shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee. If the Procurer is unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer within ten (10) days from the Termination Date. For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.3.2 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of two (2) months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by the Procurer giving a Termination Notice of at least seven (7) days, in writing to the Seller. The

termination of the Agreement shall take effect upon the expiry of the last date of the said notice period without any liability to both the Parties.

3.3.3 Similarly, in case of inability of the Procurer to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of two (2) months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by the Parties, by mutual agreement without any liability to both the Parties.

3.3.4 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.3.

3.4 Contract Performance Guarantee (CPG)

3.4.1 The Contract Performance Gurantee (CPG) furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement. The Procurer shall have the right to forfeit the CPG in case the Seller does not fulfil his contractual obligations;

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

3.4.3 If the Seller fails to commence supply of power on the respective Scheduled Delivery Date specified in this Agreement, subject to conditions mentioned in Article 4.6.1, the Procurer shall have the right to encash the Contract Performance Guarantee and appropriate in their favor as liquidated damages an amount specified in Article 4.7.1, without prejudice to the other rights of the Procurer under this Agreement;

3.4.4 The CPG shall be equivalent to 10% of the contract value as applicable for a period from the Effective Date till the Expiry Date. The value of CPG shall be ascertained after the selection of Successful Bidder based upon its Financial Bid;

3.4.5 The Contract Performance Guarantee shall be valid up to three months after the completion of term of the Agreement i.e. the Expiry Date.

3.5 *Renewal of Contract Performance Guarantee*

3.5.1 If the Agreement is further extended, by the Procurer as per Article 2.2, the Seller shall be required to extend the validity of the CPG upto three months after such extended period of the PPA. The information for such extension shall be made by the Procurer to the Seller before a date, which is sixty (60) days prior to the Expiry Date;

3.5.2 The Seller shall ensure the renewal of the Contract Performance Guarantee within fifteen(15) days of receipt of information for extension of Agreement;

3.5.3 If such extended Contract Performance Guarantee is not received as per the time line specified above, the Procurer shall have the right to encash the then existing Contract Performance Guarantee.

3.6 *Return/ release of Contract Performance Guarantee*

3.6.1 The Procurer shall return/ release the Contract Performance Guarantee to the Seller at the end of three months after the completion of Term of this Agreement or extension thereof, unless the same is not invoked by the Procurer;

3.6.2 The return/ release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.

ARTICLE 4 : SUPPLY OF POWER

4.1 Commencement of Supply of Power to the Procurer

- 4.1.1 The Seller shall apply for STOA and is responsible to commence the supply of power upto the Contracted Capacity, in accordance with Clause 5.1 of this Agreement, by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is ~~February~~ April 01, 2017. Simultaneously, the Seller shall apply for MTOA for the contracted period and quantum as per relevant SERC/ CERC Regulations and shall arrange MTOA within 6 (six) months of LOI. Till the time MTOA is not granted, the Seller shall be responsible to supply the power through STOA as per the applicable Regulations;
- 4.1.2 The Seller shall at all times be ready and responsible, at its own cost and risk, for the commencement of supply of power to the Procurer as per the terms of the PPA;
- 4.1.3 The Procurer shall not be responsible for any issue, including but not limited to the issues related Open Access, network constraints, power generation & supply issues at Seller's end, or any other issue, during the term of Agreement;
- 4.1.4 Non-supply of power at the Delivery Point(s) owing any issue, except for conditions accounting for *Force Majeure*, as mentioned in Article 9 of this Agreement, shall be on the account of Seller and the Procurer shall be duly compensated as per Article 5 of the Agreement.

4.2 Seller's Obligations

- 4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:
- a) obtaining all Consents and maintaining all Consents in full force and effect during the Term of this Agreement. *[The Seller shall further ensure that the Developer maintains all Consents in full force and effect during the Term of this Agreement]*. (Not applicable for Captive Mode)

- b) the commencement of supply of power, up to the Contracted Capacity, to the Procurer no later than the Scheduled Delivery Date, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer's scheduling and dispatch requirements throughout the Term of this Agreement;
- c) obtaining all the necessary permissions for the medium/ short term open access for both interstate and intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point and execute all necessary agreements for such transmission access and provide a copy of the same to the Procurer;
- d) obtaining open access and Consents for transmission of Contracted Capacity of power from the Injection Point to the Delivery Point;
- e) providing on a timely basis, all relevant information to the Procurer which may be required for receiving power at the Delivery Point;
- f) fulfilling all obligations undertaken by the Seller under this Agreement.

4.3 Procurer' Obligations

4.3.1 Subject to the terms and conditions of this Agreement, the Procurer shall be responsible for:

- a) Fulfilling all obligations to be undertaken by the Procurer under this Agreement;
- b) making payments to the Seller for purchase of power as per terms of this Agreement;
- c) complying with the Electricity Rules 2005, as amended or revised from time to time and as applicable to them, with respect to this Agreement;

- d) supplying details of following documents/information, required with respect to the Open Access Application, to the Seller:
- i. contract demand with grid;
 - ii. meter details (Class of Accuracy, TD Interval, Parameters) at Delivery Point;
 - iii. previous three months Discom bills;
 - iv. single line diagrams, as applicable;
 - v. details regarding Delivery Point;
 - vi. desired load under Open Access (partial/ full load);
 - vii. co-ordinator details from the Procurer side (details of contact person) for correspondence on open access/ scheduling of power.

4.4 Purchase and sale of Contracted Capacity and Scheduled Energy

4.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer, and the Procurer undertakes to pay Tariff for all of the Contracted Capacity and corresponding Scheduled Energy. ~~*[The Procurer also undertakes to pay trading margin to the Seller at a rate of Rs. 0.036/kWh (3.6 Paise/kWh) for the Scheduled Energy, in addition to the Tariff as mentioned above. (Not applicable for Captive Mode)]*~~

4.5 Right to Contracted Capacity and Scheduled Energy

4.5.1 Subject to provisions of this Agreement, the entire Contracted Capacity shall be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase the entire Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy;

4.5.2 Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from such Scheduled Delivery Date.

4.6 Extensions of Time

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

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

the Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.6.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer, or till such time such Event of Default is rectified by the Procurer;

4.6.2 In case of extension occurring due to reasons specified in Article 4.6.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than two (2) Months or the date on which the Seller elects to terminate this Agreement, whichever is later;

4.6.3 In case of extension due to reasons specified in Article 4.6.1 (c), and if such Force Majeure Event continues even after the maximum period of two (2) months, the Procurer may choose to terminate the Agreement as per the provisions of Article 10.5;

4.6.4 In case of extension due to reasons specified in Article 4.6.1(b), and if such Force Majeure Event continues even after the maximum period of two (2)

months, the Parties, upon mutual agreement, may choose to terminate the Agreement as per the provisions of Article 10.5;

4.6.5 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 12.3.

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

4.7 Delay in commencement of supply of power to the Procurer

4.7.1 If the commencement of supply of power to the Procurer does not initiate as per the timelines mentioned in Article 4.1.1, for any reason(s) other than for the reasons specified in Article 4.6.1, then the Seller shall be liable to pay a compensation of Rs. 2000/MW/day to the Procurer. Treatment of these compensation charges shall be done as per Article 8.3 of the Agreement. The compensation mentioned in this Article shall be levied on the Seller till the period of two (2) months from the expiry of the timeline for start of supply as defined in Article 4.1.1;

4.7.2 If the supply of power is not initiated even within (i) two (2) months from the receipt of Lol from the Procurer, or (ii) the Scheduled Delivery Date, whichever is later; then the Procurer may choose to terminate the Agreement as per the provisions of Article 10.1.

4.8 Alternative Source of Power Supply

4.8.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurer upto the Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Contracted Capacity from an alternative

generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer at the same Tariff and terms and conditions of this Agreement and subject to provisions of Article 4.8.2. In case any additional charge in whatever name called, including but not limited to Cross Subsidy Surcharge, temporary connection charge, transmission charge, wheeling charge, application fees for open access, RLDC/SLDC charges, etc. becomes applicable from the alternative source of power supply, the Seller would be liable to bear such additional charges.

4.8.2 The Seller shall be permitted to supply power to the Procurer from any alternative source for a maximum continuous duration of one (1) Month or a maximum of three (3) such instances aggregating 45 days during the entire Operating Period.

5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1 Scheduling and Dispatch

- 5.1.1 The Seller shall arrange the delivery of the energy corresponding to the Contracted Capacity at the Delivery Point(s) and it shall be dispatched in accordance with the applicable laws inter alia the Indian Electricity Grid Code Regulations and Grid Code Regulations in the state of the Procurer and the Power Station/ Seller, as amended from time to time;
- 5.1.2 Seller shall apply for Open Access for the entire Contracted Capacity including line loss upto the Delivery Point i.e. metering point(s) of the Procurer at Discom interface, failing which the shortfall between applied quantum & Contracted Capacity will be considered for compensation by the Seller to the Procurer at the rate of Rs. 2.00 per kWh (unit) on account of the shortfall between applied quantum & Contract Capacity in addition to the shortfall occurred during scheduling. It is clarified that in case the agency/authority does not consider wheeling losses for Open Access application, the compensation for shortfall in supply, as provided in this Article 5.1, shall be calculated at STU Interface for the quantum applied;
- 5.1.3 The Procurer has to give consent for 100% of the Contracted Capacity including line loss, failing which, the Contracted Capacity will be revised as per the consent given by the Procurer;
- 5.1.4 In case Open Access approval quantum is less than the applied quantum due to any issue, except for the reason(s) directly attributable to the technical infrastructure at the Delivery Point (for which Procurer is solely responsible) as communicated in written by the Nodal Agency, entire shortfall between applied & approved quantum will be considered for compensation by the Seller to the Procurer at the rate of Rs. 2.00 per kWh (unit) on account of the shortfall between applied & approved quantum in addition to the shortfall occurred during scheduling.

5.1.5 In case open access approval quantum is less than the applied quantum due to the reason(s) directly attributable to the technical infrastructure at the Delivery Point as communicated in writing by the Nodal Agency, then:

- a) For the first three months after the receipt of such written communication, Seller shall make the complete efforts to attain the grant of Open Access for the shortfall between applied & approved quantum as mentioned above. In case, the Seller is not able to do so, then:
 - i. the Procurer has the option for revising the Contracted Capacity to the extent of the quantum for which approval is accorded by the Nodal Agency. In such case, the revised Contracted Capacity shall be the Contracted Capacity for the purpose of this Agreement; or
 - ii. the Procurer has the option for terminating this Agreement without any liability, whatsoever, on the Procurer. In such case, Seller shall not be liable to pay any compensation, as mentioned in Clause 10.3.5 of this Agreement.

5.2 Compensation for under scheduling

5.2.1 In case Seller is not able to schedule 100% of the open access approved quantum, Seller shall pay compensation to the Procurer amounting to the difference between the Deviation/Temporary charges, including demand charges or any other charges/ penalty as paid by the Procurer to the Distribution Licensee or any other agency/ authority, if any, and agreed Tariff as per the PPA, for the quantum of shortfall in addition to Article 5.1.2 and 5.1.4.

5.2.2 In case the Procurer is not able to schedule 80% of the Contract Capacity or 100% of the open access approved quantum, whichever is less on monthly basis, the Procurer shall pay compensation to the Seller at Rs. 2.00 per kWh for the quantum of shortfall and pay for all the open access charges, load surrender charges, if any, to the extent not availed by the procurer from the point of injection to point of drawal;

5.2.3 The compensation charges shall be claimed as per the Compensatory Bill as per Article 8.

6 ARTICLE 6: METERING

6.1 Meters

- 6.1.1 For installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto, at the Injection Point and Interconnection Point, the Seller shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time;
- 6.1.2 For installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto, at the Delivery Point, the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.
- 6.1.3 The Procurer shall install ABT compliant/special energy meter(s) at Delivery Point and create metering facility as prescribed under applicable Regulations for availing Open Access during the Term of this Agreement at its own cost.
- 6.1.4 The Seller, also, shall be required to install ABT meters, if not already installed, in accordance with Open Access Regulations/ Metering Regulations of Appropriate Commission;
- 6.1.5 In case of defect or non-function of metering system at Procurer's end during the Term of the Agreement, the Procurer shall give notice to the incumbent Discom, with a copy to the Seller, for necessary action by Discom. If the defect or non-function of metering system is not rectified in accordance with the Metering Code for Intra State Transmission System of Maharashtra within 2 (two) months of such notice, the same shall be treated as Force Majeure event without any liability on the Procurer.

7 ARTICLE 7: INSURANCES

7.1 Insurance

7.1.1 The Seller shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), for plant and machinery, which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Sellers Financing Agreements.

8 ARTICLE 8: BILLING AND PAYMENT

8.1 General

8.1.1 From the commencement of supply of power:

- i. the Procurer shall pay to the Seller the monthly payments, on or before the Due Date, for the monthly invoices or bills, related to Provisional Bill or Final Bill raised by Seller in accordance with this Article 8;
- ii. the Procurer shall pay to the Seller the monthly payments (if applicable), on or before the Due Date, for the monthly invoices or bills, related to Compensatory Bill raised by Seller in accordance with this Article 8;
- iii. the Seller shall pay to the Procurer the monthly payments, on or before the Due Date, for the monthly invoices or bills, related to Supplementary Bill raised by the Procurer in accordance with this Article 8;
- iv. the Seller shall pay to the procurer the monthly payments (if applicable), on or before the Due Date, for the monthly invoices or bills, related to Compensatory Bill raised by the Procurer in accordance with this Article 8;
- v. ~~*[Payment of trading margin as per Article 4.1.1 of this Agreement, shall be done through Supplementary Bills and no rebate shall be applicable on Supplementary Bills raised on account of such trading margin. (Not applicable for Captive Mode)]*~~

8.1.2 All payments, related to supply of power as per the Agreement, by one Party to the other Party during the term of the Agreement shall be in Indian Rupees.

8.2 Delivery and Content of Provisional/ Final Bill

8.2.1 For the supply of power during a month, Seller will raise the monthly Provisional Bill to the Procurer on 1st working day of the subsequent month. The bill shall be raised to the Procurer on the basis of Tariff and implemented

schedules during the respective month as per WRLDC (Wester Regional Load Dispatch Centre) for Inter State Open Access / daily schedules during the respective month sent by Procurer to Seller for Intra State Open Access indicating energy supplied to Procurer at the Delivery Point;

8.2.2 A Final Bill shall be raised by the Seller on the basis of Tariff and energy units wheeled under Open Access, as observed from final REA (Regional Energy Accounts)/ SEA (State Energy Accounts) published by RPC/ SLDC or the monthly Discom bills showing credit of energy units wheeled under OA, and adjusting the energy already billed in Provisional Bill. The difference if any between the Provisional and Final Bill shall be adjusted in the Final Bill of the month;

8.2.3 Each Provisional/ Final Bill shall include:

- i. Implemented Schedules of WRLDC/ daily schedules sent by Procurer to Seller indicating energy supplied to Procurer at the Delivery Point for the Provisional Bill;
- ii. REA/SEA for the relevant Month for the Final Bill;
- iii. Monthly Discom bills showing credit of energy units wheeled under Open Access;
- iv. Seller's computation of various components of the monthly energy payments; and
- v. Supporting data, documents and calculations in accordance with this Agreement.

8.3 Delivery and Content of Supplementary/ Compensatory Bill

8.3.1 Procurer shall raise a Bill ("Supplementary Bill") on Seller for reimbursement of payments paid by the Procurer to the Discom or any other agency for components which are part of the Tariff. Such Supplementary Bill for the Month shall be raised by the Procurer the Seller within two (2) working days

from the receipt of Monthly Electricity Bill from the Discom for the respective Month;

8.3.2 Either Party may raise a Supplementary Bill on the other Party for claiming payments under Late Payment Surcharge in accordance with Article 8.4.8;

8.3.3 Compensatory Bill, if any, on account of compensation liability, as per Article 4.7.1 of the Agreement, shall be raised by Procurer to the Seller on weekly basis;

8.3.4 Compensatory Bill, if any, on account of compensation liability, as per Article 5 of the Agreement, shall be raised by either Seller/ Procurer, as the case may be, to the other Party on monthly basis after publishing of REA/SEA;

8.3.5 Each Supplementary/ Compensatory Bill shall include:

- i. Electricity Bill(s) raised by Discom to the Procurer including wheeling charges, electricity duty, regulatory asset charges etc;
- ii. REA/SEA for the relevant Month;
- iii. Supporting data, documents and calculations in accordance with this Agreement.

8.4 Bill Payment

8.4.1 The Procurer shall pay the amount payable under the Monthly Provisional/ Final Bill on or before the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.4.7 below;

8.4.2 The Seller shall pay the amount payable under the Supplementary Bill, in accordance with Article 8.3.1, on or before the Due Date to such account of the Seller, as shall have been previously notified by the Procurer in accordance with Article 8.4.7 below;

8.4.3 The Seller/ Procurer, as the case may be, shall pay the amount payable under the Supplementary Bill, if any, in accordance with Article 8.3.2, on or before

the Due Date to such account of the other Party, as shall have been previously notified by the other Party in accordance with Article 8.4.7 below;

8.4.4 The Seller/ Procurer, as the case may be, shall pay the amount payable under the Compensatory Bill, if any, in accordance with Article 8.3.4, on or before the Due Date to such account of the other Party, as shall have been previously notified by the other Party in accordance with Article 8.4.7 below;

8.4.5 The Procurer shall be raising the Compensatory Bill, as per Article 8.3.3, to the Seller on a weekly basis. The Seller shall be responsible to pay the amount corresponding to such bills on the subsequent day of receipt of these bills. Delay in payment of such bills shall attract a late payment surcharge which shall be payable by the Seller to the Procurer at the rate of fifteen percent (15%) per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly interest), for each day of the delay;

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

- i) deductions required by the Law; and
- ii) amounts claimed by the Procurer from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller and such deduction or set-off shall be made to the extent of the amounts. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) days period also;

8.4.7 The Seller shall open a bank account (the "Seller's Designated Account") for all payments, in accordance with the Agreement, to be made by Procurer to the Seller, and notify Procurer of the details of such account at least thirty (30) Days before the dispatch of the first Monthly Provisional Bill. Procurer shall also designate a bank account (the "Procurer's Designated Account") for all payments, in accordance with the Agreement, to be made by the Seller to

Procurer and notify the Seller of the details of such account at most ten (10) Days after the Scheduled Delivery Date. The Procurer and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller's Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day;

8.4.8 In the event of delay in payment of a Provisional/ Final Bill the Procurer beyond the Due Date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of fifteen percent (15%) per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly interest), for each day of the delay;

8.4.9 In the event of delay in payment of a Supplementary/ Compensatory Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Provisional/ Final Bill in Article 8.4.8;

8.4.10 For payment of monthly Provisional Bill/ Final Bill before Due Date, the following Rebate shall be allowed, on the whole bill amount including CSS, by the Seller to the Procurer in the following manner.

- a) Rebate of two percent (2%) shall be provided for credit of payment to the Seller's account made within ten (10) days of the receipt of monthly Provisional/ Final Bill;
- b) The above mentioned Rebate will be allowed only to the Procurer if full payment (excluding the charges corresponding to Rebate and deductions applicable as Article 8.4.6) is credited to the Seller's account, as per above mentioned timelines, for the Provisional Bill;
- c) The above mentioned Rebate will be allowed only to the Procurer if full payment (excluding the charges corresponding to Rebate and deductions applicable as Article 8.4.6) is credited to the Seller's account, as per above mentioned timelines, for the Final Bill;

d) No Rebate shall be payable on payment of Supplementary/ Compensatory Bill before the Due Date.

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

8.4.12 Any amount payable by the Seller beyond due date on accounts of electricity duty and regulatory assets charges shall be recovered by invocation of Contract Performance Guarantee which shall be reinstated by the Seller within 7 (seven) days of the intimation from the Procurer of such invocation.

8.4.13 All payments made by the Procurer shall be appropriated by the Seller in the following order of priority:

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

8.5 Disputed Bill

8.5.1 If a Party does not dispute a Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive;

8.5.2 If a Party disputes the amount payable under a Bill, that such Party shall, within seven (7) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

8.5.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

8.5.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, it shall, within seven (7) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

8.5.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.5.4, authorized representative(s) of the disputing Party and the invoicing Party shall meet in person/ discuss on phone (minutes to be prepared by the invoicing Party and sent to the disputing Party for records) and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

8.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.5.4, the matter shall be settled during Quarterly Reconciliation as per Article 8.6.2.

8.5.7 If a Dispute regarding a Bill is settled pursuant to Article 8.5 or by the Dispute resolution mechanism provided in this Agreement in favor of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.5.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

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

8.5.9 For the avoidance of doubt, it is also clarified that in all the cases, the Seller shall continue supplying electricity to the Procurer as per the Agreement till the Agreement is appropriately terminated as per the provisions of the Agreement.

8.6 Quarterly and Annual Reconciliation

8.6.1 The Parties acknowledge that all payments made against any Bill shall be subject to quarterly reconciliation at the beginning of the following quarter of the Contract Year and annual reconciliation at the end of the Contract Year to take into account any reasonable circumstance provided under the Agreement;

8.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and the Procurer shall jointly sign

such reconciliation statement. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.3.

9 ARTICLE 9:FORCE MAJEURE

9.1 Definitions

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

9.2 Affected Party

9.2.1 An affected Party means the Procurer or the [*Insert "Seller" in case Successful Bidder is for Captive Mode or insert "Developer"*] whose performance has been affected by an event of Force Majeure.

9.3 Force Majeure

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

- a) act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures;
- b) Nationalization or compulsory acquisition by Indian/ State Governmental Instrumentality of any material assets or rights of the Seller;
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian/ State Government Instrumentality which is directed against the supply of power by the Seller to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down;

- d) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- e) radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party;
- f) Industry wide strikes and labor disturbances having a nationwide impact in India;
- g) Any defect or non-function of metering system at Procurer's end which is not rectified by Discom within 2 (two) months of notice on such events.

Notification of Force Majeure Event

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

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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

9.4 Duty to Perform and Duty to Mitigate

9.4.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.5 Available Relief for a Force Majeure Event

9.5.1 Subject to this Article 9:

- a. No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b. For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the Contracted Capacity or part thereof affected by a Force Majeure Event affecting the Seller, for the duration of such Force Majeure Event affecting the Seller. For the balance part of the Contract Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Force Majeure Event affecting the Seller, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer;
- c. In case of a Force Majeure Event affecting the Procurer, no payments shall be paid by the Procurer to the Seller for the duration of such Force Majeure Event affecting the Procurer.

10 ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION

10.1 *Seller Event of Default*

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

- (i) If the supply of power is not initiated within (i) 2 months from the receipt of Lol from the Procurer, or (ii) Scheduled Delivery Date, whichever is later; or
- (ii) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of fifteen (15) Days and such default is not rectified within five (05) Days from the receipt of first notice from the Procurer in this regard; or
- (iii) the Seller fails to make any payment to the Procurer pertaining to any relevant Bill or part thereof, in accordance with the provisions of this Agreement, within one (1) Month after the Due Date of undisputed invoice(s) /demand raised by the Procuer on the Seller; or
- (iv) any of the representations and warranties made by the Seller in Schedule 3 of this Agreement, being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate and Contract Performance Guarantee is not submitted;

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days; or

- (v) if:
- a) the [*Insert "Seller" in case Successful Bidder is for Captive Mode or insert "Developer"*] assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement;
or
 - b) the Seller transfers any of its rights and/or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer:
 - (i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - (ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (vi) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the Qualification Requirements in terms of the RFP till six (6) months after commencement of supply of power by the Seller, and retains credit worthiness similar to the Seller

and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

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

10.2 Procurer Event of Default

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

- (i) fails to meet any of its obligations, as specified in Article 4.3; or
- (ii) fails to pay make any payment to the Seller pertaining to any relevant Bill or part thereof, in accordance with the provisions of this Agreement, within one (1) Month after the Due Date of undisputed invoice(s) /demand raised by the Seller; or

- (iii) the Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the Procurer is in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer and the Seller/ Successful Bidder are Parties, and such material breach is not rectified by the Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer; or
- (v) any representation and warranties made by the Procurer in Schedule 3 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or
- (vi) if:
 - a) the Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days; or
 - b) any winding up or bankruptcy or insolvency order is passed against the Procurer; or
 - c) the Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law;

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of the Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its

obligations under this Agreement and has creditworthiness similar to the Procurer and expressly assumes all obligations of the Procurer under this Agreement and is in a position to perform them; or

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

10.3 Procedure for cases of Seller Event of Default

10.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 10.1, the Procurer shall have the right to deliver to the Seller a notice, of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice;

10.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ten (10) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances;

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

10.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller;

10.3.5 In case the Procurer terminates the Agreement as per the provision in Article 10.3.4, the Seller shall be liable to pay to the Procurer the amount equivalent

to forty five (45) days of energy charges calculated on full Tariff and average monthly billing based on Contracted Capacity. Such payment shall be made by the Seller to the Procurer within thirty (30) days of the termination of the Agreement. In case of inability of the Seller to make such payment within the stipulated time period of thirty (30) days, the Procurer shall have the right to encash the Contract Performance Guarantee, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Seller. Any amount remaining unpaid on the part of the Seller shall be considered as a material breach and the Procurer shall have the right to enforce such claim as per the provisions of the Law.

10.4 Termination for Procurer Event of Default

10.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 10.2.1(ii), the Seller shall follow the remedies as provided under this Agreement;

10.4.2 Without in any manner affecting the rights of the Seller under Article 10.4.1, on the occurrence of any Procurer Event of Default specified in Article 10.2, the Seller shall have the right to deliver to the Procurer , a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue;

10.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ten (10) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances;

10.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement;

10.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have

ceased to exist or shall have been remedied, the Seller may choose to terminate the Agreement by giving a written Termination Notice of thirty (30) days to the Procurer. In such case, the Seller shall be free to sell the Contracted Capacity to any third party of the Seller's choice;

Provided that the Procurer shall have the liability to make payments for full Tariff Payments for the period upto which the electricity is being supplied, if any, to the Procurer.

10.5 Termination due to Force Majeure

10.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.6, the relevant Party, as specified in Article 4.6, shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

10.6 Termination due to change in Tariff

10.6.1 In the event of Tariff becoming higher, at any point of time during the Term of this Agreement, than the landed per unit charges of electricity, charged by Discom at the same voltage level at which Procurer is drawing power under this Agreement, the Procurer has the right to terminate the Agreement. In such a case, the Procurer shall issue the termination notice to the Seller, and the Agreement shall stand terminated on the date of such termination notice without any liability to either Party.

11 ARTICLE 11: LIABILITY AND INDEMNIFICATION

11.1 Indemnity

11.1.1 The Seller shall indemnify, defend and hold the Procurer harmless against:

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

11.1.2 The Procurer shall indemnify, defend and hold the Seller harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or

injury to such third party, arising out of a breach by the Procurer of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and

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

11.2 Monetary Limitation of Liability

11.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 11 for any indemnity claims made in a Contract Year only up to an amount of Rupees equivalent to half percent (0.5%) of the average annual Tariff Payment for the Contract Year subject to a maximum of Rs. 10,00,000/- (rupees ten lakh) in which the indemnity claim is made.

11.3 Procedure for claiming Indemnity

11.3.1 Third party claims

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

Provided however that, if:

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

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

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

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

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

11.4 Indemnifiable Losses

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

11.5 Infringement of Intellectual Property Rights

11.5.1

- a) The Seller shall, subject to the Procurer compliance with Article 11.5.1b), indemnify and hold harmless the Procurer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the [*Insert "Seller" in case Successful Bidder is for Captive Mode or otherwise "Developer"*].

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied

by the [*Insert [Insert "Seller" in case Successful Bidder is for Captive Mode or otherwise "Developer"], pursuant to the Agreement.*

- b) If any proceedings are brought or any claim is made against the Procurer arising out of the matters referred to in Article 11.5.1 (a), the Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Procurer of all actions taken in such proceedings or claims.
- c) If the Seller fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 11.5.1b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Procurer within the twenty eight (28) days period, the Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.
- d) The Procurer shall, at the Seller's request, afford all available assistance to the Seller in attending to such proceedings or claim, and shall be reimbursed by the Seller for all reasonable expenses incurred in so doing.

11.5.2

- a) The Procurer, subject to the Seller's compliance with Article 11.5.2 (b) shall indemnify and hold harmless the Seller and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Seller may suffer as a result of any infringement by the Procurer or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered..

- b) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 11.5.2 (a) the Seller shall promptly give the Procurer a notice thereof, and the Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.
- c) If the Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 11.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer. Unless the Procurer has so failed to notify the Seller within the twenty (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- d) The Seller shall, at the Procurer request, afford all available assistance to the Procurer in attending to such proceedings or claim, and shall be reimbursed by the Procurer for all reasonable expenses incurred in so doing.

11.6 Limitation on Liability

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

Procurer, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

11.7 *Duty to Mitigate*

11.7.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article11.

12 ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION

12.1 Governing Law

12.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Mumbai.

12.2 Amicable Settlement and Dispute Resolution

12.2.1 Amicable Settlement

12.2.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:

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

12.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 12.2.1.1, furnish:

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

12.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 8.5 if the other Party does not furnish any counter claim or defence under Article or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in

this Article 8.5, the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

12.3 Dispute Resolution

All differences or disputes between the parties arising out of or in connection with any question or matter of dispute in relation to this Agreement shall be settled in accordance with the Electricity Act 2003 as amended from time to time. If the dispute arising out of or in connection with any claims not covered under the Electricity Act 2003, such disputes shall be resolved by arbitration held in Mumbai as per the process described in this Article 12.3. Notwithstanding any legal dispute, disagreement or difference, the parties here to, continue to perform the respective obligations under this agreement. The arbitration shall be done as per the following process:-

- 12.3.1 All Disputes and differences shall, after written notice by either party to the contract to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.
- 12.3.2 The Appointing authority shall nominate an officer/ retired officer of Bharat Petroleum Corporation Limited (referred to as owner or BPCL) or a retired officer of any other Government Company in the Oil Sector of the rank of Chief Manager & above or any retired officer of the Central Government not below the rank of a Director to the Govt. of India, to act as the Sole Arbitrator to adjudicate the disputes and differences between the parties. The Seller shall not be entitled to raise any objection to the appointment of such person as the Sole Arbitrator on the ground that the said person is/was an officer (employee) and/or shareholder of BPCL, another Govt. Company or the Central Government or that he/she has to deal or had dealt with the matter to which the contract relates.
- 12.3.3 In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates

his office for any reasons whatsoever, the Appointing Authority, shall nominate another person as aforesaid, to act as the Sole Arbitrator.

12.3.4 Such another person nominated as the Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his predecessor.

12.3.5 It is expressly agreed between the parties that no person other than the Appointing Authority or a person nominated by the Appointing Authority as aforesaid, shall act as an Arbitrator. The failure on the part of the Appointing Authority to make an appointment ontime shall only give rise to a right to the Seller to get such an appointment made and not to have any other person appointed as the Sole Arbitrator.

12.3.6 The Award of the Sole Arbitrator shall be final and binding on the parties to the contract. The work under the Agreement shall however, unless suspended by the Procurer, continue during the Arbitration proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.

12.3.7 The Arbitrator may give a composite or separate Award(s) in respect of each dispute or difference referred to him and may also make interim award(s) if necessary.

12.3.8 The fees of the Arbitrator and expenses of arbitration, if any, shall be borne equally by the parties unless the Sole Arbitrator otherwise directs in his award with reasons. The lumpsum fees of the Arbitrator shall be Rs.1,00,000/- for engineering contracts. Reasonable actual expenses for stenographer,etc. will be reimbursed. Fees shall be paid stage wise i.e. 25% on acceptance, 25% on completion of pleadings/documentation, and balance 50% on completion of arguments and receipt of award by the parties.

12.3.9 Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, shall apply to the Arbitration proceedings under this Clause.

12.3.10 This Agreement shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at Mumbai for all purposes. The Arbitration shall be held at a place convenient to both parties and failing an agreement, the Arbitrator shall decide the venue. The Arbitration shall be conducted in English language.

12.3.11 The Appointing Authority is the Functional Director of Bharat Petroleum Corporation Limited;

12.3.12 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.

12.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 12.3 and save as the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

12.5 ~~[Consolidation of Arbitration Proceedings (Not applicable for Captive Mode)]~~

~~Where any dispute or difference arises either between the Procurer and the Seller under this Agreement or between the Seller and the Successful Bidder under the BPPA and where, in the opinion of the Seller, the presence of the other Party, that is to say that in the case of the BPPA, the presence of the Successful Bidder and in the case of this Agreement, the presence of the Procurer is necessary or desirable for the proper and complete adjudication of the dispute(s), then the Seller shall take all such steps, as may be necessary for consolidating the dispute or the consequential arbitration proceedings so that the other Party, as described above, is also present in the dispute resolution process or arbitration proceedings, as the case may be.]~~

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13 ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 *Amendment*

13.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after the written approval of both Parties where necessary.

13.2 *Third Party Beneficiaries*

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

13.3 *Waiver*

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

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

13.4 *Entirety*

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

13.4.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or

supply of power up to the Contracted Capacity under this Agreement to the Procurer by the Seller/ Successful Bidder shall stand superseded and abrogated.

13.5 Confidentiality

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

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

without the prior written consent of the other Parties.

13.5.2 Notwithstanding the provisions under Article 13.5.1, the Seller agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law.

13.6 Affirmation

13.6.1 The Seller and the Procurer, both affirm that:

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

13.7 Severability

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

13.8 Relationship of the Parties

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

13.9 Counterparts

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

13.10 Notices

13.10.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the english language;

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

Address :
Attention :
Email :
Fax. No. :

Telephone No. :

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

Address:

Attention

Email :

Fax. No. :

Telephone No. :

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

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

13.11 Language

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

13.11.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of

such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

13.12 Breach of Obligations

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

13.13 Commercial Acts

13.13.1 The Procurer and the Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

13.14 Restriction of Shareholders/Owners' Liability

13.14.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956/Companies Act, 2013.

13.15 Taxes and Duties

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

13.15.2 The Procurer shall be indemnified and held harmless by the Seller against any claims that may be made against the Procurer in relation to the matters set out in Article 13.15.1.

13.15.3 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Procurer that are required to be paid by the Seller for supplying power as per the terms of this Agreement;

13.15.4 The Seller shall bear and deposit electricity duty, and tax on sale of electricity, for power supply as per the terms of this Agreement. The Procurer shall deduct such charges from monthly bills raised by Seller in accordance with Article 8 and reimburse the same to Seller on submission of documentary proof of deposits by Seller. Whenever such duties and charges are levied prospectively or retrospectively for the Term of the Agreement, the same may be recovered from the existing Contract Performance Guarantee or from any other valid bank guarantee available with the Procurer. If the Contract Performance Guarantee does not exist, the Seller shall pay to the Procurer such levies within due date as may be specified by the Procurer in communication to the Seller in this regard.

13.16 No Consequential or Indirect Losses

13.16.1 The liability of the Seller and the Procurer shall be limited to that explicitly provided in this Agreement.

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

13.17 Discretion

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

13.18 Order of priority in application

13.18.1 In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below::

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

13.19 Independent Entity

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

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

13.20 Fraudulent and Corrupt Practices

13.20.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller/Successful Bidder has, directly or indirectly or through an agent,

engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer shall forfeit the bid bond or the Contract Performance Guarantee, without prejudice to any other right or remedy that may be available to the Procurer hereunder or subsistence otherwise.

13.20.2 Without prejudice to the rights of the Procurer under Article 13.20.1 hereinabove and the rights and remedies which the Procurer may have under this Agreement, if the Seller/Successful Bidder is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurer shall forfeit the Contract Performance Guarantee.

13.20.3 Further, the Seller/ Successful Bidder shall not be eligible to participate in any tender or RFP issued by the Procurer during a period of 2 (two) years from the date such Seller/ Successful Bidder is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

13.20.4 For the purposes of this Article 13.20, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or

after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning supply of power to the Procurer;

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

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

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

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

13.21 Compliance with Law

13.21.1 Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of

this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

13.22 Renewable Purchase Obligation (RPO)

13.22.1 Renewable Purchase Obligations (RPO), arising for the Procurer considering purchase through Open Access, shall be on the account of Procurer only.

13.23 [Investment Agreement (Applicable only in case of Group Captive Mode)]

13.23.1 *In case, the Successful Bidder had offered for supply of power through group captive mode, then the Seller and its Promoters will also enter into a Investment Agreement with the Procurer in addition to the PPA;*

13.23.2 *The various provisions of Agreement, along with the following provisions mentioned in the Article 13.23, shall equally apply to the Successful Bidder who had offered to supply power under the group captive mode.*

13.23.3 *In the event of termination of Agreement for sale of power through group captive mode, the Promoters shall buy back the equity shares from 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, and the Investment Agreement shall cease to exist from such date of buy back of equity shares. The Promoters shall furnish the Bank Guarantee in favor of the Procurer for the amount equivalent for purchasing the equity shares. The format for the same has been shared along with Investment Agreement;*

13.23.4 *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:-*

- i) *The Seller shall furnish ~~three~~ two 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 upto March 31st of the first Contract Year and per unit CSS applicable for the relevant Contract Year; b) The second 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*

The validity of each Bank Guarantee under the claim period shall be,

- a. for the period up to issuance of respective tariff order for next financial year; or*
- b. till the Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement,*

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both 13.23.4.(i).a and 13.23.4.(i).b, in such a case, the Seller shall revalidate the respective Bank Guarantee till next financial year.

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, 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 advise of the Procurer. If the Procurer is unable to recover the amount of CSS, imposed on it by the Discom, 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

- ii) 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, either

- a. after issuance of respective tariff order for next financial year; or*
- b. after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement,*

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both 13.23.4.(ii).a and 13.23.4.(ii).b, 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 Supplimentary 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 either after the issuance of the tariff order for next financial year or after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement, whichever is earlier.]

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

For and on behalf of
[Procurer]

For and on behalf of
[Seller]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Date

Date

Witness:

Witness:

- 1.
- 2.

- 1.
- 2.

1. SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER

Bharat Petroleum Corporation Limited at Mumbai Refinery

**2. SCHEDULE 2: DETAILS OF GENERATION SOURCE AND SUPPLY OF
POWER**

3. SCHEDULE 3: REPRESENTATION AND WARRANTIES

3.1. *Representations and Warranties by the Procurer*

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

3.1.1

- i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Procurer in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental

agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

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

3.1.3 In the event that any of the representations and warranties made by the Procurer in the Article above not true or are incorrect, the occurrence of such event would amount to a Procurer Event of Default under Article 10.2 of this Agreement and the Seller shall have the right to terminate this Agreement in accordance with Article 10 of this Agreement.

3.2. Representation and Warranties of the Seller

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

- i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Seller in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;

v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.

vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

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

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

4. SCHEDULE 4:TARIFF

The Tariff payable by the Procurer during the tenure of this Agreement shall be/kwh (i.e. Rupees) for the energy delivered at Delivery Point.

The Tariff (per unit price of electricity) (interchangeably, referred to as "Tariff") is at Delivery Point for entire term of Agreement. The Tariff is inclusive of all statutory charges and losses, transmission/ wheeling charges and losses, additional surcharge, cross subsidy surcharge, regulatory asset surcharge, trading margin, scheduling and operational charges, taxes, electricity duties and any other applicable charges upto the Delivery Point, except for the Renewable Power Obligation charges which shall be borne by the Procurer itself;

**5. SCHEDULE 5: FORMAT OF THE CONTRACT PERFORMANCE
GUARANTEE**

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

In consideration of the[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the Letter of Intent dated for supply of power on medium term basis, in response to the RFP dated, issued by [Insert name of Procurer](herein after referred to as Procurer), and such Procurer agreeing to consider the bid of the Successful Bidder as per the terms of the RFP, 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 Procuree*] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, an amount up to and not exceeding Rupees (Rs) only [*Insert the amount of the bank guarantee computed on the basis of 10% of the Contract value for the period from Effective Date till the Expiry Date*] as per the terms of PPA on behalf of M/s. [*Insert name of the Successful Bidder*].

This guarantee shall be valid and binding on the Guarantor Bank up to and including[*Insert date of validity of CPG*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the RFP 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 [*Insert the date of validity of the CPG*]. 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.

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 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.

6. SCHEDULE 6: LETTER OF INTENT

[The Letter of Intent issued by Procurer to be inserted in this Schedule]

7. SCHEDULE 7: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

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

Nationalized Banks

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

16. Union Bank of India
17. United Bank of India
18. UCO Bank
19. Vijaya Bank

2. Foreign Banks

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

3. Scheduled Private Banks

- 1 ING Vysya Bank Ltd.
- 2 ICICI Bank Ltd.
- 3 HDFC Bank Ltd.
- 4 IDBI Bank Ltd
- 5 Axis Bank
- 6 Kotak Mahindra Bank

[Note: The Procurer is authorized to modify the aforesaid list of Banks as deemed fit.]

8. SCHEDULE 8: CAPITAL STRUCTURE SCHEDULE

[This shall need to be filled up in case Seller is a Captive Power Plant owner]

[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 _____, 2016

Place: New Delhi / Mumbai

THIS INVESTMENT AGREEMENT IS MADE AT _____ ON THE [] DAY
OF [] 2016

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 (value to be mutually decided by the Procurer and Seller before expiration of existing Bank Guarantee) or extend validity of the existing

bank guarantee (if feasible), up to three months after such extended period of the PPA. 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 ~~its annual consumption~~ Contracted Capacity as per the Equity Equivalent Capacity (EEC) of 12..... 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~~ November 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 ~~42~~..... 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 2016.
- 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.

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.

6.5 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 2018. 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 or any other party then it shall be on the account of Seller. The Seller shall furnish ~~three~~two Bank Guarantees in favor of the Procurer, as mentioned below:

17.1.1 One Bank Guarantee (as per Annexure 6) 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 upto March 31st of the first Contract Year and per unit CSS applicable for the relevant Contract Year;

17.1.2 The second Bank Guarantee (as per Annexure 6) 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.

~~17.1.3 The third Bank Guarantee (as per Annexure 6) shall be for the third 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 third Contract Year upto the Expiry Date of the PPA and per unit CSS applicable for the relevant Contract Year~~

The validity of each Bank Guarantee under the claim period shall be

- a. *for the period up to issuance of respective tariff order for next financial year; or*
- b. *till the Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective 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 Bank Guarantees shall be returned to the Seller upon fulfilment of either of the below mentioned conditions:

- (a) Issuance of respective tariff order for next financial year; OR
- (b) Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the PPA;

whichever is earlier, and subject to verification from Procurer. In case of non-fulfillment of both (a) and (b) above within a period of 1 (one) year from the end of the Term of the PPA, the Seller shall extend the validity of respective Bank Guarantee for 1 (one) more year. Such extension of validity shall be continued till the fulfillment of either of condition (a) and (b) above.

Provided that, if the Seller does not wish to provide the above mentioned Bank Guarantee(s), it has to provide its consent (as per Annexure 7) 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, either

- (a) after issuance of respective tariff order for next financial year; or
- (b) after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement;

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both (a) and (b) 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 either after the issuance of the tariff order for next financial year or after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement, whichever is earlier.

The Seller has to either provide the Bank Guarantees (as per Annexure 6) or its consent (as per Annexure 7) at the time of execution of this Investment Agreement.

- 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.

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 ~~November~~ 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			100.00%

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 2016;
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 1 (one) year 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.

¹ Exact 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 1 (one) year 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 1 (one) year 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, either
a. after issuance of respective tariff order for next financial year; or
b. after Seller obtains the specific communication addressed to Procurer from Discom for non-imposition of CSS for the respective term of the Agreement,

whichever is earlier, and subject to verification from Procurer. In case the Seller fails to meet both para (a) and (b) 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 either after the issuance of the tariff order for next financial year or after the Seller obtains the necessary communication from Discom for non-imposition of CSS for the term of this Agreement, whichever is earlier.

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