

Power Purchase Agreement

For

**Tariff Based Bidding Process for Procurement of Power on Long Term
Basis from Power Stations to be setup at Nirgajini (7.70 MW)**

Between

UPPCL

("Procurer")

And

**[M/s B & G Renewable
Energy Private Limited] ("Seller")**

**(As per Guidelines for Determination of Tariff by Bidding Process for
Procurement of Power by Distribution Licensee)**

Long Term PPA (7 years and above)

Issued by

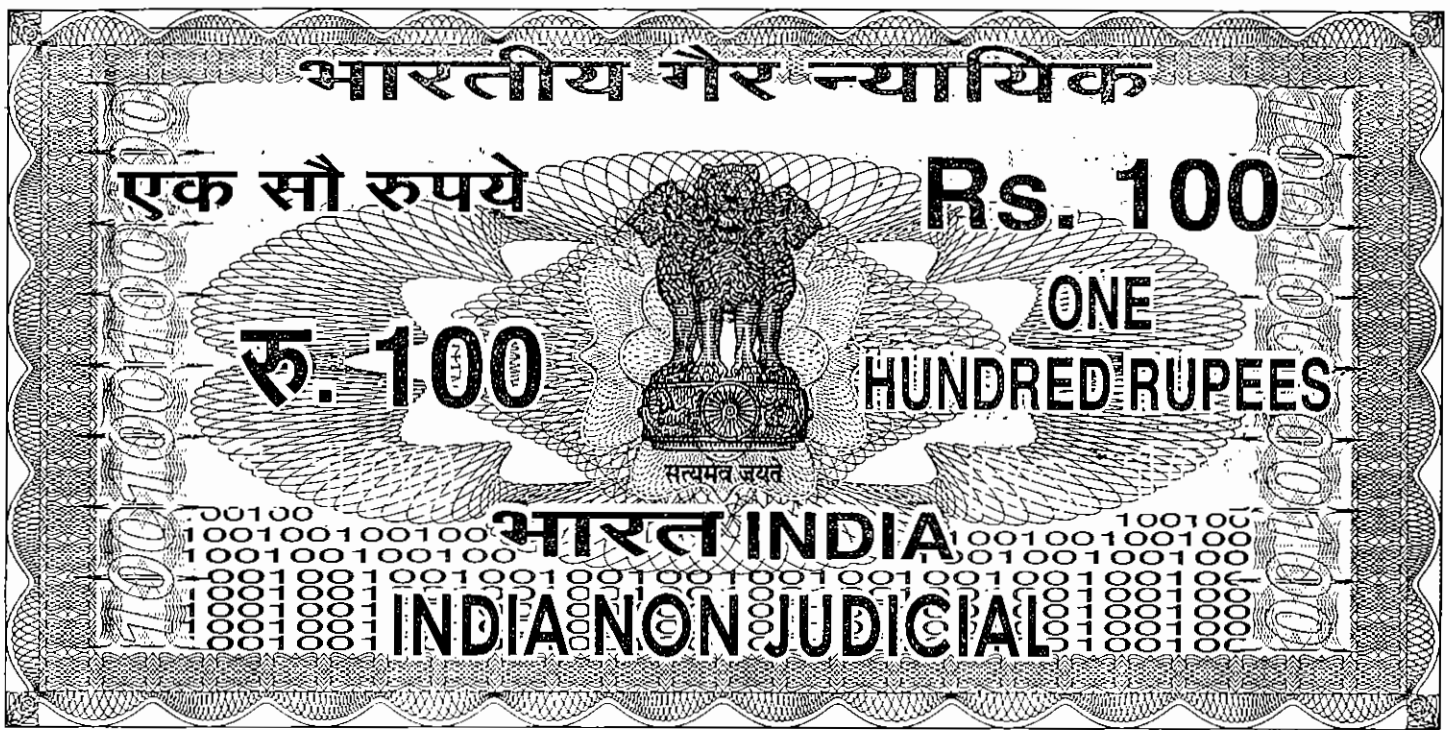
**Distribution Licensee/ Authorised Representative
Address & Contact Details**

**U.P. Jal Vidyut Nigam Limited
(A U.P. Government Enterprise)
12th Floor, Shakti Bhawan Extension,
14- Ashok Marg, Lucknow-226901**

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उत्तर प्रदेश UTTAR PRADESH

This Agreement is made on the 01 day of FEBRUARY/2017.

DD-733219

Between

22 NOV 2017



(1) **Paschimanchal Vidyut Vitran Nigam Limited**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Victoria Park, Meerut-250001 (herein after referred to as "**Procurer 1**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(2) **Poorvanchal Vidyut Vitran Nigam Limited**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Vidyut Nagar, PO DLW, Varanasi-2201010 (herein after referred to as "**Procurer 2**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(3) **Madhyanchal Vidyut Vitran Nigam Limited**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at 4A, Gokhale Marg, Lucknow-226001(herein after referred to as "**Procurer 3**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns); and

(4) **Dakshinanchal Vidyut Vitran Nigam Limited**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Urja Bhawan, NH2, Sikandra, Agra(herein after referred to as "**Procurer 4**" which

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"Procurer 4" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns);

THROUGH

UTTAR PRADESH POWER CORPORATION LIMITED ("UPPCL") a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Shakti Bhawan, 14, Ashok Marg, Lucknow, UP duly authorized by each of the above procurers to enter into this Agreement on their behalf(The "Procurer 1", "Procurer 2", "Procurer 3" and "Procurer 4" are (hereinafter collectively referred to as the "Procurers" and individually as a "Procurer")

And

M/s B & G Renewable Energy Private Limited (the "Seller"), a company incorporated in India and having its registered office at New No.25, Old No.10, Sir Madhavan Nair Road, Mahalingapuram, Nungambakkam, Chennai-600 034

(Each of the "Procurer 1", "Procurer 2", "Procurer 3", "Procurer 4" and or "Procurers" and "Seller" are individually referred as "Party" and collectively to as the "Parties")

Whereas:

- A. The Procurers have identified the Project namely, Nirgajini SHP (7.0 MW) at Nirgajini Village, Muzaffarnagar District, UP, details of which are as set out in the Schedule 1 A.
- B. The Procurers Authorized Representative, have completed/commenced the initial studies as contained in Project Report; to obtain Initial Consents required for the Project which are set out in Part 1 of Schedule 2 and have been /are to be made available to the Seller on the Effective Date.
- C. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurers/Authorised Representative, had initiated a competitive bidding process through issue of RFQ and RFP for selecting a Successful Bidder to build, own, operate and maintain the Project.
- D. Pursuant to the said bidding process, M/s B & G Renewable Energy Private Limited has been identified by the Procurers/Authorized Representative, as the Selected Bidder to construct the Project for a Contracted Capacity of 7.7 MW and sale and supply of electricity in bulk there from to the Procurers

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in accordance with the terms of this Agreement. The company bided for a capacity of 7.7 MW within the range of $\pm 10\%$ of 7.0 MW as per RFQ Documents.

- E. All the other RFP Project Documents have been executed by the Procurers 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:

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1 ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Act" or "Electricity Act 2003"	means the Electricity Act 2003 or any amendments made to the same or any succeeding enactment thereof;
"Agreed Form"	means, in relation to any document, the form of the said document most recently agreed to by the Parties and initialed by them for identification;
"Agreement" or "Power Purchase Agreement" or "PPA"	means this document including its recitals and Schedules;
"Appropriate Commission"	means the Central Electricity Regulatory Commission constituted under the Electricity Act, 2003; or such other succeeding authority or commission as may be notified by Government of India from time to time;
"Allocated Contracted Capacity"	means portion of the Contracted Capacity allocated to each of the Procurers as provided in Schedule 13 hereof, subject to adjustment as per the terms of this Agreement;
Authorised Representative	shall mean [Uttar Pradesh Jal Vidyut Nigam Ltd], the body corporate authorised by the Procurers to carry out the Bid Process for the selection of the Successful Bidder on their behalf.
"Availability Based Tariff" or "ABT"	Shall mean all the regulations contained in the Central Electricity Regulatory Commission (terms and conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
"Availability Factor" or "Availability"	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Contracted Capacity).

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- "Available Capacity" shall have the meaning ascribed thereto in ABT;
- "Bid" shall mean Non-Financial Bid and Financial Bid submitted by the Selected Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;
- "Bid Documents" or "Bidding Documents" means the RFQ and RFP along with all its attachments and any amendments thereto or clarifications thereof.
- "Bid Deadline" shall mean the last date for submission of the Bid in response to the RFP, specified in Clause 2.8 of the RFP;
- "Bidding Guidelines" or "Competitive Bidding Guidelines" shall mean Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees, issued by Ministry of Power, Government of India under The Electricity Act, 2003 on January 19, 2005 and as amended from time to time till Bid Deadline;
- "Bill Dispute Notice" means the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
- "Business Day" means with respect to Seller and each Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State in which the concerned Procurer's registered office is located;
- 'Capital Cost' means the lower of the following:
- (a) actual capital cost of the Project on a relevant date which shall not be later than the Commercial Operation Date of the Power Station, as certified by the auditors appointed jointly by the Seller and Procurers (jointly)¹; or
 - (b) total project cost of the Project as set forth in the Financing Agreements,
- provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurers or Insurers or Third Parties;
- Provided further that the Capital Cost in relation to a Unit shall be the total Project Cost allocated in proportion to the contracted Capacity of the said Unit.

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"Central Transmission Utility" or "CTU"	shall have the meaning ascribed thereto in the Electricity Act, 2003;
"CERC"	means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 13.1.1;
"Commercial Operation Date" or "COD"	means, in relation to a Unit, the date one day after the date when each of the Procurers receives a Final Test Certificate of the Independent Engineer as per the provisions of Article 6.3.1 and in relation to the Power Station shall mean the date by which such Final Test Certificates as per Article 6.3.1 are received by the Procurers for all the Units;
"Commissioning" or "Commissioned" with its grammatical variations	means, in relation to a Unit, that the Unit or in relation to the Power Station, all the Units of the Power Station have passed the Commissioning Tests successfully;
"Commissioning Tests" or "Commissioning Test"	means the Tests provided in Schedule 5 herein;
"Commissioned Unit"	means the Unit in respect of which COD has occurred;
"Construction Contractor/s"	means one or more main contractors, appointed by the Seller to design, engineer, supply, construct and commission the Project;
"Construction Period"	means the period from (and including) the date upon which the Construction Contractor is instructed or required to commence work under the Construction Contract up to (but not including) the Commercial Operation Date of the Unit in relation to a Unit and of all the Units in relation to the Power Station;
"Consultation Period"	means the period, commencing from the date of issue of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 14 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances
"Contract Year"	means the period beginning on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: <ul style="list-style-type: none"> (i) in the financial year in which Scheduled COD of the first Unit would have occurred, a Contract Year shall end on the date

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immediately before the Scheduled COD of the first Unit and a new Contract Year shall begin once again from the Scheduled Commercial Operation Date of the first Unit and end on immediately succeeding March 31 and provided further that

- (ii) the last Contract Year of this Agreement shall end on the last day of the term of this Agreement;

Provided that for the purpose of payment, the tariff will be the Quoted Tariff for the applicable Contract Year as per Schedule 11;

"Contracted Capacity"

means

- a) means aggregate 7.7 MW rated net capacity at the Interconnection Point as mentioned in the Selected Bid,
- b) in case the Seller exercises its option as per Article 3.1.1A, the rated net capacity expressed in MW of each Unit and Power Station, up to the maximum of the Contracted Capacity demanded in the RfP. .

or

such rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement;

means the RLDC or SLDC or such other load control centre designated by the Procurers from time to time through which the Procurers shall issue Dispatch Instructions to the Seller for the Power Station;

"Debt Service"

means the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the Notice to Proceed);

"Declared Capacity"

In relation to a Unit or the Power Station at any time means the net capacity of the Unit or the Power Station at the relevant time (expressed in MW at the Interconnection Point) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;

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"Declared Price of Land"	means the amount as mentioned in the RFP by the Procurers, at which the identified land for the Site will be transferred to the Seller;
" Delivery Point " or "Interconnection Point"	means the points of delivery specified in Schedule 8 for fulfilling the obligation of the Seller to deliver the Contracted Capacity to the Procurers;
"Direct Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 12.3(ii)(1).
"Distribution Licensee"	Shall mean Madhyanchal Vidyut Vitran Nigam Ltd, Lucknow OR Purvanchal Vidyut Vitran Nigam Ltd, Varanasi, OR Paschimanchal Vidyut Vitran Nigam Ltd, Meerut OR Dakshinanchal Vidyut Vitran Nigam Ltd, Agra whichever is applicable depending upon the location of the project.
Dispute"	means any dispute or difference of any kind between a Procurer and the Seller or between the Procurers (jointly) and the Seller, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 17;
"Dispatch Instruction"	means any instruction issued by the Procurers through the respective SLDC and RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Due Date"	means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by any Procurer (or, if such day is not a Business Day, the immediately Succeeding Business Day) by which date such bill is payable by the said Procurer;
"Effective Date"	means the date of signing of this Agreement by last of all the Parties;

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"Electricity Laws"	Means the Electricity Act, 2003 and the rules and regulations made there under 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;
"Electrical Output"	means the net electrical output of the Power Station at the Delivery Point, as expressed in kWh;
"Emergency"	means a condition or situation that, in the opinion of the Procurers or RLDC or SLDC or the agency responsible for operating and maintaining the Interconnection and Transmission Facilities or the transmission company, as the case may be, poses a significant threat to the Procurer's or the said agency's or transmission company's ability to maintain safe, adequate and continuous electricity supply to its customers, or seriously endangers the security of persons, plant or equipment;
"Expiry Date"	means the 35 th anniversary of the Commercial Operation Date of the Power Station. For the avoidance of doubt, in case the COD of the Power Station occurs on June 1, 2013, then the 35th anniversary of the Scheduled COD of the Power Station shall occur on June 1, 2048, i.e. in the Contract Year 2048-49 ⁵ ;
"Final Test Certificate"	Means <ul style="list-style-type: none"> a) a certificate of the Independent Engineer certifying and accepting the results of a Commissioning Test/s in accordance with Article 6.3.1 of this Agreement; or b) a certificate of the Independent Engineer certifying the result of a Repeat Performance Tests in accordance with Article 8.2.1 of this Agreement;
"Financial Closure" or "Financial Close"	Means the execution of all the Financing Agreements required for the Project and fulfilment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds thereunder;
"Financing Agreements"	means all the loan agreements, notes, indentures, security agreements, letters of credit and other documents relating to the financing of the Project on or before the COD of the Power Station,

⁵ This date shall be at least 35 years from the Schedule Commercial Operation Date of Power Station for a hydro project, 25 years from the Schedule Commercial Operation Date of Power Station for a coal based project, 15 years from the Schedule Commercial Operation Date of Power Station for gas/liquid Fuel based project

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	As may be amended ,modified, refinanced or replaced from time to time, but without in anyway increasing the liabilities of the Procurers therein;
"Force Majeure"	shall have the meaning ascribed thereto in Article 12.3;
"Forced Outage"	shall have the meaning ascribed thereto in Grid Code;
"Functional Specifications"	means the technical requirements and parameters described in Schedule 4 of this Agreement and as provided in Grid Code relating to the operation, maintenance and dispatch of any Unit and the PowerStation;
"Grid Code" or "IEGC"	means any set of regulations or codes issued by Appropriate Commission as amended and revised from time to time and legally binding on the Sellers' and Procurers' governing the operation of the Grid System or any succeeding set of regulations or code;
"Grid System"	means the Interconnection and Transmission Facilities and any other transmission or distribution facilities through which the Procurers supply electricity to their customers or the transmission company transmits electricity to the Procurers;
"Independent Engineer"	means an independent consulting engineering firm or group appointed jointly by all the Procurers jointly) and the Seller to carry out the functions in accordance with Article 4.7.1 and Article 6, Article 12 and Article 8 herein.
	provided that separate Independent Engineer may be appointed for the purposes of Article 4.7.1, Article 6, Article 12 and Article 8;
	provided further that the separate Independent Engineer may be appointed for each financial year for the purposes of Article 8, and in such case, such Independent engineer shall be appointed at least ninety (90) days prior to the beginning of the financial year.
"Indirect Non-Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3(ii)(2).
"Indian Governmental Instrumentality"	means the GOI, Government of [Insert name of states where the Procurers and Project are located] and any ministry or, department or board or agency other regulatory or quasi-judicial authority controlled by GOI or Government of States where the Procurers and Project are located and includes the Appropriate Commission;

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"Initial Consents"	Shall mean the consents listed in Schedule 2;
"Initial Performance Retest Period"	shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement;
"Interconnection Facilities" or "Interconnection and Transmission Facilities"	Means the facilities on the Procurers' side of the Interconnection Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 9, the Metering System required for the Project. The Interconnection Facilities also include the facilities for receiving power at the Delivery Point where the transmission line from the Power Station Switchyard end is injecting power into the transmission network (including the dedicated transmission line connecting the Power Station with the transmission/CTU network);
"Invoice" or "Bill"	means either a Monthly Tariff Invoice, a Supplementary Invoice or a Procurer Invoice;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 11.3.4;
"Law"	means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission;
"Lenders"	means the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before COD of the Power Station to provide the Seller with the senior debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:

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	Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurers under this Agreement in any manner and shall also does not lead to an increase in the liability of any of the Procurers;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 11.4.1;
"Meters" or "Metering System"	Means meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Maintenance Outage"	shall have the meaning as ascribed to this term as per the provisions of the Grid Code.
"MCR"	means gross Power Station or Unit Maximum Continuous Rating as defined in the Grid Code;
"Month"	Means a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	Means a monthly invoice comprising Tariff Charges, including incentive and penalty, as per Schedule 7 thereof;
"Notice to Proceed" or "NTP"	Means the date on which the Seller shall fulfill the condition as contained in Article 3.1.2 (iii) of this Agreement in accordance with the provisions of this Agreement.
"Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3(i).
"Non-Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3 (ii).
"Normative Availability"	Means equal to eighty per cent (80%) Availability at the Delivery Point on Contract Year basis ⁸ .
"Operating Period"	in relation to the Unit means the period from its COD and in relation to the Power Station the date by which all the Units achieve COD, until the expiry or earlier termination of this Agreement in

⁸ This shall be aligned to the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the Bid process. This will be Normative capacity index in case of hydro plants.. For Hydro Plant, all the tariff components quoted by the Bidder in Rs/kWh should be on the design energy basis

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accordance with Article 2 of this Agreement;

"O&M Contract" or "O&M Contracts"	Means the contract/s entered into by the Seller with the Operator or Operators, if any;
"Operating Procedures"	Shall have the meaning ascribed thereto in Grid Code;
"Operator" or "Operators"	Means one or more contractors appointed as operator of power generation facilities of the Power Station pursuant to an O&M contract, if any;
"Party" and "Parties"	Shall have the meaning ascribed thereto in the recital to this
"Performance Guarantee"	Means the irrevocable unconditional bank guarantee, submitted and to be submitted by the Seller or by the Selected Bidder on behalf of the Seller to the Procurers from any scheduled bank, in the form attached hereto as Schedule 15, in accordance with Article 3 of this Agreement and which shall include the additional bank guarantee furnished by the Seller under this Agreement;
"Performance Test"	Means the test carried out in accordance with Article 1.2 of Schedule 5 of this Agreement;
"Preliminary Default Notice"	Shall have the meaning ascribed thereto in Article 14 of this Agreement;
"Power Station"	Means the: <ul style="list-style-type: none"> (a) hydro power generation facility comprising of any or all the Units; (b) township area for the staff colony; and (c) bay/s for transmission system in the switchyard of the power station, (d) 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;

whether completed or at any stage of development and construction or intended to be developed and constructed as per the provisions of this Agreement.

"Project" means the Power Station undertaken for design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance by the Seller in accordance with the terms and conditions of this Agreement;

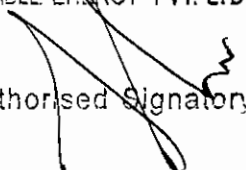
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"Project Documents"	Mean <ul style="list-style-type: none"> a) Construction Contracts; b) O&M contracts; d) RFP and RFP Project Documents; and e) any other agreements designated in writing as such, from time to time , jointly by the Procurers and the Seller;
"Prudent Utility Practices"	means 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 of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of: <ul style="list-style-type: none"> a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project; b) the requirements of Indian Law; and c) the physical conditions at the Site;
Quoted Tariff	Shall mean the Quoted Charges
"Repeat Performance Test"	Shall have the meaning ascribed thereto in Article 8.1 of this Agreement;
"Revised Scheduled COD"	Shall have the meaning as ascribed thereto in Article 3.1.2(viii).
"RPC"	Means the relevant Regional Power Committee established by the Government of India for a specific Region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that Region;
"RBI"	Means Reserve Bank of India;
"Regional Energy Accounts" or " REA "	Means as defined in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"RLDC"	Means the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region in which the Project is located;

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"RFP"	shall mean Request For Proposal dated 19-09-2014 along with all schedules, Annexures and RFP Project Documents attached thereto, issued by the Procurers/Authorised Representative and shall include any modifications, amendments or alterations thereto.
RFP Project Documents	shall mean the following documents to be entered into in respect of the Project, by the parties to the respective agreements: <ul style="list-style-type: none"> a) PPA; b) Memorandum of Agreement
"RFQ"	shall mean the Request for Qualification document issued by [Insert name of Procurer/Authorised Representative] for Tariff Based Bidding Process for Procurement of Power on Long-Term Basis from Power Station to be setup at [Insert Location] and shall include any modifications, amendments or alterations thereto and clarifications issued regarding the same;
"Rupees" or "Rs."	Means the lawful currency of India;
"SBAR"	means the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
"Selectee"	means a new company (i) proposed by the Lenders pursuant to Schedule 17 hereof and approved by the Procurers (ii) or proposed by the Procurer in accordance with Schedule 17 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule.
"Selected Bid"	means the Bid of the Selected Bidder as accepted by Procurers or their Authorised Representative, copy of which is attached herewith and marked as Schedule 16;
"Selected Bidder" or "Successful Bidder"	shall mean the Bidder selected pursuant to the RFP to set up the Project and supply electrical output there from to the Procurers through the Seller as per the terms of PPA and other RFP Project Documents;

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"SERC"	means the State Electricity Regulatory Commission (i.e UPERC), as defined in the Electricity Act, 2003, or its successors;
"Scheduled COD" or "Scheduled Commercial Operation Date"	means 30 months from the date of signing of PPA or such other dates from time to time specified in accordance with the provisions of this agreement.
"Scheduled Connection Date"	Shall mean the date falling 210 ¹⁰ days before the Scheduled COD of first Unit;
"Scheduled Energy "or "Scheduled Generation"	Means scheduled generation as defined in the ABT;
"Scheduled Outage"	shall have the meaning ascribed to this term as per the provisions of the Grid Code;
"Scheduled Synchronisation Date"	means in relation to a Unit, the date, which shall be maximum of one hundred and eighty (180) days prior to the Scheduled COD of the respective Unit;
"Settlement Period"	means the time block for issue of daily generation and drawal schedules as provided in ABT;
Site	means the land over which the Project will be developed as provided in Annexure 1A;
"SLDC"	means the relevant State Load Dispatch Centre as defined in the Electricity Laws, in the State where the Procurer's registered office is located;
"State Transmission Utility" or "STU"	shall have the meaning ascribed thereto in the Electricity Act 2003;
"Supplementary Bill"	Means a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 11;

¹⁰ This period may be changed by the Procurer

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"Tariff Payment"	Means the payments under Monthly Bills as referred to in Schedule 7
"Tariff"	Means the tariff as computed in accordance with Schedule 7;
"Tested Capacity"	in relation to a Unit, or the Power Station as a whole (if all the Units of the Power Station have been Commissioned) means the results of the most recent Performance Test or Repeat Performance Test carried out in relation to the Power Station in accordance with Article 6, Article 8 and Schedule 5 of this Agreement;
"Terminal Price"	will transfer back the site along with all the assets necessary to run the plant as erected by the Seller to the Procurers, at the end of the term of this Agreement. This price is the same as laid down in Clause 1.8 of RFQ.
"Termination Notice"	shall mean the notice given before termination of this Agreement in accordance with relevant clauses of this Agreement
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.1;
"Total Debt Amount"	Means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders <ul style="list-style-type: none"> (a) the principal amount of the senior debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Project according to the Capital Structure Schedule which remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any senior debt repayments which could have been made out of the Monthly Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing Agreements ;and (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Tariff Charge payment (as specified in paragraph 1.2 of Schedule 7 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Tariff Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised, and (c) if this Agreement is terminated during the Construction Period, any amounts owed to the Construction Contractor for work performed but not paid for under the Construction Contract (other than amounts falling due by reason of the Seller's default);

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"US \$ " or "USD" or "Dollar" [for imported fuel only]	Means the lawful currency of United States of America
"Unit"	Means one , hydro turbine, generator and associated auxiliaries of the Power Station thereto
"Unscheduled Interchange" or "UI"	shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time;
"Week"	means a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wheeling Charges" or "Transmission Charges"	Are the charges paid by the Procurers to the CTU or STU or any other agency for the transfer of power from the Power Station switchyard end to the Procurers' network.

1.2 Interpretation

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

- 1.2.1 A "Recital", an "Article", a "Schedule" and a "paragraph/Clause" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph/clause respectively of this Agreement.
- 1.2.2 An "affiliate" of any party shall mean a company that either directly or indirectly controls or is controlled by or is under common control of the same person which controls the concerned party; and control means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company.
- 1.2.3 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.

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- 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 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.
- 1.2.8 Words importing the singular shall include the plural and vice versa.
- 1.2.9 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 1.2.10 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.11 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.12 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.
- 1.2.13 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.
- 1.2.14 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.
- 1.2.15 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement.
- 1.2.16 The contents of Schedule 16 shall be referred to for ascertaining accuracy and correctness of the representation made by the Seller in Article 2.6 of Schedule 10 hereof.
- 1.2.17 In case of anything in this agreement is found to be inconsistent with GOUP Policy dated 24-09-08 & 10-08-09, RFQ & RFP, UPERC Order dated 15-12-10 (Copy enclosed) and dated 16-02-2015 (Copy enclosed) or from UPERC order passed from time to time (collectively said as "documents"), the such documents shall prevail over this Agreement.

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2 ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date and Term of Agreement*

This Agreement shall come into effect from the Effective Date. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement") unless terminated earlier pursuant to Article 2.2. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 18.9, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, atleast one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the Appropriate Commission, as necessary.

2.2 *Early Termination*

This Agreement shall terminate before the Expiry Date:

- i. if either all the Procurers (jointly) or Seller exercises a right to terminate, pursuant to Article 3.3.2, Article 3.3.3, Article 4.5.3, Article 14.4.5 or Schedule 10 of this Agreement or any other provision of this Agreement; or
- ii. in such other circumstances as the Seller and all the Procurers (jointly) may agree, in writing.

2.3 *Terminal Price payment*

- 2.3.1 The Terminal Price payment to be made by Procurers to Seller, as mentioned in this Article 1.1 should be paid within ten (10) days from the last day of Term of the Agreement.

2.4 *Survival*

- 2.4.1 The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, including the right to receive Liquidated Damages as per the terms of this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.

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3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER AND THE PROCURERS

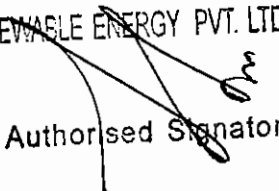
3.1 Satisfaction of conditions subsequent by the Seller and the Procurers


3.1.1 Prior to the Effective Date, the Seller or the Selected Bidder, on behalf of the Seller, have provided to the Procurers, the Performance Guarantee from any of the scheduled, of an aggregate amount of Rupees 57.75 Lacs which has been provided separately to each of the Procurers for the amount calculated pro-rata (and rounded off to Rs. 57.75 Lacs) with the principle that amounts below Rupees Rs. 57.75 Lacs shall be rounded down and amounts of Rupees Rs. 57.75 Lacs and above shall be rounded up) in the ratio of Allocated Contracted Capacities. The Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time to be valid up to three (3) Months after the actual COD of the Power Station. In case the validity of Performance Guarantee is expiring before the validity period specified in this Article, the Seller shall at least thirty (30) days before the expiry of the Performance Guarantee replace the Performance Guarantee with another Performance Guarantee or extend validity of existing Performance Guarantee which is valid and in force till the validity period specified in this Article.

3.1.1A The Seller shall have the option to change the Unit configuration after the Effective Date till NTP provided that Seller submits the undertaking that the changed Unit configuration meets all the conditions specified in Format 3 of Annexure 6 of RfP and the changed Unit configuration meets all Functional Specifications. Any additional cost arising out of the changed Unit configuration shall be to the account of the Seller and no adjustment in the Tariff will be permitted.

3.1.2 The Seller agrees and undertakes to duly perform and complete the following activities within (i) 23 Months from the Effective Date or (ii) 24 Months from the date of issue of Letter of Intent, whichever is later, unless such completion is affected due to the Procurers' failure to comply with their obligations under Article 3.1.2A of this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurers jointly:

i). the Seller shall have received the Initial Consents as mentioned in Schedule 2, either unconditionally or subject to conditions which do not

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materially prejudice its rights or the performance of its obligations under this Agreement;

.ii) Not used;

iii) the Seller shall have

a) awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for turbine and generator for the Project and shall have given to such contractor an irrevocable notice to proceed ; and

b) The Seller shall have sent a written notice to all the Procurer(s) indicating the Contracted Capacity and Gross Capacity for the each Unit and for the Power Station as a whole expressed in MW and furnished the undertaking as per Article 3.1.1 A.

c)

1) in case the Project is proposed to be developed on the books of the Bidder, he shall have completed the execution and delivery of the Financing Agreements for at least twenty five percent (25%) of the debt required for the Project as certified by the Lender/Lead Lender ;or

2) in case the Seller develops the Project on a non recourse basis, Seller shall have achieved Financial Closure;

iv. the Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required;

v. the Seller shall have finalised the specific delivery point for supply of power in consultation with the Procurer;

vi. the Seller shall have taken the possession of the land for the Power Station and have paid the remaining Declared Price of the Land, if any to the State Government authority acquiring the land,

vii. The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Project Documents.

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viii. where the Seller has not exercised its option to change Unit configuration the Seller shall have sent a written notice to all the Procurer(s) indicating that

a) the Scheduled COD shall be as per the original Scheduled COD.

b) that it intends to prepone the Scheduled COD to be (i) for the first Unit, [Insert Date]; (ii) for the second Unit, [Insert Date]; (iii) for the third Unit, [Insert Date] and so on till last Unit] (hereinafter referred to as "Revised Scheduled COD"). Provided that, the Revised Scheduled COD of any Unit shall not be earlier than [Insert months] months from the NTP

ix) In case where the Seller has exercised its option to change Unit configuration, the Seller shall have sent a written notice to all the Procurer(s) indicating the Scheduled COD of each Unit and Power Station. Provided that, the Scheduled COD of any Unit so intimated shall not be earlier than [Insert months] months from the NTP. Provided further that the Scheduled COD of the 1st Unit and Scheduled COD of the Power Station shall not be later than the Scheduled COD given in the Selected Bid.

3.1.2A The Procurers shall ensure that the following activities are completed within the time period mentioned below:

A. Obtaining order of the Appropriate Commission adopting the Tariff under Section 63 of the Electricity Act, 2003, within six months of the Effective Date.

3.1.3 Joint responsibilities of the Procurers and the Seller

The Procurer and Seller shall jointly appoint the Independent Engineer for the purposes of carrying out the functions as specified in Article 4.7.1, Article 6, Article 8 and Article 12, herein within a period of eight (8) months from the Effective Date.

3.2 Progress Reports

The Seller and the Procurers shall notify one another in writing at least once a Month on the progress made in satisfying the conditions in Articles 3.1.2, 3.1.2A and 3.1.3.

3.3 Consequences of non-fulfillment of conditions under Article 3.1

3.3.1 If any of the conditions specified in Article 3.1.2 is not duly fulfilled by the Seller even within three (3) Months after the time specified under Article 3.1.2, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1.2, the Seller shall be liable to furnish to the

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Procurers additional weekly Performance Guarantee of Rs. [2,81,250/-] derived on the basis of Rs. 0.375 lakhs per MW of maximum capacity proposed to be procured] within two (2) business days of expiry of every such week. Such additional Performance Guarantee shall be provided to each Procurer in the manner provided in Article 3.1.1 and shall become part of the Performance Guarantee and all the provisions of this Agreement shall be construed accordingly. The Procurers shall be entitled to hold and/or invoke the Performance Guarantee, including such increased Performance Guarantee, in accordance with the provisions of this Agreement.

3.3.2 Subject to Article 3.3.3:

- (i) fulfillment of any of the conditions specified in Article 3.1.2 is delayed beyond the period of three (3) Months and the Seller fails to furnish any additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof; or
- (ii) the Seller furnishes additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof but fails to fulfill the conditions specified in Article 3.1.2 for a period of eight (8) months beyond the period specified therein,

all the Procurers (jointly) or Seller shall have the right to terminate this Agreement by giving a Termination Notice to the Seller / Procurer in writing of at least seven (7) days.

If the Procurers or the Seller elect to terminate this Agreement in the event specified in the preceding paragraph of this Article 3.3.2, the Seller shall be liable to pay to the Procurers an amount of Rupees [57.75 Lakhs] derived on the basis of Rs. 7.5 lakhs per MW of the maximum capacity proposed to be procured] only as liquidated damages. The Procurers shall be entitled to recover this amount of damages by invoking the Performance Guarantee to the extent of Rupees [Insert amount not less than that derived on the basis of Rs. 7.5 lakhs per MW of the maximum capacity proposed to be procured] and shall then return the balance Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover said the amount of Rupees [57.75 Lakhs] or any part thereof from the Performance Guarantee the amount not recovered from the Performance Guarantee, if any, shall be payable by the Seller to the Procurers within ten (10) days from the end of eight (8) Months period from the due date of completion of conditions subsequent.

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

3.3.3 In case of inability of the Seller to fulfill the conditions specified in Article 3.1.2

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due to any Force Majeure event, the time period for fulfillment of the Condition Subsequent as mentioned in Article 3.1.2 and Article 3.1.2 A, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurers (jointly) or the Seller by giving a notice of at least seven (7) days, in writing to the other Party.

Similarly, in case of inability of the Procurers to fulfill the conditions specified in Article 3.1.2A due to any Force Majeure event, the time period for fulfillment of the Condition Subsequent as mentioned in Article 3.1.2 and Article 3.1.2 A, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurers (jointly) or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party.

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. Provided that due to the provisions of Article 3.3.3, any increase in the time period for completion of Conditions Subsequent mentioned under Article 3.1.2 and 3.1.2 A, shall also lead to an equal increase in the time period for Scheduled COD and Scheduled Connection Date.

3.4 Deleted

3.5 Return of Performance Guarantee

3.5.1 The Performance Guarantee as submitted by Seller shall be released by the Procurers within three (3) Months from the actual Commercial Operation Date of the Power Station. In the event of delay in achieving Scheduled COD of any of the Units by the Seller (otherwise than due to the Procurers' inability to complete the activities mentioned in Article 3.1.2 A, or Force Majeure event) and consequent part invocation of the Performance Guarantee by the Procurers, the

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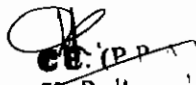
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Procurers shall release the Performance Guarantee if any, after the satisfactory completion by the Seller of all the requirements regarding achieving the Scheduled Commercial Operation Date of the remaining Units of the Power Station. It is clarified that the Procurers shall also return/release the Performance Guarantee in the event of (i) applicability of Article 3.3.2 to the extent the Performance Guarantee is valid for an amount in excess of Rupees 57.75 Lakhs, or (ii) termination of this Agreement by any Party under Article 3.3.3 of this Agreement.

3.5.2 The release of the Performance Guarantee shall be without prejudice to other rights of the Procurers under this Agreement.

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4 ARTICLE 4 : DEVELOPMENT OF THE PROJECT

4.1 *The Seller's obligation to build, own and operate the Project*

4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

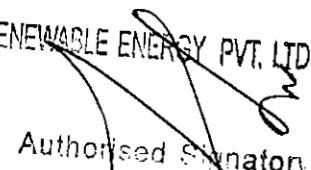
- a) obtaining (other than Initial Consents) and maintaining in full force and effect all Consents required by it pursuant to this Agreement and Indian Law;
- b) executing the Project in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned no later than its Scheduled Commercial Operations Date and 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 Procurers' scheduling and dispatch requirements throughout the term of this Agreement but under no event earlier than 42 months from NTP;
- c) owning the Project throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted by Article 16;
- d) procure the requirements of electricity at the Project (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such a supply of electricity;
- e) provide on a timely basis relevant information on Power Station specifications which may be required for interconnecting system with the transmission system;
- f) fulfilling all other obligations undertaken by him under this Agreement.


4.2 *Procurers' obligation*

Subject to the terms and conditions of this Agreement, the Procurers:

- a) shall be responsible for procuring the Interconnection and Transmission Facilities¹⁴ to enable the Power Station to be connected to the Grid System not later than the Scheduled Connection Date;
- b) shall ensure that the Seller is provided an electrical connection for reasonable construction, commissioning and start up power at the Project as reasonably

¹⁴ This obligation may also be of the Seller if the same is being specified in the RFP. Consequential changes may accordingly be carried out in the Project Documents.

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- requisitioned by the Seller by written intimation to the Procurers, on the then prevalent terms and conditions as applicable to such consumers.;
- c) shall be responsible for payment of the Transmission Charges and RLDC and SLDC charges;
 - d) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission lines and
 - e) fulfilling obligations undertaken by them under this Agreement.

4.3 Purchase and sale of Available Capacity and Scheduled Energy


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

4.4 Right to Available Capacity and Scheduled Energy

- 4.4.1 Subject to other provisions of this Agreement, the entire Contracted Capacity of the Power Station and all the Units of the Power Station shall at all times 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 Available Capacity and/or Scheduled Energy.
- 4.4.2 Notwithstanding Article 4.4.1, the Seller shall be permitted to sell power, being a part of the Available Capacity of the Power Station to third parties if:
- (a) there is a part of Available Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer'); and
 - (b) such part has first been offered, at the same Tariff, to the other Procurers (by the RLDC and/or the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part.

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- 4.4.3 If a Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to such Procurer's Allocated Capacity, and the provisions of Article 4.4.2 have been complied with, the Seller shall be entitled to sell such Available Capacity not procured, to any person without losing the right to receive the Tariff Charges from the Concerned Procurer for such un-availed Available Capacity.
- 4.4.4 The Seller shall not itself use any of the electricity generated by the Power Station during the term of this Agreement, except for the purpose of meeting the Power Station's auxiliary load requirements, as per the norms laid down by the Appropriate Commission, and housing colony for the staff.
- 4.4.5 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.5 Extensions of time

4.5.1 In the event that:

- (a) the Seller is prevented from performing its obligations under Article 4.1.1(b) by the stipulated date, due to any Procurer Event of Default; or
- (b) a Unit cannot be Commissioned by its Scheduled Commercial Operations Date because of Force Majeure Events.

the Scheduled Commercial Operations Date, the Scheduled Connection Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period but not less than 'day for day' basis, to permit the Seller through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or in the case of the Procurer's or Procurers' Event of Default, till such time such default is rectified by the Procurer(s).

- 4.5.2 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled Commercial Operations Date, the Scheduled Connection Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 17.
- 4.5.3 In case of extension occurring due to reasons specified in Article 4.5.1(a), the original Scheduled Commercial Operations Date of any Unit or the original Scheduled Commercial Operations Date of the Power Station as a whole, would not be extended by more than

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two (2) years or the date on which the Seller elects to terminate this Agreement, whichever is earlier.

As a result of such extension, the date newly determined shall be deemed to be the Scheduled Commercial Operations Date for the purposes of this Agreement.

4.6 Liquidated damages for delay in providing Contracted Capacity

4.6.1 If any Unit is not Commissioned by its Scheduled Commercial Operation Date other than for the reasons specified in Article 4.5.1, the Seller shall pay to each Procurer liquidated damages, proportionate to their then existing Allocated Contracted Capacity, for the delay in such Commissioning or making the Unit's Contracted Capacity available for dispatch by such date. The sum total of the liquidated damages payable by the Seller to the Procurers for such delayed Unit shall be calculated as follows:

$SLDb = [CCun \times dn \times DR1]$, if $dn \leq 60$

$SLDb = [CCun \times 60 \times DR1] + [CCun \times (dn - 60) \times DR2]$, if $dn > 60$

Where:


- a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Commercial Operation Date of a Unit up to and including the day on which Unit is actually Commissioned;
- b) "CCun" is the Contracted Capacity of Unit "n";
- c) "d" is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date of Unit "n" up to and including the day on which such Unit is actually Commissioned;
- d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is equal to or more than 60 days

4.6.2 The Seller's maximum liability under this Article 4.6 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.6.1 for and upto twelve (12) Months of delay for the Unit. Provided that in case of failure of the Seller to Commission the Unit even after expiry of twelve (12) Months from its Scheduled Commercial Date, the provisions of Article 14 shall apply.

4.6.3 The Seller shall pay the amount calculated pursuant to Article 4.6.1 to the Procurers within ten (10) days of the earlier of:

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- (a) the date on which the Unit is actually Commissioned ;or
- (b) expiry of the twelve (12) month period mentioned in Article 4.6.2.

If the Seller fails to pay the amount of damages within the said period of ten (10) days, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Guarantee. If the then existing Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurers under this Article 4.6, then the Seller shall be liable to forthwith pay the balance amount.

4.6.4 The Parties agree that the formula specified in Article 4.6.1 for calculation of liquidated damages payable by the Seller under this Article 4.6, read with Article 14 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in achieving Commissioning of a Unit by its Scheduled COD.

4.6.5 If any Unit is not Commissioned by its Revised Scheduled COD other than for the reasons specified in Article 4.5.1, the Seller shall pay to each Procurer liquidated damages, proportionate to their then existing Allocated Contracted Capacity, for the delay in such Commissioning or making the Unit's Contracted Capacity available for dispatch by such date. The sum total of the liquidated damages payable by the Seller to the Procurers for such delayed Unit shall be equivalent to the damages payable by the Procurers to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement proposed to be entered into by the Procurers with CTU/STU for establishment of transmission system. Provided however, the liquidated damages payable by the Seller to the Procurers in case of delay under this Article 4.6.5 shall not be more than twenty percent (20%) of liquidated damages computed in the manner mentioned in Article 4.6.1. Provided further, in case of delay beyond Scheduled Commercial Operation Date, the provisions of Article 4.6.1 to 4.6.4 will apply for such delay beyond Scheduled Commercial Operation Date.

4.7 Liquidated damages for delay due to Procurer Event of Default and Non Natural Force Majeure Events and Natural Force Majeure Event (affecting the Procurer)

4.7.1 If

- a) Unit cannot be commissioned by its Scheduled Commercial Operations Date, due to a Procurer Event of Default or due to Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) provided such Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) has continued for a period of more than three (3) continuous or non-continuous Months ;or

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- b) Unit is available for conducting Commissioning Tests and is anticipated to be capable of duly completing the Commissioning Tests as certified by the Independent Engineer, but the said Commissioning Tests are not undertaken or completed due to such Procurer Event of Default or due to Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) provided such Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) has continued for a period of more than three (3) continuous or non-continuous Months:

such Unit shall, until the effects of the Procurer Event of Default or of Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) no longer prevent the Seller from undertaking a Commissioning Test/s, be deemed to have a Tested Capacity equal to the Contracted Capacity and to this extent, be deemed to have been Commissioned with effect from the Scheduled COD without taking into account delay due to such Procurer Event of Default or Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s) and shall be treated as follows.

- a) In case of delay on account of the Procurer Event of Default, the Procurers shall make payment to the Seller of Tariff Charges calculated on Normative Availability of Contracted Capacity of such Unit for and during the period of such delay. Provided however, if any Unit is not Commissioned by its Revised Scheduled COD due to unavailability of transmission system, the Procurer(s) shall make payment to the Seller of an amount equivalent to the amounts paid by the CTU/STU (as the case may be) to the Procurers as per the terms of agreement proposed to be entered into by the Procurers with CTU/STU for establishment of transmission system for the period of delay up to Scheduled Commercial Operation Date.
- b) In case of delay on account of Direct Non Natural Force Majeure Event, the Procurers shall make payment to the Seller of Tariff Charges calculated on Normative Availability of Contracted Capacity of such Unit for the period of such events in excess of three (3) continuous or non-continuous Months in the manner provided in (d) below.
- c) In case of an Indirect Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s), the Procurers shall make payments for amounts ("Debt Service") relatable to such Unit, which are due under the Financing Agreements, subject to a maximum of Tariff Charges based on Normative Availability, for the period of such events in excess of three (3) continuous or non-continuous Months in the manner provided in (d) below.

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d) In case of delay due to Direct and Indirect Non Natural Force Majeure Events (or Natural Force Majeure affecting the Procurer/s), the Procurer shall be liable to make payments mentioned in (b) and (c) above, after Commissioning of the Unit, in the form of an increase in Tariff Charges. Provided such increase in Tariff Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) and (c) above in a situation where the Direct Non Natural Force Majeure or Indirect Non Natural Force Majeure Event, as the case may be, had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.7.1 shall be paid by the Procurers in proportion to their then Allocated Contracted Capacity.

4.7.2 In every case referred to in Article 4.7.1 hereinabove, the Seller shall undertake a Commissioning Test/s as soon as reasonably practicable [and in no event later than two (2) weeks or such longer period as mutually agreed between the Seller and the Procurers (jointly)] after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as appropriate) and if such Commissioning Test/s is not duly completed and / or demonstrate/s a Tested Capacity of a Unit which is less than ninety five (95) percent of its Contracted Capacity, then:

- a) The Unit which fails the Commissioning Tests, shall be deemed to have not been Commissioned from the deemed COD referred to in Article 4.7.1;
- b) The Seller shall repay to the Procurers, all sums received by way of Tariff Charge for such Unit along with interest at the same rate as Late Payment Surcharge ;and
- c) If the Seller fails to achieve Commissioning by the Scheduled Commercial Operation Date, it shall also pay liquidated damages to the Procurer for such Unit calculated in accordance with Article 4.6.

4.8 Limit on amounts payable due to default

4.8.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 15), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.2(a) to Article 4.2(d) shall be to pay the Seller the amounts specified in Article 4.7 and Article 14.

4.8.2 Similarly, Seller's only liability for any loss suffered by the Procurers of any kind or description whatsoever (except claims for indemnity under Article 15), by reason of the Seller's failure to meet its obligations of Commissioning the various Units on their Scheduled COD, shall be as per Article 4.6 and Article 14.

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5 ARTICLE 5 : CONSTRUCTION

5.1 *Seller's Construction Responsibilities*

The Seller shall be responsible for designing, constructing, erecting, commissioning, completing and testing the Power Station in accordance with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- a) Applicable Law;
- b) the Grid Code;
- c) the terms and conditions of this Agreement;
- d) the Functional Specifications; and
- e) Prudent Utility Practices.

Notwithstanding anything to the contrary contained in this PPA, the Seller shall ensure that the technical parameters or equipment limits of the Project shall always be subject to the requirements as specified in points (a) to (e) above and under no event shall over-ride or contradict the provisions of this Agreement and shall not excuse the Seller from the performance of his obligations under this Agreement.

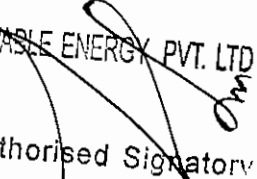
5.2 *The Site*


The Seller acknowledges that, before entering into this Agreement, it has had sufficient opportunity to investigate the Site and accepts full responsibility for its condition (including but not limited to its geological condition, on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water) and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason.

5.3 *Information Regarding Interconnection Facilities*¹⁵

The Procurers (jointly) shall provide the Seller, on a timely basis, all information with regard to the Interconnection and Transmission Facilities as is reasonably necessary to enable the Seller to design, install and operate all interconnection plant and apparatus on the Seller's side of the Interconnection Point.

¹⁵ This clause is relevant only when the responsibility of getting the clearances and Transmission Linkage is with the Procurer.

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5.4 *Quality of Workmanship*

The Seller shall ensure that the Power Station is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade quality such that, the useful life of the Power Station will be till the Expiry Date.

The Seller shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Indian Standards and Codes issued by Bureau of Indian Standards and/or internationally recognised Standards and Codes as applicable

- i. American National Standards Institute(ANS)
- ii. American Society of Testing and Materials(ASTM)
- iii. American Society of Mechanical Engineers(ASME)
- iv. American Petroleum Institute(API)
- v. Standards of the Hydraulic Institute,USA
- vi. International Organization for Standardization(ISO)
- vii. Japanese Industrial Standards(JIS)
- viii. Tubular Exchanger Manufacturer's Association(TEMA)
- ix. American Welding Society(AWS)
- x. National Electrical Manufacturers Association(NEMA)
- xi. National Fire Protection Association(NFPA)
- xii. International Electro-Technical Commission(IEC)
- xiii. Expansion Joint Manufacturers Association(EJMA)
- xiv. Heat Exchange Institute(HEI)
- xv. American Water Works Association(AWWA)
- xvi. DeutschesInstitut fur Normung(DIN)

Other international standards, established to be equivalent or superior to the above standards shall also be acceptable. However, in the event of any conflict between the requirements of the international codes and standards and the requirements of the Indian standards/regulations, the latter shall prevail.

5.5 *Consents*

The Seller shall be responsible for obtaining all Consents (other than those required for the Interconnection and Transmission Facilities and the Initial Consents, if any) required for developing, financing, constructing, operating and maintenance of the Project and maintaining/ renewing all such Consents in order to carry out its obligations under this Agreement in general and this Article 5 in particular and shall supply to the Lead Procurer (or Procurer, as applicable) promptly with copies of each application that it submits, and copy/ies of each consent/approval/license which it obtains. For the avoidance of doubt, it is

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clarified that the Seller shall also be responsible for maintaining/renewing the Initial Consents and for fulfilling all conditions specified therein.

5.6 Construction Documents

The Seller shall retain at the Site and make available for inspection to the Procurers at all reasonable times copies of the results of all tests Specified in Schedule 5 hereof.

5.7 Co-ordination of Construction Activities

Before the tenth (10th) day of each Month, during the Construction Period:

- (a) the Seller shall prepare and submit to the Lead Procurer (or Procurer, as applicable) a monthly progress report, in the Agreed Form; and
- (b) The Procurers shall jointly prepare and submit to the Seller a monthly progress report, in the Agreed Form, regarding the Interconnection and Transmission Facilities¹⁶.

The Seller individually and all the Procurers (jointly) shall designate from time to time, by giving a written notice to the other party up to five (5) of its/their employees who shall be responsible for coordinating all construction activities relating to the Project and who shall have access at all reasonable times to the other party's land for the purpose of apprising the progress of the work being carried on, subject to such designated persons or the party appointing them giving reasonable notice to the other party of such visit and subject to their complying with all reasonable safety procedures.

For the avoidance of doubt, it is clarified that the total number of the representatives of all the Procurers shall not exceed five (5).

¹⁶ This clause is relevant only when the responsibility of getting the clearances and Transmission Linkage is with the Procurers.

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6 ARTICLE 6 : SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

6.1 Synchronization

6.1.1 The Seller shall give the Procurers and RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to synchronise a Unit to the Grid System. Subject to Article 6.1.1, a Unit may be synchronised by the Seller to the Grid System when it meets all connection conditions prescribed in any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System

6.2 Commissioning

- 6.2.1 The Seller shall be responsible for ensuring that each Unit is Commissioned in accordance with Schedule 5 at its own cost, risk and expense.
- 6.2.2 The Seller shall give all the Procurers and the Independent Engineer not less than ten (10) days prior written notice of Commissioning Test of each Unit.
- 6.2.3 The Seller (individually), the Procurers (jointly) and the Independent Engineer (individually) shall witness and monitor Commissioning Test of each Unit.
- 6.2.4 Testing and measuring procedures applied during each Commissioning Test shall be in accordance with the codes, practices and procedures mentioned in Schedule 5 of this Agreement.
- 6.2.5 Within five (5) days of a Commissioning Test, the Seller shall provide the Procurers copies of the detailed Commissioning Test results. Within five (5) days of receipt of the Commissioning Test results, the Procurer shall provide the Seller in writing, his findings from the evaluation of Commissioning Test results, either in the form of Final Test Certificate certifying the matters specified in Article 6.3.1 or the reasons for non-issuance of Final Test Certificate.

6.3 Commercial Operation

- 6.3.1 A Unit shall be Commissioned on the day after the date when all the Procurers issues a Final Test Certificate of the Independent Engineer stating that:
- the Commissioning Tests have been carried out in accordance with Schedule 5; and are acceptable to him;
 - the results of the Performance Test show that the Unit's Tested Capacity, is not less than ninety five (95) percent of its Contracted Capacity, as existing

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on the Effective Date or in case the Seller has exercised the option under Article 3.1.1 A the Contracted Capacity so finalized..

- 6.3.2 If a Unit fails a Commissioning Test, the Seller may retake the relevant test, within a reasonable period after the end of the previous test, with three (3) day's prior written notice to the Procurers. Provided however, the Procurers shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days, without incurring any liability for such deferment, if the Procurers are unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurers or due to inadequate demand in the Grid.
- 6.3.3 The Seller may retake the Performance Test by giving at least fifteen (15) days advance notice in writing to the Procurers, up to eight (8) times, during a period of one hundred and eighty (180) days ("Initial Performance Retest Period") from a Unit's COD in order to demonstrate an increased Tested Capacity over and above as provided in Article 6.3.1 (b). Provided however, the Procurers shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days, without incurring any liability for such deferment, if the Procurers are unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurers or due to inadequate demand in the Grid.
- 6.3.4 Provided that in all the above events, the Seller shall be liable to obtain/maintain all the necessary consents (including Initial Consents), permits and approvals including those required under the environmental laws for generation of such excess Tested Capacity.

6.4 *Costs Incurred*

The Seller expressly agrees that all costs incurred by him in synchronising, connecting, Commissioning and / or Testing or Retesting a Unit shall be solely and completely to his account and the Procurer's or Procurers' liability shall not exceed the amount of the Tariff Charges payable for such power output, as set out in Schedule7.

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7 ARTICLE 7 : OPERATION AND MAINTENANCE

The Parties shall comply with the provisions of the applicable Law including, in particular, Grid Code as amended from time to time regarding operation and maintenance of the Power Station and all matters incidental thereto. Provided however the Seller shall not schedule the Maintenance Outage of a Unit when another Unit of the project is shut down or expected to be shut down except under Force Majeure or when the operation of Unit is not permissible due to technical considerations.

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8 ARTICLE 8: CAPACITY, AVAILABILITY AND DISPATCH

8. Repeat Performance Tests

8.1.1 The Procurers (jointly) may from time to time during the Operating Period, but only if the Available Capacity has not been one hundred per cent (100%) of the Contracted Capacity of the commissioned units (excluding the unit(s) under planned outage for capital maintenance in consultation with the Regional Power Committee, if any) even for one continuous period of at least three (3) hours during any three continuous months, require the Seller to demonstrate a Unit's or (if all the Units have been Commissioned, the Power Station's) Tested Capacity by carrying out a further Performance Test (a "**Repeat Performance Test**") in accordance with this Article 8.1. A Repeat Performance Test shall be carried out in accordance with Schedule 5, save that the test shall last twenty-four (24) hours instead of seventy two (72) hours. Provided that if the Tested Capacity after such test is less than one hundred percent (100%) of the Contracted Capacity as existing on the Effective Date or in case the Seller has exercised the option under Article 3.1.1A the Contracted Capacity as so finalized) of the Commissioned Units, the Seller shall also have a right to conduct not more than two (2) Repeat Performance Test within a period six (6) months, by giving a notice of not less than fifteen (15) days to the Procurers for each such test. Provided that the Procurers shall have a right to require deferment of each such re-tests for a period not exceeding five (5) days, without incurring any liability for such deferment, if the Procurers are unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurers or due to inadequate demand in the Grid.

8.1.2 The Procurers (jointly) shall give the Seller not less than seven (7) days' advance written notice of the time when a Repeat Performance Test of a Unit (or if all the Units have been Commissioned, of the Power Station's) is to begin. A Repeat Performance Test may not be scheduled for any period when the Unit to be tested is due to undergo a Scheduled Outage.

8.1.3 The Procurers (jointly) and Seller shall jointly appoint the Independent Engineer to monitor the Repeat Performance Test and to certify the results in accordance with Article 8.2.

8.1.4 If the Seller wishes to take any Unit, out of service for repair before a Repeat Performance Test, it shall inform all the Procurers in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a Maintenance Outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurers (jointly), requiring the Repeat Performance

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Test, shall defer the Repeat Performance Test until such Unit is returned to service following that Maintenance Outage. Provided however the Seller shall not schedule the Maintenance Outage of a Unit when another Unit of the project is shut down or expected to be shut down except under Force Majeure or when the operation of Unit is not permissible due to technical considerations.

- 8.1.5 The Procurers requiring the Repeat Performance Test, may jointly, for reasonable cause, defer any Repeat Performance Test for up to fifteen (15) days from the date originally notified to the Seller in accordance with Article 8.1.2 if such Procurers jointly notify the Seller in writing at least one (1) day before the Repeat Performance Test starts of the reason for the deferral and when the test is to be rescheduled.

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

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8.1.6 The Seller (individually), the Procurers (jointly) and the Independent Engineer (individually) shall each have the right to designate qualified and authorised representatives (but not more than three each) to monitor the Repeat Performance Test.

8.1.7 Testing and measurement procedures applied during the Repeat Performance Test shall be in accordance with the codes, practices or procedures as generally/normally applied for the Performance Tests.

8.1.8 Within five (5) days of a Repeat Performance Test, the Seller shall provide each of the Procurers and the Independent Engineer with copies of the detailed test results.

8.1.9 Within one (1) Month of the date by which all the Units have been Commissioned, the Seller shall conduct a Performance Test of the Power Station (hereinafter referred to as "Power Station Performance Test") whereafter the provisions of Article 8.2 shall apply. A Power Station Performance Test shall be carried out in accordance with Article 1.1 of Schedule 5, save that the test shall last twenty-four (24) hours instead of seventy two (72) hours.

8.2 Deleted

8.3 Availability


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

8.4 Dispatch

The Seller shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to Dispatch and the matters incidental thereto.

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9 ARTICLE 9: METERING AND ENERGY ACCOUNTING

9.1 *Meters*


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

9.2 **RLDC / SLDC Charges**

All scheduling and RLDC / SLDC charges applicable shall be borne by the Procurers.

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10 ARTICLE 10: INSURANCES

10.1 Insurance

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

10.2 Application of Insurance Proceeds


Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

If a Natural Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, the Procurer(s) shall have no claim on such proceeds of such Insurance

10.3 Effect on liability of the Procurers

Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the Seller can claim compensation, under any Insurance shall not be charged to or payable by the Procurers.

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ARTICLE 11 : BILLING AND PAYMENT**11.1 General**

From the COD of the first Unit, Procurers shall pay the Seller the Monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 11 and Schedule 7. All Tariff payments by Procurers shall be in Indian Rupees.

Provided however, if any of the Procurers avails of any Electrical output from the Seller prior to the Commercial Operation Date ("**Infirm Power**") of the Unit, then such Procurer shall be liable to pay Tariff Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Tariff Charges are mentioned in such Contract Year), for Infirm Power generated by such Unit. The quantum of Infirm Power generated by Units synchronized but not have been put on COD shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (installation and operation of meters) Regulations 2006 as amended from time to time.

11.2 Delivery and content of Monthly Bills

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

Provided that:

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

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

11.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and energy account for the relevant Month as per REA for

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- Monthly Bill and RLDC's daily energy account for Provisional Bill;
- ii. the Seller's computation of various components of the Monthly Tariff Payment in accordance with Schedule 7; and
- iii. supporting data, documents and calculations in accordance with this Agreement.

11.3 *Payment of Monthly Bills*

11.3.1 Procurers shall pay the amount payable under Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller to Procurers in accordance with Article 11.3.3 below.

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

1. towards Late Payment Surcharge, payable by the Procurers, if any;
2. towards earlier unpaid Monthly Bill, if any; and
3. towards the then current Monthly Bill.

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

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

Provided further, the maximum amounts that can be deducted or set-off by all the Procurers taken together (proportionate to their then existing Allocated Contracted Capacity in case of each Procurer) under this Article in a Contract Year shall not exceed Rupees [18.75 Lakhs] calculated as Rs. 2.5 lacs per MW of Contracted Capacity] only, except on account of payments under sub Article (i) above.

11.3.3 The Seller shall open a bank account at [Identified Place or Account designated by Lenders] (the "Designated Account") for all Tariff Payments to be made by Procurers to the Seller, and notify Procurers of the details of such account at least ninety (90) days before the dispatch of the first Monthly Bill to Procurers. Procurers shall instruct their respective bankers to make all payments under this Agreement to the Designated Account and shall notify the Seller of such instructions on the same day. Procurers shall also designate a bank account at

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[Identified Place] for payments to be made by the Seller (including Supplementary Bills) to Procurers and notify the Seller of the details of such account ninety (90) days before the COD of the first Unit.

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

11.3.5 For payment of any Bill before Due Date, the following rebate shall be paid by the Seller to the Procurer in the following manner.

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

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

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- e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available only to those Procurers who credit one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller's account/designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.
- f) In the event only part amount of Provisional Bill is credited to Seller's account, within first five (5) days and the balance amount is credited to Seller's account during other days of the Month, rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to Seller's account;
- g) The above rebate will be allowed only to those Procurers who credit to Seller's account the full Monthly Bill.
- h) No rebate shall be payable on the bills raised on account of Change in Law relating to taxes, duties and cess;
- i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

11.4 Payment Mechanism

11.4.1 Letter of Credit:

Each Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, a monthly unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**"), opened and maintained by each Procurer, which may be drawn upon by the Seller in accordance with Articles 11.4.1.1 through 11.4.1.5. The Procurers shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller before the NTP. Further, the Letter of Credit shall be provided from the bank which is appointed as Default Escrow Agent under the Default Escrow Agreement.

- 11.4.1.1 Not later than one (1) Month prior to the Scheduled COD or the Revised Scheduled COD (as applicable) of the first Unit, each Procurer shall through a scheduled bank at [*Identified Place*] open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year plus the estimated monthly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

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


Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 11.4.1.1 or 11.4.1.8 otherwise than by reason of drawal of such Letter of Credit by the Seller, the relevant Procurer shall restore such shortfall within seven (7) days.

- 11.4.1.2 Procurers shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.
- 11.4.1.3 In case of drawal of the Letter of Credit by the Seller in accordance with the terms of this Article 11.4.1, the amount of the Letter of credit shall be reinstated in the manner stated in Article 11.4.2.3 of this Agreement.
- 11.4.1.4 If any Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 11.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 11.3.4 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
 - i) a copy of the Monthly Bill which has remained unpaid by such Procurer;
 - ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
 - iii) calculations of applicable Late Payment Surcharge, if any.

Further, on the occurrence of such an event as envisaged herein, the Seller shall immediately inform all the Procurers of the said failure of the Procurer to pay the

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Monthly Bill or part thereof and shall send regular updates to all the Procurers, which shall not be less than one (1) in every two (2) days, containing details of the amount claimed by the Seller as per the provisions of this Article and payments made by the Procurer pursuant to such claim.

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

- 11.4.1.5 Procurers shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.
- 11.4.1.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurers; however, Letter of Credit negotiation charges shall be borne and paid by the Seller.
- 11.4.1.7 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurers and the Seller.
- 11.4.1.8 Upon fulfillment of the conditions mentioned under Article 11.4.2.2 the Letter of Credit amount as mentioned in Article 11.4.1.1 shall be changed to one (1) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year.

11.5 Third Party Sales on default

11.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this Agreement, the Seller shall follow the steps as enumerated in Articles 11.5.3.


11.5.2 Deleted

11.5.3 The Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

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

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11.5.4 Deleted

11.5.5 Provided that, in the case of Article 11.5.3, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect affiliate of the Seller/shareholders of the Seller, is not at a price less than the Tariff Charges.

11.5.6 Deleted

11.5.7 Sales to any person or Party, other than the defaulting Procurer under Article 11.5, shall cease and regular supply of electricity to the defaulting Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the

option of Seller:

- (a) the day on which the defaulting Procurer pays the amount due to the Seller and renews the Letter of Credit ;or
- (b) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 3.

11.6 Disputed Bill

11.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party within thirty (30) days of receiving it, such bill shall be taken as conclusive.

11.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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

11.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, the invoicing Party shall revise such bill within seven

(7) days of receiving such notice and if the disputing Party has already made the excess payment , refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and upto and including the date on which such payment has been received.

11.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

- i) reasons for its disagreement;

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- ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its counter-claim.
- 11.6.5 Upon receipt of notice of disagreement to the Bill Dispute Notice under Article
- 11.6.4 authorised representative(s) or a director of the board of directors/member of board of each Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.
- 11.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 11.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 17.
- 11.6.7 In case of Disputed Bills, it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 17 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.
- 11.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 11.6 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 11.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 11.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the concerned Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months invoices (being the undisputed portion of such three Months invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

11.7 Quarterly and Annual Reconciliation

Parties acknowledge that all payments made against Monthly Bills, Provisional Bill and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff Adjustment Payments, Tariff Rebate Payments, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and each Procurer shall jointly sign such reconciliation statement.

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Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 17.

11.8 Payment of Supplementary Bill

11.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 7; or
- iii) Change in Law as provided in Article 13,

and such Bill shall be paid by the other Party.

11.8.2 Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurers by the Due Date to concerned Procurer's designated bank account and notify such Procurer/s of such payment on the same day. For such payments by a Procurer, rebates as applicable to Monthly Bills pursuant to Article 11.3.5 shall equally apply.

11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 11.3.4.


11.9 Payment for Startup Power

The Seller shall be liable to pay, for the power and energy consumed for start-up of the Project and commissioning, to the distribution Licensee(s) in whose area the Project is located or such other entity from whom such power/energy is sourced, at the then prevalent rates payable by such industrial consumers.

11.10 The copies of all notices/offers which are required to be sent as per the provisions of this Article 11, shall be sent by either Party, simultaneously to all Parties.

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12 ARTICLE 12 : FORCE MAJEURE**12.1 Definitions**

In this Article 12, the following terms shall have the following meanings:

12.2 Affected Party

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

An event of Force Majeure affecting the CTU/STU or any other agent of Procurer, which has affected the Interconnection Facilities, shall be deemed to be an event of Force Majeure affecting Procurer/s.

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

- a. late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Project; or
- b. a delay in the performance of any of the Seller's contractors.


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

12.3 Force Majeure

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:

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i. Natural Force Majeure Events:

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. Non-Natural Force Majeure Events:**1. Direct Non - Natural Force Majeure Events**

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Seller or the Seller's contractors; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by the Seller or any of the Seller's contractors to perform their obligations under the Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the development/operation of the Project. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the Project. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Indirect Non - Natural Force Majeure Events


- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action ;or
- b) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site by the Affected Party or those employed or engaged by the Affected Party.
- c) Industry wide strikes and labor disturbances having a nationwide impact in India.

12.4 Force Majeure Exclusions

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

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- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 12.2;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i) Negligent or intentional acts, errors or omissions;
 - ii) Failure to comply with an Indian Law; or
 - iii) Breach of, or default under this Agreement or any Project Documents.

12.5 Notification of Force Majeure Event

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

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.

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12.6 Duty to perform and duty to mitigate

To the extent not prevented by a Force Majeure event pursuant to Article 12.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

12.7 Available Relief for a Force Majeure Event

Subject to this Article 12:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5.
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurers for the part of Contracted Capacity affected by a Natural Force Majeure Event affecting the Seller, for the duration of such Natural Force Majeure Event. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurers.
- (d) If the average Availability of the Power Station is reduced below sixty (60) percent for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) months, as a result of an Indirect Non Natural Force Majeure, then, with effect from the end of that period and for so long as the daily average Availability of the Power Station continues to be reduced below sixty (60) percent as a result of an Indirect Non Natural Force Majeure of any kind, the Procurers shall make payments for Debt Service, subject to a maximum of Tariff Charges based on Normative Availability, relatable to such Unit, which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer(s) from the Seller, in the form of an increase in Tariff Charge. Provided such Tariff Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in

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case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure had not occurred.

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

- e) If the average Availability of the Power Station is reduced below eighty (80) percent for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) months, as a result of a Direct Non Natural Force Majeure, then, with effect from the end of that period and for so long as the daily average Availability of the Power Station continues to be reduced below eighty (80) percent as a result of a Direct Non Natural Force Majeure of any kind, the Seller may elect in a written notice to the Procurers, to deem the Availability of the Power Station to be eighty (80) percent from the end of such period, regardless of its actual Available Capacity. In such a case, the Procurers shall be liable to make payment to the Seller of Tariff Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure in the form of an increase in Tariff Charge. Provided such Tariff Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Tariff Charges in a situation where the Direct Non Natural Force Majeure had not occurred.
- (f) For so long as the Seller is claiming relief due to any Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s) under this Agreement, the Procurers may from time to time on one (1) days notice inspect the Project and the Seller shall provide Procurer's personnel with access to the Project to carry out such inspections, subject to the Procurer's personnel complying with all reasonable safety precautions and standards. Provided further the Procurers shall be entitled at all times to request Repeat Performance Test, as per Article 8.1, of the Unit(s) Commissioned earlier and now affected by Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)), where such Testing is possible to be undertaken in spite of the Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)), and the Independent Engineer accepts and issues a Final Test Certificate certifying such Unit(s) being

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capable of delivering the Contracted Capacity and being Available, had there been no such Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer/s). In case, the Available Capacity as established by the said Repeat Performance Test (provided that for such Repeat Performance Test, the limitation imposed by Article 8.1.1 shall not apply) and Final Test Certificate issued by the Independent Engineer is less than the Available Capacity corresponding to which the Seller would have been paid Tariff Charges equal to Debt Service in case of Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer/s), then the Procurers shall make pro-rata payment of Debt Service but only with respect to such reduced Availability. For the avoidance of doubt, if Debt Service would have been payable at an Availability of 60% and pursuant to a Repeat Performance Test it is established that the Availability would have been 40%, then Procurers shall make payment equal to Debt Service multiplied by 40% and divided by 60%. Similarly, the payments in case of Direct Non Natural Force Majeure Event (and Natural Force Majeure Event affecting the Procurer/s) shall also be adjusted pro-rata for reduction in Available Capacity.


- g) In case of a Natural Force Majeure Event affecting the Procurer/s which adversely affects the performance obligations of the Seller under this Agreement, the provisions of sub-proviso (d) and (f) shall apply.
- (h) For the avoidance of doubt, it is specified that the charges payable under this Article 12 shall be paid by the Procurers in proportion to their then existing Allocated Contracted Capacity.

12.8 Additional Compensation and Procurers' Subrogation

If the Seller is entitled, whether actually or contingently, to be compensated by any person other than the Procurers as a result of the occurrence of a Non Natural Force' Majeure Event (or Natural Force Majeure Event affecting the Procurer/s) for which it has received compensation from the Procurers pursuant to this Article 12, including without limitation, payments made which payments would not have been made in the absence of Article 4.7.1, the Procurers shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurers to the Seller. Provided that in case the Seller has actually received compensation from the any person other than the Procurers as well as the Procurers as a result of the occurrence of a Non Natural Force' Majeure Event (or Natural Force Majeure Event affecting the Procurer/s), then the Seller shall forthwith refund the compensation received by it from the Procurers but only to the extent of the compensation received by the Seller from any person other than the Procurers.

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13 ARTICLE 13 : CHANGE IN LAW**13.1 Definitions**

In this Article 13, the following terms shall have the following meanings:

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

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law or (ii) a change in interpretation of any Law by a Competent Court of law, tribunal or Indian Governmental Instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Seller, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Procurers under the terms of this Agreement, or (iv) any change in the (a) Declared Price of Land for the Project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project mentioned in the RFP or (c) the cost of implementing Environmental Management Plan for the Power Station (d) but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

13.1.2 "Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.


13.2 Application and Principles for computing impact of Change in Law¹⁸

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

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

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a) Construction Period

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees [Insert amount] in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Tariff Charges shall be an amount equal to [Insert amount] of the Non Escalable Tariff Charges. Provided that the Seller provides to the Procurers documentary proof of such increase/ decrease in Capital Cost for establishing the impact of such Change in Law. In case of Dispute, Article 17 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/decrease exceeds amount of Rs. [Insert Amount].

b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Central Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.


Provided that the above mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.

13.3 Notification of Change in Law

- 13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.
- 13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to all the Procurers under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurers shall jointly have the right to issue such notice to the Seller.

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13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and
- (b) the effects on the Seller of the matters referred to in Article 13.2.

13.4 Tariff Adjustment Payment on account of Change in Law


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

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.

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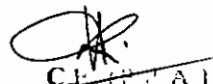
14 ARTICLE 14 : EVENTS OF DEFAULT AND TERMINATION***14.1 Seller Event of Default***

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

- i) the failure to Commission any Unit by the date falling twelve (12) Months after its Scheduled Commercial Operation Date, or
- ii) after the commencement of construction of the Project, the abandonment by the Seller or the Seller's Construction Contractors of the construction of the Project for a continuous period of two (2) Months and such default is not rectified within thirty (30) days from the receipt of first notice from any of the Procurers or Procurers (jointly) in this regard, or
- iii) if at any time following a Unit being Commissioned and during its retest, as per Article 8, such Unit's Tested Capacity is less than ninety two (92) percent of its Contracted Capacity, as existing on the Effective Date or in case the Seller has exercised the option under Article 3.1.1A the Contracted Capacity so finalised, and such Tested Capacity remains below ninety two (92) percent even for a period of three (3) Months thereafter; or
- iv) Deleted
- v) Deleted
- vi) any of the representations and warranties made by the Seller in Schedule 10 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the the undertakings submitted by the Selected Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its parent company/ affiliates related to the minimum equity obligation; Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days, or
- vii) if the Seller:
 - a) assigns or purports to assign any of its assets or rights in violation of this Agreement; or
 - b) transfers or novates any of its rights and/or obligations under this agreement, in violation of this Agreement; or
- viii) 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

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all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Seller will not be an Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the financial and technical requirements as per RfQ till COD of the Power Station, and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

- ix) the Seller repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurers (jointly) in this regard; or
- x) 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 Project Documents where the Procurer and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by any of the Procurers or Procurers (jointly) the Procurers to the Seller or by the Lead Procurer (or Procurer, as applicable) on behalf of the Procurers.
- xi) the Seller fails to complete/fulfill the activities/conditions specified in Article 3.1.2, beyond a period of 8 Months from the specified period in Article 3.1.2 and the right of termination under Article 3.3.2 is invoked by the Procurers (jointly); or
- xii) any direct or indirect change in the shareholding of the Seller in contravention of the terms of the Bid Documents ; or
- xiii) The Seller fails to provide additional bank guarantee to the Procurers in accordance with Article 3.3 of this Agreement , or
- xiv) Occurrence of any other event which is specified in this Agreement to be a material breach/default of the Seller.

14.2 Procurer Event of Default

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

- i) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or

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- ii) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard;or
- iii) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is in material breach of any of its obligations pursuant to this Agreement or of any of the RFP Project Documents where the Procurers and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to all the Procurers;or
- iv) any representation and warranties made by any of the Procurer in Schedule 10 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the concerned Procurer in writing of at least thirty (30) days;or
- v) if (a) any Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Procurer, or (c) the Procurer goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, except where such dissolution or liquidation of such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to such Procurer and expressly assumes all obligations of such Procurer under this Agreement and is in a position to perform them;or;
- vi) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurers.

14.3 Procedure for cases of Seller Event of Default

14.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 14.1, the Procurers jointly shall have the right to deliver to the Seller a Procurer Preliminary Default Notice, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

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

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

14.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, the Lenders may exercise or the Procurers may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurers would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 17. Alternatively, in case the Lenders do not exercise their rights as mentioned herein above, the Tariff Charge of the Seller shall be reduced by 20% for the period of Seller Event of Default.

14.4 Termination for Procurer Events of Default

14.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 14.2 (i), the Seller shall follow the remedies provided under Articles 11.5.2.

14.4.2 Without in any manner affecting the rights of the Seller under Article 14.4.1, on the occurrence of any Procurer Event of Default specified in Article 14.2 the Seller shall have the right to deliver to all the Procurers a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

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

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

14.4.5 (i) After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have been remedied, the Seller shall be free to sell the then existing Allocated Contracted Capacity and associated Available Capacity of Procurer/s committing Procurer/s Event of Default to any third party of his choice. Provided such Procurer shall have the liability to make payments for Tariff Charges based on Normative Availability to the Seller for the period three (3) years from the eighth day after the expiry of the Consultation Period. Provided further that in such three year period, in case the Seller is able to sell electricity to any third party at a price which is in excess of

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the Tariff Charges, then such excess realization will reduce the Tariff Charge payments due from such Procurer/s. For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for the three year period. During such period, the Seller shall use its best effort to sell the Allocated Contracted Capacity and associated Available Capacity of such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time. Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect affiliate of the Seller/shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer/s. Such request for consent would be responded to within a maximum period of 3 days failing which it would be deemed that the Procurer has given his consent. Provided further that at the end of the three year period, this Agreement shall automatically terminate but only with respect to such Procurer/s and thereafter, such Procurer/s shall have no further Tariff Charge liability towards the Seller. Provided further, the Seller shall have the right to terminate this Agreement with respect to such Procurer/s even before the expiry of such three year period provided on such termination, the future Tariff Charge liability of such Procurer/s shall cease immediately.

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15 ARTICLE 15 : LIABILITY AND INDEMNIFICATION**15.1 Indemnity**

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


- (a) Any and all third party claims, actions, suits or proceedings against the Procurer/s for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer /s from third party claims arising by reason of (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 15 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 Procurers, 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.

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 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 Procurer of any of its obligations under this Agreement

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(Provided that this Article 15 shall not apply to such breaches by 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 Procurers under this Agreement being found to be inaccurate or untrue.

15.2 Monetary Limitation of liability

A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 15 for any indemnity claims made in a Contract Year only upto an amount of Rupees [Insert amount]. With respect to each Procurer, the above limit of Rupees [Insert amount] shall be divided in the ratio of their Allocated Contract Capacity existing on the date of the indemnity claim.

15.3 Procedure for claiming indemnity

15.3.1 Third party claims


(a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1(a) or 15.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 15.1.1(a) or 15.1.2(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 15.3.1(b) below; and
- (ii) the claim amount is not required to be paid/deposited to such third party pending the resolution of the Dispute,

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

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(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 15.1.1(a) or 15.1.2(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.

15.4 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 15.1.1(b) or 15.1.2(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 15.4, such event shall constitute a payment default under Article 14.

15.5 Limitation on Liability

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

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

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16 ARTICLE 16: ASSIGNMENTS AND CHARGES

16.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to Article 16.2, this Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing:

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

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

Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 17 of this Agreement.

16.2 Permitted Charges

16.2.1 Notwithstanding anything contained in Article 16.1, the Seller may create any encumbrance over all or part of the receivables, Payment Mechanism or the other assets of the Project or the RFP Project Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

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

Provided that:

- I the Lenders or the Lender's Representative on their behalf shall have agreed in writing to the provisions of Schedule 17 of this Agreement; and
- II any encumbrances granted by the Seller in accordance with this Article shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurers to release from such encumbrances all of the right, title and interest to Additional Compensation so as to enable the Procurers to claim its right of

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subrogation. For the purposes of this Article, Additional Compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurers as well as compensated by any person other than the Procurers for the same event.

16.2.2 Article 16.1 does not apply to:

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

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17 ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION***17.1 Governing Law***

This Agreement shall be governed by and construed in accordance with the Laws of India.

17.2 Amicable Settlement

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

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

17.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 17.2.1, furnish:

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


17.2.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 17.2.1 or Article 17.2.2, 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 of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 17.3.

17.3 Dispute Resolution

17.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, 13.2, 18.1 or clause 10.1.3 of Schedule 17 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


CE (P.P.A.)
UPPCL
Shakti Inver Extn.
Lucknow.

The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

17.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 17.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 17.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.


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

17.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the arbitral tribunal as provided in Article 17.3 and save as the Appropriate Commission or the arbitral 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.

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CE. (P.P.A.)
UPPCL
 Shakti Bhawan Estate
 Lucknow. 78

ARTICLE 18 : MISCELLANEOUS PROVISIONS***18.1 Amendment***

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

18.2 Third Party Beneficiaries

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.

18.3 No Waiver

A valid waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by any Party to insist on the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by any Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

18.4 Entirety

18.4.1 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.

18.4.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the sale or purchase of Electrical Output and Contracted Capacity under this Agreement to the Procurers by the Seller shall stand superseded and abrogated.

18.5 Confidentiality

The Parties undertake to hold in confidence this Agreement and RFP Project 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

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CE (PPA.)
UPPCL
Shri. ... Extn.
Lucknow.

their activities;or

(c) disclosures required under Law.

without the prior written consent of the other Parties.

Provided that the Seller agrees and acknowledges that any of the Procurers may at any time, disclose the terms and conditions of the Agreement and the Project Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

18.6 Affirmation

The Seller and Procurers, each affirm that:

- (i) 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
- (ii) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

18.7 Severability

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.

18.8 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the Seller and Procurers.

18.9 Survival

Notwithstanding anything to the contrary herein, the provisions of this Agreement, including Article 3.3.2, Article 10.2 (Application of Insurance Proceeds), Article 12 (Force Majeure), Article 14 (Events of Default and Termination), Article 15 (Liability and Indemnification), Article 17 including Article 17.3.2 (Governing Law and Dispute Resolution), Article 18

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

SE (P.P.A.)
U.P.P.C. Ltd.
Shahdoli Bxtd.
Ghaziabad

(Miscellaneous), 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.

18.10 Counterparts

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 instrument.

18.11 Notices

All notices must be delivered personally, by registered post or any method duly acknowledged or facsimile to the addresses below:

Seller: M/s. B & G Renewable Energy Private Limited
New No.25, Old No 10 Sir Madhavan Nair Road, Mahalingapuram,
Nungambakkam, Chennai-600034

Procurer: UP Power Corporation Limited, 14 Ashok Marg, Lucknow.

On behalf of DISCOM's

- 1: Paschimanchal Vidyut Vitran Nigam Limited
- 2: Poorvanchal Vidyut Vitran Nigam Limited
- 3: Dakshinanchal Vidyut Vitran Nigam Limited
- 4: Madhyanchal Vidyut Vitran Nigam Limited

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

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

18.12 Language

B. & G Renewable Energy Pvt. Ltd- Nirgajini (7.5 MW)

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE. (M.P.A.)
UP PCL
Shri B. V. B. B. B.
Lucknow

The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

18.13 Breach of Obligations

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.

18.14 Nomination Restriction

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

18.15 Commercial Acts

The Procurers and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and those agreements included in the Collateral Arrangement to which it is a Party constitute private and commercial acts rather than public or governmental acts;

18.16 Restriction of Shareholders/Owners Liability

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

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

18.17 No Consequential or Indirect Losses

The liability of the Seller and the Procurers shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE (PPA)
U.P.P.C.L.
Shakti Bhawan, 2nd floor
Lucknow

this Agreement, under no event shall the Procurers or the Seller claim from one another any indirect or consequential losses or damages.

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at [place].

For and on behalf of
[Procurers]

Signature with seal

Witness:

1.

2.

(S.K. SINHA)
SEPPA

CE (P.P.)
U.P.P.
Shakti Bhawan Bhopal
Lucknow

For and on behalf of
[THE Seller]

Signature with seal

Witness:

1.

2.

1. Anjan Kumar - 108/82 Taredpur
Lucknow



For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE (P.P.A.)
U.P.P.C. L.
Shakti Bhawan Bhopal
Lucknow

1. Schedule 1: NAMES AND DETAILS OF THE PROCURERS


- A. Paschimanchal Vidyut Vitran Nigam Limited
- B. Poorvanchal Vidyut Vitran Nigam Limited
- C. Madhyanchal Vidyut Vitran Nigam Limited
- D. Dakshinanchal Vidyut Vitran Nigam Limited

B & G Renewable Energy Pvt. Ltd- Nirgajini (7.5 MW)

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


CE/PPA.1
U. P. P. C. E.
Shakti Bhawan 3rd
Lucknow

1A. SCHEDULE 1A: SITE**Nirgajini Small Hydropower Project: As per DPR/PFR available****SAILENT FEATURE**

1. Name of canal :
2. LOCATION
 - i) Site of P.H. : ~
 - ii) Nearby village :
3. APPROACH
 - i) Nearest Railway Station :
 - ii) Road :
4. HYDROLOGY
 - ii) Design Discharge :
5. DIVERSION CHANNEL
 - i) Length : 500 meters
6. POWER STATION
 - i) Installed capacity :
 - ii) Type of turbine :
 - iii) Total head :
 - vi) Power House :
7. TAIL RACE CHANNEL
 - i) Length :
8. POWER
 - i) Installed Capacity :
 - ii) Annual Energy(KWH) on
75% dependable discharge :

B & G Renewable Energy Pvt. Ltd. Nirgajini (7.5 MW)

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


 CHAIRMAN
 U. P. P. C. L.
 Shakti Bhawan
 Lucknow

SCHEDULE 2: INITIAL CONSENTS

As covered in the Bid Document

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE. P. P. L.
U. P. P. L.
Shakti Shuman Baid
BESKNOV.

2 SCHEDULE 3: CALCULATION OF 'X'DAYS

(Refer Article 11.5.7)

Percentage of Monthly Invoice which is the subject of default under Article 11.4 as notified in the Notice (issued under Article 11.5.2) relatable to the present occurrence	Number of times a Notice has been issued under Article 11.5.2 to the defaulting Procurer prior to present occurrence			
	1 st time	2 nd time	3 rd time	4 th time and onwards
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = 90 days

B & G Renewable Energy Pvt. Ltd. Nirgajini (7.5 MW)

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


 CB. (PPA)
 U. P. C. I.
 Shakti Bhawan
 know

3 SCHEDULE 4: FUNCTIONAL SPECIFICATION¹⁹

S No.	Description	Unit	Particulars
1.1 Grid Conditions at Interconnection Point			
(i)	Voltage : Nominal	kV	[]
	Variation	%	[]
(ii)	Frequency : Nominal	Hz.	[]
	Variation	%	[]
(iii)	Combined Voltage and Frequency variation for Contracted Capacity	%	[]
(iv)	Power Factor : Nominal		[] lag
	Variation		[] to [] lag lead
(v)	Basic Impulse Level(Peak)	kV	[]

1.2 Fault Levels:

(i)	3Phase	Maximum	kA	[]
(ii)	Clearance time	Maximum	ms	[]

1.3 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than one percent (1%) per minute. Such capability shall be demonstrated during the Unit load of more than 50%.

¹⁹ This chapter/article describes a sample functional specifications for a coal based plant and it needs to be customised considering the plant type and relevant Grid Code

Name of the Distribution Company

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Shakti Bhawan
Lucknow

4 SCHEDULE 5: COMMISSIONING AND TESTING

1.1 Performance Test

- (i) (a) The Performance Test shall be conducted under any and all ambient conditions (temperature, humidity etc.) and any and all Fuel qualities that may exist during the time of the Performance Test and no corrections in final gross and net output of the Unit will be allowed as a result of prevailing ambient conditions or Fuel quality.
- (b) The correction curves will only be used if the Grid System operation during the Performance Test exceeds electrical system limits.
- (c) The Performance Test shall be deemed to have demonstrated the Contracted Capacity of the Unit under all designed conditions and therefore no adjustments shall be made on account of fuel quality or ambient conditions.
- (d) The Seller shall perform in respect of each Unit a Performance Test, which such Unit shall be deemed to have passed if it operates continuously for seventy two consecutive hours at or above ninety five (95) percent of its Contracted Capacity, as existing on the Effective Date or in case the Seller has exercised the option under Article 3.1.1A the Contracted Capacity so finalised, and within the electrical system limits and the Functional Specifications.
- (ii) For the purposes of any Performance Test pursuant to this sub-article, the electrical system limits to be achieved shall be as follows:
 - (a) **Voltage**
The Unit must operate within the voltage levels described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, voltage tests cannot be performed due to Grid System, data supplied from tests of the generator step-up transformers and generators supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified voltage limits.
 - (b) **Grid System Frequency**
The Unit shall operate within the Grid System frequency levels described in the Functional Specification for the duration of the Performance Test.
 - (c) **Power Factor**
The Unit shall operate within the power factor range described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, power factor tests cannot be performed due to the Grid System, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified power factor range.

Name of the Distribution Company

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

[Signature]
Sd/-
D. C. L.
Shakti
Bachow.

- iii As a part of the Performance Test, the Seller shall demonstrate that the Unit meets the Functional Specifications for Ramping rate as mentioned in Schedule 4. For this purpose, representative samples of ramp rates shall be taken, by ramping up or down the gross turbine load while maintaining the required temperatures and temperature differences associated with each ramp rate within the turbine while maintaining all other operational parameters within equipment limits;
- 1.2 Testing and Measurement procedures applied during Performance Test shall be in accordance with codes, practices or procedures as generally/ normally applied for the Performance Tests
- 1.3 The Seller shall comply with the prevalent Laws, rules and regulations as applicable to the provisions contained in this Schedule from time to time.

Name of the Distribution Company

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U. P. P. C. L.
Shriwan Extra

6. SCHEDULE 6²⁰: AVAILABILITY FACTORS

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

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

²⁰ This schedule may be amended time to time as per applicable grid code

Name of the Distribution Company

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CE. (P.P.A.)
U.P. L.
Extn.

7 SCHEDULE 7: TARIFF

1.1 General

- i. The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with the approved tariff as per schedule 11 of RfP.
- ii. Deleted
- iii. For the purpose of payments, the Tariff will be Quoted Tariff,
- iv. Deleted

1.2 Monthly Tariff Payment

1.2.1 Components of Monthly Tariff Payment

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

- i. Monthly Charges in accordance with Article 1.2.2 below;
- iii. Deleted;
- iv. Deleted;
- v. Penalty Payment determined in accordance with Article 1.2.8 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first month of the next Contract Year) (Applicable in case where fuel arranged by Seller);

1.2.2 Monthly Tariff Charges²²

The Monthly Tariff charges will be calculated asunder:

The Monthly Tariff Charges for Month "m" shall be calculated asunder:

$$MEP_m = AEO_m \times MEP_n$$

Where:

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

Name of the Distribution Company

2

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signature

CE. (P.P.A.)
U. P. C. L.
Tkt. 10 Extra.
1007

MEP_m is the Monthly Charges for Month *m* (inRs.) as per approved single tariff in Rs/ kwh for theyear

AEOM is the Scheduled Energy during the Month *m* (inkwh)

MEP_n is the Tariff, in Rs/kwh, and for the Contract Year “*n*” in which Month “*m*” occurs

1.2.6 Deviation from the schedule

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

1.2.7 Transmission/Wheeling Charges and Scheduling Charges

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

1.2.8 Not used

1.2.9 Tariff for the period prior to Scheduled COD of first unit and for Contract Years beyond the 35 years from the COD of the first Unit

The Tariff for the period prior to Scheduled COD of the first unit shall be the quoted tariff of the first year. The Tariff for the Contract Years beyond the 35 years from the Scheduled COD of the first Unit shall be the Quoted Tariff of the 35th year from the Scheduled COD of the first Unit with applicable escalation.

1.3 SETTLEMENT OF BILLS

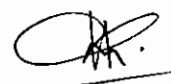
1. The penalty of actual Availability shortfall during the Contract Year, Deviation from the schedule, Transmission & Scheduling Charges, and Penalty to be paid to fuel supplier will be settled as detailed in Article 1.2.6 and Article 1.2.7 of this Schedule.
2. Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.

Name of the Distribution Company

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Authorised Signatory



C.B. (P.P.A.)
U.P. P. C. L.
Shakti B. Extn.

8 SCHEDULE 8: DETAILS OF INTERCONNECTION POINT AND FACILITIES

The Interconnection Point or Delivery Point shall be point from where the power from the Power Station Switch Yard Bus is being injected into the Transmission Network`.

The Seller shall be required to provide the following facilities in the Power Station Switch Yard

Note: These details are to be filled up as given finally in the RFP Clause No.1.4.

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

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Authorised Signatory

CH. PPA. P
U.P. P. C. L.
Shakti Bh. P. C. L.
Lucknow.

9. SCHEDULE 9: ESCALATION INDEX


No Escalation Index is envisaged as the approved tariff per year will include escalation

Name of the Distribution Company

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Authorised Signatory


CE. (P.P.A.)
U. P. P. C. L.
I-ti Bhawan

10 SCHEDULE 10: REPRESENTATION AND WARRANTIES*1. Representations and Warranties by the Procurers*

Each 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:

- 1.1 The said Procurer has all requisite powers authorising and has been duly authorised to execute and consummate this Agreement;
- 1.2 This Agreement is enforceable against the said Procurer in accordance with its terms;
- 1.3 The consummation of the transactions contemplated by this Agreement on the part of the said 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 said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived;
- 1.4 The said Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;
- 1.5 There are no actions, suits, claims, proceedings or investigations pending or, to the best of the said Procurer's knowledge, threatened in writing against the said 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 judgements, 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.
- 1.6 The quantum of Allocated Contracted Capacity of said Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines

Each of the Procurers makes all the representations and warranties above to be valid as on the date of this Agreement.

2. Representation and Warranties of the Seller

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

Name of the Distribution Company

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

U. P. P. A. J.
U. P. P. C. L.
Shakti Bhushan Bhatia
Encl. No.

2.1 The Seller has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;

2.2 This Agreement is enforceable against the Seller in accordance with its terms;

2.3 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;

2.4 The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;

2.5 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 judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.

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

The Seller makes all the representations and warranties above to be valid as on the date of this Agreement, except as stated in sub-article 2.6 above.

Name of the Distribution Company

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE. (P.P.A.)
U.P.P.C.L.
Shakti Bhawan Bktn.
Lucknow

11 SCHEDULE 11: QUOTED TARIFF

(Copy enclosed)

Name of the Distribution Company

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE. (P.P.A.)
U.P.P.C. Ltd.
Kishan

FINANCIAL BIDName of the Project: **NIRGAJINI (7.70 MW)****Quoted Tariff**

Year	Tariff (Rs./KWH)
1	1.933
2	1.856
3	1.779
4	1.703
5	1.627
6	1.552
7	1.550
8	1.549
9	1.548
10	1.533
11	1.426
12	1.447
13	1.468
14	1.491
15	1.515
16	1.539
17	1.565
18	1.593
19	1.621
20	1.651
21	1.563
22	1.596
23	1.630
24	1.665
25	1.570
26	1.674
27	1.678
28	1.682
29	1.686
30	1.691
31	1.695
32	1.699
33	1.703
34	1.708
35	1.712

For B & G RENEWABLE ENERGY PVT. LTD.

Authorised Signatory

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


 U.P.P.C.L.
 Shakti Bhawan Bxtn,
 Lucknow.

SCHEDULE 12: Authorisation Letters from DISCOMs

(Copies enclosed)

Name of the Distribution Company

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For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory



CE. (P.P.A.)
B & G RENEWABLE ENERGY PVT. LTD.

Name of the Distribution Company

101

For B & G RENEWABLE ENERGY PVT. LTD.

Authorised Signatory


U. S. S. S.
Shashi Bhawan Bazar.
New Delhi.

1116
28.8.2010

(1)

नवीत सहगल
आईओएन
अध्यक्ष एवं प्रबन्ध निदेशक



उत्तर प्रदेश पावर कारपोरेशन लिमिटेड
(उत्तर प्रदेश सरकार का उपक्रम)
शक्ति भवन, 14-अशोक मार्ग, लखनऊ-226001
कार्यालय : 0522-2287827

पत्र सं० 478/पाएल-नि/उओप्रओजओविओलिओ

दिनांक: 23/08/10

अध्यक्ष एवं प्रबन्ध निदेशक
उओप्रओ जल विद्युत निगम लिओ
शक्ति भवन
लखनऊ।

विषय:-15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उओप्रओ शासन द्वारा
प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर
निविदाएं आमंत्रित करने के सम्बन्ध में।

महोदय,

उपरोक्त विषयक स्व कार्यालय पत्रांक 566/पी-22 दिनांक 24.7.2010 का संदर्भ
ग्रहण करें जिसके द्वारा 15 लघु जल विद्युत परियोजनाएँ निजी क्षेत्र में स्थापित किये
जाने हेतु सहमति माँगी है।

इस सम्बन्ध में अवगत कराना है कि प्रस्तावित लघु जल विद्युत परियोजनाओं से
विद्युत का क्रय वितरण निगमों द्वारा किया जायेगा। अतः उओप्रओ जल विद्युत निगम द्वारा
तैयार किये गये आरओएफओक्यूओ, आरओएफओपीओ एवं पीओपीओएओ प्रपत्रों में Procurer चारों
वितरण निगमों यथा पश्चिमांचल, दक्षिणांचल, मध्यांचल एवं पूर्वान्चल वितरण निगमों को
Procurer के रूप में अंकित किया जाना होगा। भारत सरकार के विद्युत मंत्रालय द्वारा
जारी "Guidelines for Determination of Tariff by Bidding Process for
Procurement of Power by Distribution Licensees" में जो भी विचलन किये
जायेंगे, स्टैण्डर्ड बिडिंग डॉक्यूमेन्ट्स के क्लॉज सं० 5.16 के अनुसार विचलनों का
अनुमोदन उओप्रओ जल विद्युत निगम लिओ द्वारा उओप्रओ विद्युत नियामक आयोग से लिया
जाना निश्चित किया जायेगा।

Name of the Distribution Company

102

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE. (P.P.A.)
U.P.P.C. Ltd.
Shakti Bhawan Bldg.
Lucknow.

(2)

- 2 -

सभी विद्युत वितरण निगमों की ओर से उपरोक्त लघु जल विद्युत परियोजनाओं की बिड प्रोसेस प्रारम्भ किये जाने की सहमति प्रदान की जाती है। सम्बन्धित वितरण निगमों से उOप्रO जल विद्युत निगम को अधिकृत किये जाने वाले पत्र एवं बिड डाक्यूमेन्ट्स पर सहमति अलग से प्रेषित की जायेगी।

भवदीय,

 (नवनीत सहगल)
 अध्यक्ष एवं प्रबन्ध निदेशक

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

Authorized Signatory

103

CE. (P.P.A.)
 U. P. P. C. D.
 Shakti Bhawan Extn.
 Lucknow.

(3)

Madhyanchal Vidyut Vitran
Nigam Limited
Lucknow



मध्यांचल विद्युत वितरण निगम लिमिटेड
प्रधान कार्यालय, 4-ए, गोखले मार्ग,
लखनऊ।

E-mail commvvn@gmail.com/Pho.No. 0522-2205065

पत्रांक: 1429 प्र0नि0/म0वि0वि0नि0लि0/उ0प्र0ज0वि0नि0लि0/वा0, दिनांक: 30/8/2010

विषय :- 15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उ0प्र0 शासन द्वारा प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निविदायें आमंत्रित करने के संबंध में।

अध्यक्ष एवं प्रबन्ध निदेशक,
उ0प्र0 पावर कारपोरेशन लि0,
शक्ति भवन, 14 अशोक मार्ग,
लखनऊ।

महोदय,

उपरोक्त विषयक उ0प्र0 पावर कारपोरेशन लि0, लखनऊ के पत्रांक 1926-पाकालि/नि0/उ0प्र0ज0वि0नि0लि0, दिनांक 25.08.2010 के संदर्भ में 15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उ0प्र0 शासन द्वारा प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निजी क्षेत्र में स्थापना हेतु उ0प्र0 जल विद्युत निगम लि0 को मध्यांचल विद्युत वितरण निगम लि0 की ओर से बिड प्रोसेस करने हेतु अधिकृत किया जाता है।

(पार्थ सारथी सेन शर्मा)
प्रबन्ध निदेशक

का. 5

28/8

AA1

88

[Name of the Distribution Company]

104

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CB. (P.P.A.)
U. P. P. C. L.
Shakti Bhawan Bldg.
Lucknow

(4)

दूरभाष : 0121-2665734
फैक्स : 0121-2606062



कार्यालय
Office of the
प्रबंध निदेशक
MANAGING DIRECTOR
पश्चिमांचल विद्युत वितरण निगम लि०
Paschimanchal Vidyut Vitran Nigam Ltd.
विक्टोरिया पार्क, मेरठ
Victoria Park, MEERUT-250001

पत्रांक 6017 / प0वि0वि0नि0लि0 / मेरठ / लेखा

दिनांक 23/09/10

विषय:- 15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उ० प्र० शासन द्वारा प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निविदाएं आमंत्रित करने के सम्बन्ध में।

अध्यक्ष एवं प्रबंध निदेशक,
उ० प्र० पावर कारपोरेशन लि०,
शक्ति भवन, 14- अशोक मार्ग,
लखनऊ।

उपरोक्त विषयक उ० प्र० पावर कारपोरेशन लि०, लखनऊ के पत्रांक 1925 पाकालि-नि/उ०प्र०ज०वि०नि०लि० दिनांक 25.8.10 के संदर्भ में पश्चिमांचल विद्युत वितरण निगम लि०, मेरठ की ओर से 'उ० प्र० जल विद्युत निगम लि०' को 15 नई लघु जल विद्युत परियोजनाओं के संदर्भ में भारत सरकार के विद्युत मंत्रालय द्वारा जारी "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Lincensees" के अधीन बिडिंग की कार्यवाही सम्पन्न किये जाने हेतु अधिकृत क्रेता (Authorized Representative) के रूप में निगम के निदेशक मण्डल से अनुमोदन की प्रत्याशा में अधिकृत किया जाता है।

(आशीष कुमार गोयल)
प्रबंध निदेशक

Name of the Distribution Company

105

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

GE. (P.P.A.)
U.P. P. C. L.
Shakti B. via Extn.
Tue. 10.11.10

(5)



दक्षिणांचल विद्युत वितरण निगम लि०, आगरा
(उ० प्र० सरकार का उपक्रम)

पत्रांक 269 / प्र० नि० / द० वि० वि० नि० लि० / (तक०)

दिनांक 10/01/11

विषय - 15 नई लघु विद्युत परियोजनाओं के विकास हेतु उ० प्र० शासन द्वारा प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निविदाये आमंत्रित करने के सम्बन्ध में।

अध्यक्ष एवं प्रबन्ध निदेशक
उ० प्र० पावर कारपोरेशन लि०
शक्ति भवन, 14 अशोक मार्ग
लखनऊ।

महोदय,

कृपया उपरोक्त विषयक उ० प्र० पावर कारपोरेशन लि० लखनऊ के पत्रांक -1927/पाकालि/नि०/ उ० प्र० ज० वि० नि० लि० दिनांक 25.08.10 के सन्दर्भ में 15 नई लघु विद्युत परियोजनाओं के विकास हेतु उ० प्र० शासन द्वारा प्रतिपादित नीति के क्रम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निजी क्षेत्र में स्थापना हेतु उ० प्र० जल विद्युत निगम लि०, लखनऊ को दक्षिणांचल विद्युत वितरण निगम लि०, की ओर से बिड प्रोसेस करने हेतु अधिकृत कि जाता है।

उ. अ. नि. (नि. प्र. नि. नि.)

12.1.11

(दुपद प्रसाद)
प्रबन्ध निदेशक

Name of the Distribution Company: U.P. P.C. D. Shakti B. & C. RENEWABLE ENERGY PVT. LTD.

106

Authorised Signatory

U.P. P.C. D.
Shakti B. & C. RENEWABLE ENERGY PVT. LTD.
12.1.11

(5)



पूर्वांचल विद्युत वितरण निगम लिमिटेड

"पूर्वांचल विद्युत भवन"
विद्युतनगर, पत्रालय-डी.एल.डब्ल्यू.
वाराणसी-221004

फैक्स

पत्रांक: 37 --/पूयिविनिलि(वा)/मु0अ0(नियोजन)/कैम्प

दिनांक: 16/01/2011

विषय :- 15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उ0प्र0 शासन द्वारा प्रतिपादित नीति के कम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निविदायें आमंत्रित करने के सम्बन्ध में।

अध्यक्ष एवं प्रबन्ध निदेशक,
उ0प्र0 पावर कारपोरेशन लि0,
शक्ति भवन, 14 अशोक मार्ग,
लखनऊ।

उपरोक्त विषयक उ0प्र0 पावर कारपोरेशन लि0, लखनऊ के पत्रांक 1926-पाकालि/नि0/उ0प्र0ज0वि0नि0लि0, दिनांक 25.08.2010 के सन्दर्भ में 15 नई लघु जल विद्युत परियोजनाओं के विकास हेतु उ0प्र0 शासन द्वारा प्रतिपादित नीति के कम में प्रतिस्पर्धात्मक बिडिंग के आधार पर निजी क्षेत्र में स्थापना हेतु उ0प्र0 जल विद्युत निगम लि0, को मध्यांचल विद्युत वितरण निगम लि0 की ओर से बिड प्रोसेस करने हेतु अधिकृत किया जाता है।

मु. म. (नि. य. न.)

दी. 24/1

(सुरेश राम)
प्रबन्ध निदेशक

Name of the Distribution Company

107

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

GE. 107 A. 1
U. P. P. C. 107
Shawar 3000.
Backnow

(7)

दिनांक 20 जुलाई, 2010 को शक्ति भवन, 14-अशोक मार्ग, लखनऊ स्थित परिषद कक्ष में आयोजित दक्षिणांचल विद्युत वितरण निगम लिमिटेड के निदेशक मण्डल की इक्तालिसी बैठक के कार्यवृत्त का उद्धरण।

विषय	निदेशक मण्डल का निर्णय
इक्तालिस(17)/10 विभिन्न स्रोतों से ऊर्जा कय करने हेतु वितरण निगमों द्वारा अधिकृत किये जाने एवं ऊर्जा का वितरण निगमवार आवंटन करने के सम्बन्ध में।	इक्तालिस(17)/10 निदेशक मण्डल ने विभिन्न स्रोतों से ऊर्जा कय करने हेतु ३००० पावर कारपोरेशन लि० को अधिकृत किया एवं उसमें दक्षिणांचल विद्युत वितरण निगम लि० के अंश 20 प्रतिशत का भी अनुमोदन प्रदान किया।

हरताक्षरित
(नवनीत सहगल)
अध्यक्ष

सत्य प्रतिलिपि

[Signature]
सत्य प्रतिलिपि
वितरण निगम लि०

Blary No. 1956...G.M.P.P.A.
Dated, 24.7.10

[Signature]
S.P. Pandey, C.E.
G.M. (P.P.A.)

Name of the Distribution Company

108

For B & G RENEWABLE ENERGY PVT. LTD.

Authorised Signatory

[Signature]
G.E. Ch.
108
108

(8)

दिनांक 20 जुलाई, 2010 को शक्ति भवन, 14-अशोक मार्ग, लखनऊ स्थित परिषद कक्ष में सम्पन्न पूर्वांचल विद्युत वितरण निगम लिमिटेड के निदेशक मण्डल की 49वीं बैठक के कार्यवृत्त का उद्धरण।

विषय	निदेशक मण्डल का निर्णय
उन्चास(10)/10 विभिन्न स्रोतों से ऊर्जा कय करने हेतु वितरण निगमों द्वारा अधिकृत किये जाने एवं ऊर्जा का वितरण निगमवार आवंटन करने के सम्बन्ध में।	उन्चास(10)/10 निदेशक मण्डल ने विभिन्न स्रोतों से ऊर्जा कय करने हेतु 30प्र0पावर कारपोरेशन लि0 को अधिकृत किया एवं उसमें पूर्वांचल विद्युत वितरण निगम लि0 के अंश 30 प्रतिशत का भी अनुमोदन प्रदान किया।

हस्ताक्षरित
(नवनीत सहगल)
अध्यक्ष

सत्य प्रतिलिपि

[Signature]
एन. जयका.
सचिव
पूर्वांचल विद्युत वितरण निगम लि0

Diary No. 1905-0 M. P. A.
Date: 29/7/10

[Signature]
Er. S. P. Pandey, Jr.

[Signature]
CH (P.P.A.) 29/7

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

109

[Signature]
P.P.A.
U.P. P.C. &
Shakti Bhawan Bham,
Lucknow.

(9)

दिनांक: 28 जुलाई, 2010

मध्यांचल विद्युत वितरण निगम लिमिटेड के निदेशक मण्डल द्वारा दिनांक 28 जुलाई, 2010 को पारित प्रस्ताव-

विषय	पारित प्रस्ताव
विभिन्न स्रोतों से ऊर्जा क्रय करने हेतु वितरण निगमों द्वारा अधिकृत किये जाने एवं ऊर्जा का वितरण निगमवार आवंटन करने के सम्बन्ध में।	एतद्वारा उ0प्र0 विद्युत नियामक आयोग के आदेश को ध्यान में रखते हुए ऊर्जा नीति-2008 के अन्तर्गत एम0ओ0यू0 रूट की सभी परियोजनाओं तथा अन्य स्रोतों, यथा राज्य क्षेत्र में उ0प्र0 राज्य विद्युत उत्पादन निगम तथा उ0प्र0 जल विद्युत निगम के अन्तर्गत विद्युत गृहों से उत्पादित ऊर्जा, केन्द्रीय क्षेत्र में एनटीपीसी, एनएचपीसी के अन्तर्गत विद्युत गृहों से उत्पादित ऊर्जा, सह उत्पादकों व कैप्टिव संयंत्रों से उत्पादित ऊर्जा तथा ट्रेडिंग कम्पनी/पावर एक्सचेंज व अन्य स्रोतों से अल्पकालीन ऊर्जा, से समग्रता से विद्युत क्रय किये जाने हेतु पावर कारपोरेशन को अधिकृत करते हुए उक्त क्रय की जाने वाली ऊर्जा का 20 प्रतिशत अंश मध्यांचल विद्युत वितरण निगम लि0 को आवंटित किये जाने का अनुमोदन प्रदान किया गया।

हस्ताक्षरित
(नवनीत सहगल)
अध्यक्ष

सत्य प्रतिलिपि

28/7/10
(एच० के० अग्रवाल)
कम्पनी सचिव
मध्यांचल वि० वित० लि०

Diary No. 187-7-08/PPA

Name of the Distribution Company

110

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

CE (PPA)
U.P.P.C.L.
Shakti Bhawan
Lucknow

मुख्य मामला (फाइल)

दिनांक: 27 जुलाई, 2010

पश्चिमान्चल विद्युत वितरण निगम लिमिटेड के निदेशक मण्डल द्वारा दिनांक 27 जुलाई, 2010 को पारित प्रस्ताव-

विषय	पारित प्रस्ताव
विभिन्न स्रोतों से ऊर्जा क्रय करने हेतु वितरण निगमों द्वारा अधिकृत किये जाने एवं ऊर्जा का वितरण निगमवार आवंटन करने के सम्बन्ध में।	एतद्वारा उ0प्र0 विद्युत नियामक आयोग के आदेश को ध्यान में रखते हुए ऊर्जा नीति-2009 के अन्तर्गत एम0ओ0यू0 रूट की सभी परियोजनाओं तथा अन्य स्रोतों, यथा राज्य क्षेत्र में उ0प्र0 राज्य विद्युत उत्पादन निगम तथा उ0प्र0 जल विद्युत निगम के अन्तर्गत विद्युत गृहों से उत्पादित ऊर्जा, केन्द्रीय क्षेत्र में एनटीपीसी, एनएचपीसी के अन्तर्गत विद्युत गृहों से उत्पादित ऊर्जा, सह उत्पादकों व कैप्टिव संयंत्रों से उत्पादित ऊर्जा तथा ट्रेडिंग कम्पनी/पावर एक्सचेंज व अन्य स्रोतों से अल्पकालीन ऊर्जा, से समग्रता से विद्युत क्रय किये जाने हेतु पावर कारपोरेशन को अधिकृत करते हुए उक्त क्रय की जाने वाली ऊर्जा का 30 प्रतिशत अंश पश्चिमान्चल विद्युत वितरण निगम लि0 को आवंटित किये जाने का अनुमोदन प्रदान किया गया।

हस्ताक्षरित
(नगनीत सहगल)
अध्यक्ष

सत्य प्रतिलिपि

(एच. के. अग्रवाल)
अध्यक्ष

पश्चिमान्चल वि. वित. नि. लि.

Diary No. 1206. त. प्र. नि. लि.
दिनांक 29/7/10

S.E. (SPA To) / E. S. P. (To) E.C.

Name of the Distribution Company

IDA

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

(S. P. A.)
D. P. P. C. L.
Joint Director
Lucknow

13. SCHEDULE 13: ALLOCATED CONTRACTED CAPACITY

Shall be filled in by Procurers on or prior to the Effective Date.


Contracted Capacity allocated to each of the Procurers shall be asunder

Name of the Procurer	Allocated Contracted Capacity (%)
Paschimanchal Vidyut Vitran Limited	30
Poorvanchal Vidyut Vitran Limited	30
Dakshinanchal Vidyut Vitran Limited	20
Madhyanchal Vidyut Vitran Limited	20

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


B & G RENEWABLE ENERGY PVT. LTD.
BANGALORE.

14. SCHEDULE 14: CAPITAL STRUCTURE SCHEDULE

(Not used)

Name of the Distribution Company
FOI B & G RENEWABLE ENERGY PVT. LTD

112

Authorized Signatory

EE. (P.P.A.)
U.P. P.C. L.
Chakti Bhawan Bx. 10.
Lucknow.

15. SCHEDULE 15: FORMAT OF THE PERFORMANCE GUARANTEE

In consideration of the [Insert name of the Selected Bidder or Selected Bidder on behalf of the Seller] agreeing to undertake the obligations under the PPA and the other RFP Project Documents and [Insert the name of the Procurer], agreeing to execute the PPA and the other RFP Project Documents inter alia with the Seller, regarding setting up the Power Station of the capacity of MW, at[Insert name of the place] for supply of power there from on long term basis, the _____ (insert name of bank] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to [Insert Name of the Procurer] at [insert the Place from the address of the respective Procurer indicated in PPA] forthwith on demand in writing from [Name of the Procurer] or any Officer authorised by it in this behalf, any amount upto and not exceeding Rupees _____ only [Insert the amount of the bank guarantee in respect of the respective Procurer as per the terms of PPA], on behalf of M/s. _____ [Insert name of the Seller or the Selected Bidder on behalf of the Seller].

This guarantee shall be valid and binding on this Bank up to and including _____

_____ and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract 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 _____. The Procurer shall be entitled to invoke this Guarantee till [Insert date which is 30 days after the date in the preceding sentence].

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

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by 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 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

Name of the Distribution Company

113

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

GE. (PPA)
U. P. P. C. Ltd.
Shakti Bhawan

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

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 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 Seller, to make any claim against or any demand on the Seller or to give any notice to the Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the 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 Procurer to any entity to whom the Procurer is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs.

_____ (Rs. _____ only) and it shall remain in force until _____
[Date to be inserted on the basis of Article 3.1.1 of PPA] with an additional claim period of thirty (30) days thereafter. 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.

Signature _____

Name _____

Power of Attorney No _____

For _____

Banker's Stamp and Full

Address. Dated this

_____ day of _____, 20__

Name of the Distribution Company

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

114

G.E. (P.P.A.)
U. P. P. C. Ltd.
Shakti Bhawan Extn.
Lucknow.

16. SCHEDULE 16: SELECTED BID

Name of the Distribution Company 115

FOR B & G RENEWABLE ENERGY PVT. LTD

Authorized Signatory

GE. (P.P.A.)
U. P. P. C. D.
Bakti Bhowan Bhatn.
know.

Petition Nos. 704 and 708 of 2010

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Hearing : 02.12.2010

Date of Order : 15.12.2010

PRESENT:

1. Hon'ble Shri Rajesh Awasthi, Chairman
2. Hon'ble Shri Shree Ram, Member
3. Hon'ble Smt. Meenakshi Singh, Member

IN THE MATTER OF:

Approval of Bid Documents (RFQ, RFP and model PPA) for procurement of power from Small Hydro Power Stations (SHP) through Tariff Based Competitive Bidding Process in Petition No. 704 of 2010 filed by UP Jal Vidyut Nigam Limited (UPJVNL) for projects at 15 locations and Petition No 708 of 2010 filed by UP New and renewable Energy Development Agency (UPNEDA) for projects at 14 locations who have been authorized by UP Government to conduct the bidding process.

BETWEEN


Chief Engineer (MPS)
UP Jal Vidyut Nigam Limited (UPJVNL),
12th Floor, Shakti Bhawan Ext.,
14, Ashok Marg, Lucknow

Director
UP New and Renewable Energy Development Agency (UPNEDA),
Vibhuti Khand, Gomti Nagar,
Lucknow

-----Petitioner(s)

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


O.E. (P.P.A.)
U. P. P. C. L.
Shakti Bhawan Ext.
Lucknow.



AND

1. The Chairman and Managing Director, U.P. Power Corporation Ltd., 7th Floor, Shakti Bhawan, 14, Ashok Marg, Lucknow.
2. The Managing Director, Purvanchal Vidyut Vitran Nigam Ltd., 132KV Substation, Bhikharipur, Vidyut Nagar, Varanasi.
3. The Managing Director, Paschimanchal Vidyut Vitran Nigam Ltd., Victoria Park Meerut.
4. The Managing Director, Madhyanchal Vidyut Vitran Nigam Ltd., Prag Narain Road, Lucknow.
5. The Managing Director, Dakchinanchal Vidyut Vitran Nigam Ltd., Gailania Road, Agra.

-----Respondent(s)

The following were present:

1. Sri G.S.Sinha, C.E., UPJVNL
2. Sri P.K.Saxena, E.E., UPJVNL
3. Sri Ram Kumar, Project Officer, UPNEDA
4. Sri N.D. Arora, V.P., IL&FS
5. Sri Pradeep Agarwal, A.V.P., IL&FS
6. Sri Sagar Jain, Simplex Infrastructures
7. Sri C.G. Appa, Design Group

For B & G RENEWABLE ENERGY PVT. LTD. Page 2 of 18

Authorised Signatory


CE. (P.P.A.)
U. P. P. C. L.
Shakti Bhawan Bldg.
Lucknow.




Order

(Public Hearing on 2.12.10)

1. The petitions have been filed for procurement of power from Small Hydro Power (SHP) Projects in the State through standard process of competitive bidding. The Petitioners have submitted that GoUP has authorized UP Jal Vidyut Nigam Limited (UPJVNL) to conduct bidding process for setting up SHPs at 15 locations and UP New and Renewable Energy Development Agency (UPNEDA) for setting up SHPs at 14 locations under GoUP Policy dated 24.09.2008 & 10.08.2009. The Procurers (DISCOMs) have also authorized them to conduct the bidding process for procurement of power on their behalf. It has been further submitted that as per the notification of Ministry of Power, GOI dated 11th November 1998 and 2nd June, 1999, Hydro Power Projects of small capacities selected through a process of competitive bidding by the competent Government does not require concurrence of Central Government. The Petitioners have submitted that Request for Qualification (RFQ), Request for Proposal (RFP) and model Power Purchase Agreement (PPA) documents, for selection of developer to supply power to UPPCL / DISCOMs on long term basis for 35 years under Case - 2 tariff based bidding guidelines, have been prepared as per the Commission's directions vide order dated 26.11.08 in petition no. 574/2008. In this order, the Commission had directed to develop documents for procurement of power on Case - 2 basis according to the standard bidding guidelines provided by the Central Government and the policy made by GoUP. UPJVNL and UPNEDA have submitted the draft RFQ, RFP and model PPA along with certain deviations for approval of the Commission.

For B & G RENEWABLE ENERGY PVT. LTD

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Lucknow.



2. The salient features of GoUP policy dated 24.09.2008 & 10.08.2009 are as follows:

- i. The land shall either be arranged by the developer or shall be provided by the Government on lease.
- ii. The right of way shall be arranged by the developer.
- iii. There would not be any electricity duty on the electricity generated from these projects.
- iv. The power shall be supplied to UPPCL/DISCOMs.
- v. MoU shall be signed by the developer with UPJVNL/UPNEDA.
- vi. The developer shall pay Rs. 0.05/unit of generated electricity to respective department as royalty for maintenance of canal.
- vii. The developer has to provide 12% of the power free of cost to the Government of UP.

3. The Petitioners have proposed to follow two stage bidding process. The major deviations from the Case - 2 standard bidding guidelines of central Government sought by the Petitioners are as below:

- i. Bid documents have been prepared on single tariff basis.
- ii. Timelines have been altered to 90 days from zero date instead of 270 days from the date of publication of RFQ as provided in the standard document.
- iii. In the qualifying criteria technical experience of developing infrastructure projects has been included.
- iv. Model PPA has been modified accordingly.

4. During the hearing, Sri G.S.Sinha, C.E., UPJVNL stated that the documents have been prepared broadly on the basis of Standard Bidding Documents (SBD) of Ministry of Power and Energy Policy of GoUP for development of canal based small hydro power projects in U.P. Sri Pradeep Agarwal, on behalf of the petitioners presented the details of draft documents along with the deviations sought by them in the petitions. He



submitted that the SBD has the provision of two part tariff which is not applicable for hydro projects having almost no fuel cost therefore they have envisioned the bidding process for small hydro projects with provision of only single part tariff. Thereby many provisions in the documents had to be changed accordingly. Sri Sagar Jain, Simplex Infrastructures, submitted that they are one of the largest construction companies of India which has executed many construction projects and has all the necessary qualifications except developing a project. He requested that on the basis of their experience in construction works they may be allowed to bid for SHPs and for that reason in the technical qualification criteria the word 'experience in construction' may be added.

The Commission enquired about the allocation of power among DISCOMs and the Authorization of DISCOMs in favor of UPPCL which has not been submitted with the petitions. It was directed to include these with the bidding documents. The representatives of UPJVNL and UPNEDA confirmed that they shall include these documents in the bidding documents. Regarding deviation in technical qualification criteria, the Commission opined that in this regard agencies having experience in developing / constructing of infrastructure projects may be allowed to participate in the bidding process subject to the condition that such agencies must have collaboration with some engineering company having experience in equipment engineering & commissioning related activities for power plants, so that the completion of the project within stipulated timeframe may not suffer any undue delay for want of technical experience. The Commission also apprehended that the period of 90 days proposed by the petitioner for conducting the bid process would be sufficient. Sri N.D. Arora, on behalf of the petitioners replied that the projects are canal based and do not require much project preparatory activity. As such they have envisaged to complete the bidding process in 90 days.

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For B & G RENEWABLE ENERGY PVT. LTD

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Lucknow.



In reference to the selection criteria of project developer, the Commission contemplated that once the selection of the successful bidder is done on the basis of lowest levelized tariff no discussions need to be held with any of the bidders thereafter for issue of LOI as proposed. Hence sub clause 3.4.1.3 and 3.4.1.4 is modified accordingly as detailed below. It was further pointed out by the Commission that the sequence of order of the sub clauses of clause 3.4 for successful bidder selection in model RFP requires to be altered to bring clarity in the document.

5. The deviations, proposed by the petitioners and approved by the Commission are enlisted as follows:

Request For Qualification (RFQ)


Standard Bid Document	Proposed Bid Condition	Justification	Commission's View
Bid Notification	Insert the following in the first para "The Bidder can bid for any number of projects. On allotment, in case of Request by the developer, 5% increase in the capacity quoted as minimum capacity is allowed beyond which separate permission has to be obtained by the developer from the concerned Authority(s), in case of expansion of capacity of the project"	For more clarity to the Bidder as the Bid is common for a number of projects. In case during detailed Engineering stage the Bidder feels the capacity can be enhanced, he would be allowed to do so upto 5% of Quoted capacity, beyond which he will have to take permission from the concerned authorities.	Approved
Section 1.2 Definitions	Definitions of "Lead Procurer" and "SPV" deleted Other definitions relevant to the Bid Document added	Not relevant SPVs are generally formed for Big Projects to inhouse land & clearances etc. In small hydro projects, land is mostly govt. land and shall be on lease basis. Also clearances of MOEF are not required being <25	Approved



		MW so no SPV formed for the projects. Accordingly all subsequent definitions and Clauses have been modified considering that the Procurer has not formed SPV Definition of Distribution Licensee and MoA/ MoU added	
Clause 1.3	The following line inserted "The Bidder can submit his Bid for any number of projects from the list of projects in the appended annexure."	For more clarity to the Bidder.	Approved
Clause 1.8 Transfer of Project -The assets shall be transferred back to the Procurer at a terminal value	The project alongwith all its assets built as part of the project will be transferred back to the Govt of Uttar Pradesh or its Authorized Representative (s) as the case maybe in working condition at the end of the term of PPA. The terminal value for transferring the assets back to the Govt of Uttar Pradesh at the end of the term of the PPA is ₹ 100.	All the assets will be transferred back to the respective state authorities as per the land lease / concession agreement at the end of term.	Approved
Clause 1.12 to 1.15	New Clauses related to developer responsibility, regulatory framework etc. added.	For better clarity for the Bidder	Approved
Clause 2.1.2	(a) Clause item relevant to Small hydro projects retained, rest deleted (b) At Clause 2.1.2 (i) the Internal Resource would be computed as five times the maximum internal resources generated during any of the last three years business operations (c) At clause 2.1.2 (iii), the first line modified to read as ₹ 1.20 crore per MW of the maximum capacity specified by the UPJVNL/ UPNEDA. In case the capacity of the project is less than 1 MW then minimum	(a) Only relevant portions of clause retained (b) To align it with the requirement of Net worth and Annual Turnover. (c) To ensure that only Bidders who have the minimum turnover will bid for the projects as approved by Empowered Committee of State of UP.	Approved with modification

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


CE (PPA)
U. P. P. C. L.
Shakti Bhanu Bhatnagar
Lucknow.



	annual turnover of ₹ 1.0 crore, shall be required.		
Clause 2.1.3 Qualifying Criteria – Technical Criteria: The Bidder must have experience of developing projects (not necessarily in the power sector) in the last 10 years whose aggregate capital costs must not be less than the amount equivalent to 0.75 Crore per MW of the capacity offered by the Bidder. Out of these projects, the capital cost of at least one project should be equivalent or more than 0.125 Cr. or equivalent US\$ per MW of the maximum capacity (expected gross capacity of the power station) specified by the Procurer/Authorised Representative.	Technical Requirements Qualifying Criteria – Technical Criteria The Bidder must have experience of <u>developing / constructing Infrastructure Projects</u> . The rest is the same as the Standard Bid Document. The definition of Infrastructure Projects has been expanded to include experience in exploration and drilling in mines and minerals as an eligibility criteria in addition to those specified as; "construction of different components of hydropower projects, roads, bridges, tunnel-works, barrages, head race channel, intake, power station structure and tail race channel, etc or projects such as roads, water supply in EPC/BOT/BOO or its variance"	To encourage more Bidders to participate in the Bidding Process to ensure competitiveness.	Approved
	New Clause 2.1.5 "The cumulative financial and technical qualification parameters will be considered while allocating the projects to a single developer if the developer is L1 or lowest in more than one project. In case the L1 Bidder on the strength of number of projects does not accept the LOI within the stipulated time frame, the projects will be offered to L2 as per the terms of Clause 3.4 of RFP".	For evaluation of Bids for a cluster of projects.	Approved

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


CE. (P.P.A.)
U.P.P.C. Ltd.
Shakti Bhawan Extn.
Lucknow.



Clause 2.3.1 The Bidders can collect the RFQ document in person	The Bidders can collect the RFQ and RFP document in person	This has been done to cut-short the time requirements for bidder selection.	Approved
Clause 2.6.2 Due dates – The total period anticipated for completion of the bidding process is 270 days from the date of publication of RFQ.	Clause 3.6.2 "Due Dates" The important deadlines are modified and the total period for completion of the bidding process up to the acceptance of Lol to developer from the date of Notice for invitation of tender has been taken as <u>90 days</u> from the date of Notice for invitation of tender	The timelines have been reduced considering the small size of the project. Also composite bidding is envisaged instead of two stage bidding process. This will also help in bringing up the project at the earliest.	Approved
Clause 2.7	Method of Submission: Modified to suit combined Bid Document	To bring better clarity to the Bidder	Approved
Clause 4.2.1	Definitions : shifted to Clause 1.2, Other Clauses suitably renumbered		Approved
	Clause 4.2.3.1 "For a Bidding Company" : Number of years has been modified from "five" to "three"	This is to align it with the financial criteria.	Approved
	Clause 4.2.3.1 "For a Bidding Consortium": Number of years has been modified from "five" to "three"	This is to align it with the financial criteria.	Approved
Checklist for Bidders	Point No vii) Five years modified to three years The Annexure Reference Nos have been corrected in line with the modified RFQ	This is to align it with the financial criteria	Approved
Annexure 2: Draft format for Joint deed Agreement among participating Distribution Licensees	Deleted; Annexure Nos modified accordingly	Only single procurer.	Authorization letter from DISCOMs for UPPCL for procurement of power from these SHPs shall be included at Annexure 2.
Annexure 8 A1 "Format for Financial Requirement- Internal Resource	The words "...annual accounts for the last five financial years" will be replaced by "...annual	This is to align it with the financial criteria	Approved




Generation" & Annexure 8 A2 "Format for financial Requirement - Networth"	accounts for the last three financial years"		
Annexure 8 B1- Internal Resource Generation	The words "...last five years audited annual accounts" to be replaced by "...last three years audited annual accounts"	This is to align it with the financial criteria	Approved
Annexure 10- Illustration of Affiliates	Deleted and other Annexure numbered accordingly	Not necessary	Approved

Request For Proposal (RFP)

Standard Bid Document	Proposed Bid Condition	Justification	Commission's View
Definitions: RFP Project Documents	Modified to remove irrelevant documents and include relevant documents	Removed: Hypothecation, and Port Services Agreement Included: Memorandum of Agreement	Approved
Definitions Irrelevant for such projects	Deleted	Not relevant	Approved Definition of Effective Date shall be added in the Definitions of RFP documents
Clause 1.6	Delete last line "The Bidder as part of the Bid should submit the terminal value for transferring the assets back to the GoUP at the end of the term of the PPA"	This is already covered at clause 1.8 of RIQ	Approved
Clause 2.1.1, 2.1.3, 2.1.3A	Deleted	Not relevant	Approved
Clause 2.1.3.1	Modified to remove irrelevant documents and include relevant documents	Removed: Hypothecation, and Port Services Agreement Included: Memorandum of Agreement	

For B & G RENEWABLE ENERGY PVT. LTD.

Authorised Signatory


G.B. (P.P.A.)
U.P.P. C. L.
Shakti Bhaw Singh
Lucknow.




Clause 2.1.3.2	Clauses related to SPV deleted	Not relevant	Approved
Clause 2.4	Bidder shall quote Fixed Tariff for each year of contract.	Tariff shall be single Part tariff	Approved
Clause 2.5.3	The first line of 2nd para "Further, in case Bidders need any clarifications after the issuance of amendments, they should ensure that written request for such clarification is delivered to the Procurer(s) or Authorised Representative, as the case may be, at least fifteen (15) days prior to the Bid Deadline as mentioned in clause 2.8.2" deleted	No clarifications would be sought/ entertained after issue of amendments which would take place after the Pre Bid Meeting. This is to reduce the timelines of the process.	Approved
Clause 2.6.3	Deleted	Not relevant in light of Clause 2.6.2	Approved
Clause 2.7.1.4	Modified with respect to single part tariff		Approved
Clause 2.7.2.4	Added the following "Further MNRE capital subsidy/benefits as qualified for small hydro projects are also available. Bidders are required to make necessary assessment of possibility of availing "carbon finance" and MNRE subsidy/benefits on their own	To include MNRE capital/subsidy	Approved
Clause 2.8.2 Timelines Due dates – The total period anticipated for COD of the Project is to be as per competitive bidding guidelines.	The important deadlines are modified and the total period for completion of the bidding process up to the acceptance of Lol to developer from the date of Notice for invitation of tender has been taken as 90 days from the date of Notice for invitation of tender	The timelines have been reduced considering the small size of the project. Also composite bidding is envisaged instead of two stage bidding process. This will also help in bringing up the project at the earliest.	Approved
Clause 2.12.1	Each Bidder shall submit the Bid accompanied by Bid Bond as per format given in	Annexure 12 deleted, so as not to restrict the Bidders	Approved
Clause 2.1.3.2	Delete the last line " The Performance Guarantee shall be issued only by the banks listed in annexure 12"	So as not to restrict the Bidders	Approved
Clause 2.15.	New Clause "RFP Bids of only those Bidders who are found to be responsive as	For better clarity, as RFP and RFQ are being issued	Approved

For B & G RENEWABLE ENERGY PVT. LTD

Page 11 of 18

Authorised Signatory



G. P. P. A.
U. P. P. C. L.
Shakti Bhawan Extn.
Lucknow.



	per the Evaluation Criteria of RFQ document shall be opened" added.	together. Other Clauses renumbered	
Clause 3.1	New Clause 3.1 "RFP of only those Bids whose RFQ qualify as per the terms of the RFQ shall be opened. The Bid Evaluation process for the RFQ is given in Volume I "Request for Qualification". Added	For better clarity, as RFP and RFQ are issued together. Other Clauses renumbered	Approved
Clause 3.3.1.3	Modified to read "The Bidders shall quote fixed Tariff for each project for each year during the term of the PPA, starting from the date of commencement of supply of power as specified in Format 1 of Annexure 4. Based on the Quoted Tariff provided by the Bidders, the Levellised Tariff (in ₹. Per Kwh) of each Bid shall be calculated for the term of the PPA as per the methodology mentioned in Clause 3.3.2"	Revised as per requirement of single tariff. Sub Clauses not relevant deleted	Approved
Clause 3.3.2 Computing Levellised Tariff	Irrelevant sections deleted. Clause 3.3.2.1 Modified to read as: The quoted tariff for each year during the term of the PPA shall be discounted applying the discounting rate issued by the UPERC/CERC to arrive at the levellised tariff (The present discounting rate as per Notification No. Eco 2/2009- CERC dated 30/9/2009 is 9.35 % for Bids opening upto 30/9/2010 or as applicable at the time of the date of bid opening	Revised as per requirements of single tariff structure.	Approved
Clause 3.4 Successful Bidder Selection	Clause revised as follows: 3.4 Step III- Successful Bidder Selection 3.4.1.1 The Levellised Tariff calculated as per Clause 3.3.2.1 shall be ranked from the lowest to the highest. 3.4.1.2	Revised as per requirements of single tariff structure.	Approved with modifications

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


G.E. (P.P.A.)
U. P. C. L.
Shakti Bhawan E&M
Lucknow.



	<p>If two bidders have the same levelled tariff, the Bidder, who has offered higher capacity of the plant and / or with lower escalation factor in initial years, shall be given the preference and shall be designated as L1.</p> <p>3.4.1.3</p> <p>The Bidder with lowest levelled tariff (L1) shall be selected and the Letter of Intent (LOI) shall be issued to such selected bidder.</p> <p>3.4.1.4</p> <p>The selected bidder shall enter into the Memorandum of Agreement and the PPA within the stipulated timeframe failing which it would be treated as non-acceptance of LOI.</p> <p>3.4.1.5</p> <p>If the Bidder offering lowest levelled tariff (L1) does not accept LOI within the stipulated timeframe as provided in this document, the Bidder offering the second lowest levelled tariff (L2) shall be selected.</p> <p>3.4.1.6</p> <p>If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clause 2.1.3.2 then in accordance with provisions of clause 2.1.4, the UPJVNL/UPNEDA reserve the right to cancel the Letter of Intent. Further, in such a case, the provisions of clause 2.7.1.3 shall apply.</p> <p>3.4.1.7</p> <p>The UPJVNL/UPNEDA, in its own discretion, has the right to reject any or all Bids if the Quoted Tariffs are not aligned to the</p>		
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	prevailing market prices.		
Annexure 1 List of Procurers	Deleted Added Data Sheet	Not relevant as there is only one Procurer Replaced by Project data sheet.	Authorization letter from DISCOMs for UPPCL for procurement of power from these SHPs shall be included at Annexure 2. The document having allocation of power among DISCOMs shall also be included.
Annexure 3 Format for RFP Documents	Modified	Documents not relevant deleted; Memorandum of Agreement added	Approved
Annexure 4 Format for Financial Bid	Modified	Revised as per requirements of single tariff structure	Approved
Annexure 6 Format 1 : Bidders Undertaking	Sl. No 8 Modified to read as We confirm that The Scheduled COD of the Power Station shall not be later than 48 months from the Effective Date as defined in PPA, subject to the provisions of the PPA	Original Clause pertains to larger projects and therefore modified.	Approved
Annexure 6 Format 3 : Scheduled COD and Contracted Capacity	Deleted	Not relevant	Approved
Annexure 12 List of Banks	Deleted	Not required as these are very small projects	Approved
Annexure 13 Illustration of Bid Evaluation/ Computation of Levellised Tariff	Deleted	Not required as it is a fixed tariff	Approved
Annexure 14 Illustration for	Changed to Annexure 12		Approved



Applicable Board Resolution Requirements			
Annexure 15 Format for disclosure	Deleted	Already enclosed in RFQ	Approved

Model Power Purchase Agreement

Standard Bid Document	Proposed Bid Condition	Justification	Commission's View
Clause 1.1	Delete definitions of Capacity Charge, Capacity Notice, Capital structure schedule, fuel, fuel supply agreement, minimum offtake guarantee, quoted capacity charge, quoted energy charge, quoted non escalable capacity charge, quoted escalable capacity charge, quoted non escalable energy charge, quoted escalable energy charge, quoted net heat rate, share purchase agreement, Super Critical Technology, UMPP	Not applicable for small/ micro hydro projects	Approved
	Quoted Tariff shall mean the single tariff quoted	In line with the RFQ and RFP	Approved
	In the definition of RFP Project documents, delete b) Default Escrow Agreement and c) Agreement to Hypothecate cum Deed of Hypothecation; Port Services Agreement	Not applicable for small/ micro hydro projects	Approved
	In the definition of "Terminal Price", replace the last line with "This price is the same as laid down in clause 1.8 of RFQ"		Approved
Clause 2.5 "Lead Procurer"	Delete	Not applicable as there is only one Procurer	Approved
Clause 3 Conditions subsequent to be	Delete Clause 3.1.2 ii) "The Seller shall have executed	Not applicable for small/	Approved



satisfied by the Seller and the Procurer	Fuel Supply Arrangement and provided the copies of the same to the Procurer"	micro hydro projects	
	Delete Clause 3.1.2 B regarding interstate projects	Not applicable	Approved
	In clause 3.3.2 replace "Rs 10 lakhs per MW" with "Rs 7.5 lakhs per MW"	Restricted to the maximum amount of the Performance Guarantee	Approved
	Delete Clause 3.4.1 regarding reduction in Performance Guarantee and its subsequent reference in Clause 3.4.2	No reduction in Performance Guarantee envisaged.	Approved
	In clause 3.5 replace "Rs 10.00 lakhs per MW" with "Rs 7.5 lakhs per MW"	Restricted to the maximum amount of the Performance Guarantee	Approved
Clause 6.3 "Commercial Documents"	Delete Sub clause 6.3.4, 6.3.5	Not applicable for small and micro hydro	Approved
Clause 8.2 "Derating"	Delete Sub clause 8.2.2, 8.2.3 and 8.2.4 with reference to De rating	Not envisaged for small/micro hydro projects which have been allotted on single tariff based bidding	Approved
Clause 8.3 "Availability"	Delete the words "provisions of ABT"	Not envisaged for small/micro hydro projects which have been allotted on single tariff based bidding	Not Approved The Clause shall remain as provided in standard document.
Clause 8.4 "Dispatch"	Delete the words "provisions of ABT"	Not envisaged for small/micro hydro projects which have been allotted on single tariff based bidding	Not Approved The Clause shall remain as provided in standard document.
Clause 11.4.2 "Collateral Arrangement"	Delete	Not envisaged for small hydro projects. Procuree's obligations covered through Letter of Credit	Approved
Clause 11.5 "Third Party Sales on default"	Delete clause 11.5.2	Not applicable in this arrangement.	Approved
	Delete Clause 11.5.4	Collateral Arrangement	Approved



		not envisaged	
	Delete Clause 11.5.6	No adjustment envisaged for single tariff	Approved
Clause 14.1 "Seller Event of Default"	Delete point (iv) & (v)	Not applicable for small and micro hydro projects	Approved
Schedule 5 "Commissioning and Testing"	Delete point 1.1 (ii) (d) "Fuel quality and cooling water temperature" and (iv) "Further, as a part of the Performance Test, the Unit shall be tested for compliance with parameters of Supercritical Technology"	Not applicable	Approved
Schedule 7 "Tariff"	Delete 1.1 (ii) and (iv)	Not applicable for small and micro hydro projects. and also it is a single tariff bid.	Approved
	Delete Clause 1.2 (iii) and (iv)	Penalty and Incentives are not envisaged	Approved
	Delete clause 1.2.2 "Monthly Capacity Charge"	Tariff is envisaged as Single Tariff as brought about in the RFP and RFQ.	Approved
	Clause 1.2.3 Replaced "Energy" with "Tariff". Define MEP _m as Monthly Charges for month m (in Rs) as per the approved single tariff in Rs/ kwh for the year Define MEP _n as the Tariff in Rs/kwh for the contract year "n" in which month "m" occurs Delete the rest of the para Deleted 1.2.5, 1.2.8	In line with single tariff bid for small and micro hydro projects	Approved
	In Clause 1.2.9 replace "25" years with "35" years	As it is 35 years for hydro power projects	Approved
Schedule 9 "Escalation Index"	Replace Para with "No Escalation envisaged as the approved tariff per year will include escalation"	The schedule has not been deleted so as to retain the sequence of schedule numbers and their references in the main text	Approved
Schedule 12 "List of Articles"	Replace with "Not applicable as there is only one Procurer"	The schedule has not been deleted so as to retain the sequence of schedule numbers and their references in the main text	Authorization letter from DISCOMs for UPPCL for procurement of power from these SHPs



			shall be included at Annexure 2. The document having allocation of power among DISCOMs shall also be included.
Schedule 17 "Substitution rights of lender"	Delete	Not envisaged for small hydro.	Approved
General	Replace "Capacity charge" and "Energy charge" with "Tariff Charge"	The Tariff is envisaged as Single Tariff as brought about in the RfP and RfQ.	Approved
	Delete all clauses related to SPV and UMPP	Not relevant	Approved

6. With the deviations as above, the Commission approves the documents of RFQ, RFP and Model PPA for conducting the bidding process for procurement of power from 15 nos. small hydro power projects of UPJVNL and 14 nos. of UPNEDA on long term (35 years) basis as per the Case-2 bidding guidelines of GOI.
7. These generating plants shall abide by the provisions of Acts, Rules, Codes, Regulations, Orders & Directions applicable in the State time to time regarding generation and evacuation of electricity.
8. The petitions are disposed of.

(Meenakshi Singh)

Member

(Shree Ram)

Member

(RajeshAwasthi)

Chairman


Place : Lucknow

Dated: 15.12.10

Page 18 of 18

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory


C.E. (P.P.A.)
U.P. P. C. L.
Shakti Birwan Estate
Lucknow.



Uttar Pradesh Electricity Regulatory Commission

Kisar Mandi Bhawan, II Floor, Gomti Nagar, Lucknow-226001 Phone: 2724471 Fax: 2724432 E-mail: secretary@uperc.org

Ref: UPERC/Secy/JD (G)/2015-603

Date: 16th February, 2015

1. Chief Engineer (PPA),
U.P. Power Corporation Ltd.,
4th Floor, Shakti Bhawan Extension,
Lucknow.

2. Chief Engineer (MPS)
UP Jal Vidyut Nigam Ltd.
12th Floor, Shakti Bhawan Extn.
14, Ashok Marg, Lucknow.

Dear Sir,

Please find enclosed herewith copy of the Commission's order dated 16.02.2015 in petition no. 985 of 2014.

Yours Sincerely,

(Arun Kumar Srivastava)
Secretary

SE (P) 2017

19/2/15

EE (S&I)

15/2/15

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

GE. (P.P.A.)
U.P. P.C. Ltd.
Shakti Bhawan Bldg.,
Lucknow.

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order: 16.02.2015

PRESENT:

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Smt Meenakshi Singh, Member
3. Hon'ble Sri Indu Bhushan Pandey, Member

IN THE MATTER OF: Approval for bid process for small hydro power projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) | Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt – Merrut & Sharda Sagar (1.5MW) in Distt Pilibhit, on the same bid document (RFQ, RFP and Model PPA), along with deviations as already approved by the Hon'ble UPERC vide order dated 15.12.2010.

AND

IN THE MATTER OF

UP Jal Vidyut Nigam Ltd.
12th Floor, Shakti Bhawan Extn.
14, Ashok Marg, Lucknow.


Petitioner

The Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan ,
14, Ashok Marg, Lucknow.

Respondent

The following were present:

1. Sri Ashok Rathi, CE, UPJVNL
2. Sri S. C. Bunkar, SE , UPJVNL
3. Sri P.K.Saxena, EE , UPJVNL
4. Sri Adil Qureshi, Manager IL&FS


O.E.(P.P.A.)
U.P.P.C.L.
Shakti Bhawan Extn.
Lucknow.

For B & G RENEWABLE ENERGY PVT. LTD



Authorised Signator

Page 1 of 3



Order

(Date of Hearing 16.12.2014)

1. The petition has been filed by UPJVNL for procurement of power from Small Hydro Power (SHP) projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) ! Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt – Merrut & Sharda Sagar (1.5 MW) in Distt Pilibhit, on the same bid document (RFQ, RFP and Model PPA), along with deviations as already approved by the Hon'ble UPERC vide order dated 15.12.2010.
2. The Petitioner has submitted that GoUP has authorized UP Jal Vidyut Nigam Limited (UPJVNL) to conduct bidding process for setting up SHPs at 15 locations for setting up SHPs under GoUP Policy dated 24.09.2008 & 10.08.2009. The Procurers (DISCOMs) have also authorized them to conduct the bidding process for procurement of power on their behalf.
3. The salient features of GoUP policy dated 24.09.2008 & 10.08.2009 are as follows:
 - i. The land shall either be arranged by the developer or shall be provided by the Government on lease.
 - ii. The right of way shall be arranged by the developer.
 - iii. There would not be any electricity duty on the electricity generated from these projects.
 - iv. The power shall be supplied to UPPCL/DISCOMs.
 - v. MoU shall be signed by the developer with UPJVNL/UPNEDA.
 - vi. The developer shall pay Rs. 0.05/unit of generated electricity to respective department as royalty for maintenance of canal.
 - vii. The developer has to provide 12% of the power free of cost to the Government of UP.

4. It had been earlier submitted by the petitioner that as per the notification of Ministry of Power, GOI dated 11th November 1998 and 2nd June, 1999

For B & G RENEWABLE ENERGY - PVT. LTD

Page 2 of

Authorised Signatory



U.P. P.C.L.
Shakti Bhawan Bldg.
Lucknow.

Hydro Power Projects of small capacities selected through a process of competitive bidding by the competent Government does not require concurrence of Central Government. The Petitioners have submitted that Request for Qualification (RFQ), Request for Proposal (RFP) and model Power Purchase Agreement (PPA) documents, for selection of developer to supply power to UPPCL / DISCOMs on long term basis for 35 years under Case - 2 tariff based bidding guidelines, have been prepared as per the Commission's directions vide order dated 26.11.08 in petition no. 574/2008. In this order, the Commission had directed to develop documents for procurement of power on Case - 2 basis according to the standard bidding guidelines provided by the Central Government and the policy made by GoUP.

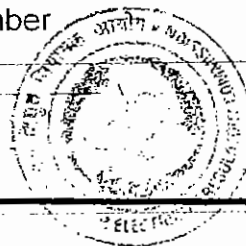
5. UPJVNL have submitted petition for approval of the same draft RFQ, RFP and model PPA along with deviations as earlier approved by the Commission vide order dated 15.12.2010. The Commission considers that the renewable energy in the state has to be promoted through such small hydroelectricity projects.
6. Therefore the Commission allows UPJVNL to initiate the bid process for small hydro power projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt - Merrut & Sharda-Sagar (1.5 MW) in Distt Pilibhit, on the same bid-document (RFQ, RFP and Model PPA) with same deviations as already approved vide order dated 15.12.2010. These generating plants shall abide by the provisions of Acts, Rules, Codes, Regulations, Orders & Directions applicable in the State time to time regarding generation and evacuation of electricity.
7. The petition is disposed of.

(Indu Bhushan Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Place: Lucknow
Dated: 16.02.2015



CE. (P.P.A.)
U.P.P.
Shakti Bham
Lucknow

For B & G RENEWABLE ENERGY PVT. LTD

Page 3 of 3

Authorised Signatory



Uttar Pradesh Electricity Regulatory Commission

Uttar Pradesh Electricity Regulatory Commission, 2nd Floor, Gomti Nagar, Lucknow-226001. Phone: 2260010. Fax: 2260012. Email: secretary@uperc.org

Ref: UPERC/Secy/JD (G)/2015-603

Date: 16th February, 2015

1. Chief Engineer (PPA),
U.P. Power-Corporation Ltd.,
4th Floor, Shakti Bhawan Extension,
Lucknow.

2. Chief Engineer (MPS)
UP Jal Vidyut Nigam Ltd.
12th Floor, Shakti Bhawan Extn.
14, Ashok Marg, Lucknow.

Dear Sir,

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Yours Sincerely,

(Arun Kumar Srivastava)
Secretary

SE (P) 2017

Attch

19/2/15

EE (S&I)

(15)

20/02

For B & G RENEWABLE ENERGY PVT. LTD

Authorised Signatory

Shakti Bhawan Extn.
Lucknow.

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order: 16.02.2015

PRESENT:

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Smt Meenakshi Singh, Member
3. Hon'ble Sri Indu Bhushan Pandey, Member

IN THE MATTER OF: Approval for bid process for small hydro power projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) I Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt – Merrut & Sharda Sagar (1.5MW) in Distt Pilibhit, on the same bid document (RFQ, RFP and Model PPA), along with deviations as already approved by the Hon'ble UPERC vide order dated 15.12.2010.

AND

IN THE MATTER OF

UP Jal Vidyut Nigam Ltd.
12th Floor, Shakti Bhawan Extn.
14, Ashok Marg, Lucknow.

-----Petitioner

The Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan ,
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2. Sri S. C. Bunkar, SE , UPJVNL
3. Sri P.K.Saxena, EE , UPJVNL
4. Sri Adil Qureshi, Manager IL&FS

(Signature)
CE (P.O.A.)
U.P. P.C. Ltd.
Shakti Bhawan Extn.
Lucknow.

For B & C RENEWABLE ENERGY PVT. LTD

(Signature)
Authorised Signatory



Order

(Date of Hearing 15.12.2014)

1. The petition has been filed by UPJVNL for procurement of power from Small Hydro Power (SHP) projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) & Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt - Merrut & Sharda Sagar (1.5 MW) in Distt Pilibhit, on the same bid document (RFQ, RFP and Model PPA), along with deviations as already approved by the Hon'ble UPERC vide order dated 15.12.2010.
2. The Petitioner has submitted that GoUP has authorized UP Jal Vidyut Nigam Limited (UPJVNL) to conduct bidding process for setting up SHPs at 15 locations for setting up SHPs under GoUP Policy dated 24.09.2008 & 10.08.2009. The Procurers (DISCOMs) have also authorized them to conduct the bidding process for procurement of power on their behalf.
3. The salient features of GoUP policy dated 24.09.2008 & 10.08.2009 are as follows:
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 - ii. The right of way shall be arranged by the developer.
 - iii. There would not be any electricity duty on the electricity generated from these projects.
 - iv. The power shall be supplied to UPPCL/DISCOMs.
 - v. MoU shall be signed by the developer with UPJVNL/UPNEDA.
 - vi. The developer shall pay Rs. 0.05/unit of generated electricity to respective department as royalty for maintenance of canal.
 - vii. The developer has to provide 12% of the power free of cost to the Government of UP.

4. It had been earlier submitted by the petitioner that as per the notification of Ministry of Power, GOI dated 11th November 1998 and 2nd June, 1999.

For B & G RENEWABLE ENERGY PVT. LTD

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Authorised Signatory



Handwritten signature and stamp. The stamp is a rectangular box containing the text 'CB. (P.P.A.)', 'U.P. P.C. & L.', and 'Shakti' followed by 'Lucknow'.

Hydro Power Projects of small capacities selected through a process of competitive bidding by the competent Government does not require concurrence of Central Government. The Petitioners have submitted that Request for Qualification (RFQ), Request for Proposal (RFP) and model Power Purchase Agreement (PPA) documents, for selection of developer to supply power to UPPCL / DISCOMs on long term basis for 35 years under Case - 2 tariff based bidding guidelines, have been prepared as per the Commission's directions vide order dated 26.11.08 in petition no. 574/2008. In this order, the Commission had directed to develop documents for procurement of power on Case - 2 basis according to the standard bidding guidelines provided by the Central Government and the policy made by GoUP.

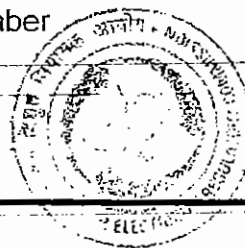
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6. Therefore the Commission allows UPJVNL to initiate the bid process for small hydro power projects- Nirgajni (7.0 MW), Chitaura (5.5 MW) I Distt- Muzaffar Nagar and Salawa (4.5 MW) & Bhola (5.0 MW) in Distt - Merrut & Sharda-Sagar (1.5 MW) in Distt Pilibhit, on the same bid document (RFQ, RFP and Model PPA) with same deviations as already approved vide order dated 15.12.2010. These generating plants shall abide by the provisions of Acts, Rules, Codes, Regulations, Orders & Directions applicable in the State time to time regarding generation and evacuation of electricity.
7. The petition is disposed of.

(Indu Bhushan Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Place: Lucknow
Dated: 16.02.2015



U.P.
Shri. Ravi
Lucknow

For B & G RENEWABLE ENERGY PVT. LTD

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