

**Power Purchase Agreement**

**between**

**Paschimanchal Vidyut Vitran Nigam Ltd.  
("Procurer 1")**

**and**

**Poorvanchal Vidyut Vitran Nigam Ltd.  
("Procurer 2")**

**and**

**Madhyanchal Vidyut Vitran Nigam Ltd.  
("Procurer 3")**

**and**

**Dakshinanchal Vidyut Vitran Nigam Ltd.  
("Procurer 4")**

**And**

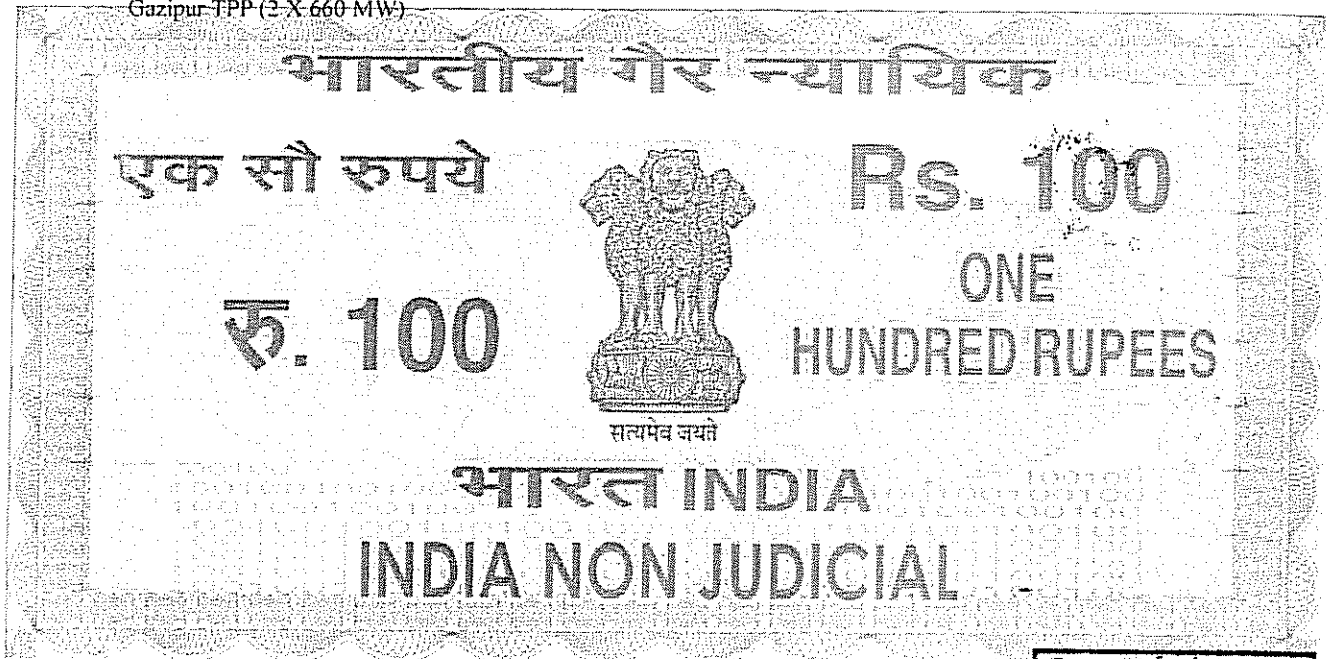
**Welspun Energy UP Private Limited  
("Seller")**

**(As Approved by UPERC)**

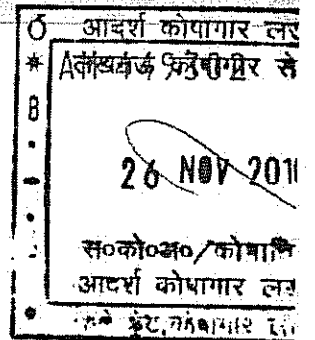
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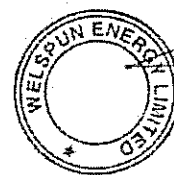
उत्तर प्रदेश UTTAR PRADESH

This Agreement is made on the 4<sup>th</sup> day of January, 2011

Between

- (1) **Paschimanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Victoria Park Meerut-250001 (Hereinafter 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 Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Vidyut Nagar, P.O. DLW, Varanasi-2201010 (Hereinafter 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

S.B. (P.P.A.)  
U. P. P. C. L.  
Shakti Bhawan Estate,  
Lucknow.



(3) **Madhyanchal Vidyut Vitran Nigam Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at 4A, Gokhale Marg, Lucknow-226001 (Hereinafter 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 Ltd**, a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Urja Bhawan, NH2, Sikandra, Agra (Hereinafter referred to as "**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, U.P duly authorised by each of the above Procurers to enter into this Agreement on their behalf

(The "Procurer1", "Procurer 2", "Procurer 3" and "Procurer 4" are (hereinafter collectively referred to as the "Procurers" and individually as a "Procurer")


and

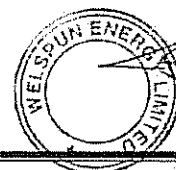
**Welspun Energy UP Private Limited** (the "Seller"), a company incorporated in India and registered under the Companies Act, 1956, having its registered office at Welspun House, 7<sup>th</sup> Floor, Kamla City, Senapati Bapat Marg, Lower Parel (West), Mumbai - 400013 (Hereinafter referred to as "**Seller**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective successors, nominees and permitted assigns)

(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 **State Government** has declared Energy Policy 2009 (as amended from time to time), envisaging development of Independent Power Plants (**IPPs**) under various routes including MoU Route, in order to set up/create required power

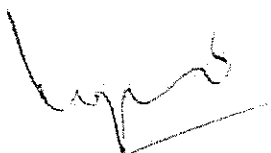
  
Gazipur TPP (2 x 660 MW). C. L.  
Shakti Bhawan Extn,  
Lucknow.

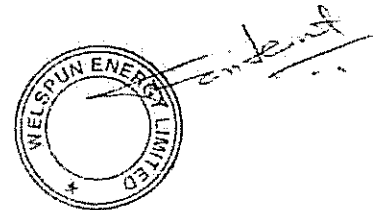


generation capacity for meeting power demand of the State, within the State at various places identified by the State and/or the private developers;

- (B) In furtherance of the aforesaid Policy, the State Nominated Agency, namely UP Power Corporation Limited ("UPPCL") has identified a site in District Gazipur for setting up of 2 x 660 MW Coal based Thermal Power Plant ("Project").
- (C) The State Government and M/s Welspun Energy Limited, signed an MOU for setting up the aforesaid Project on 31<sup>st</sup> December, 2010, ("the said MOU") and according to the provisions of which 100% of the Saleable Energy generated by the Project is to be sold by the Special Purpose Vehicle subsidiary company (the Seller) to Procurers and the Procurers have agreed to purchase such energy;
- (D) Not Used
- (E) All the Procurers, have duly authorised UPPCL vide their respective resolutions of their Board of Directors, to act as their Coordinating agency and represent, sign and execute this Agreement on their behalf and to do all other relevant and incidental things, as may be required;
- (F) The Procurers/UPPCL and the Company has mutually agreed to this Power Purchase Agreement in respect of the Company's Generating Plant being set up at at District Gazipur (UP), which has been duly approved by UPERC vide its Order dated 18.11.2010, 07.12.2010 and dated 04.01.2011 copy of which is collectively annexed hereto as **Annexure-1**

NOW, THEREFORE, in consideration of the foregoing and respective covenants and agreements set forth in this PPA and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

  
**SB. (P.P.A.)**  
**U. P. P. C. L.**  
Shanti B. Singh  
Lucknow.



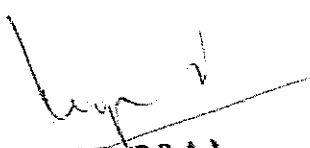
## 1 ARTICLE 1: DEFINITIONS AND INTERPRETATION

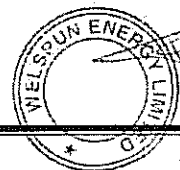
### 1.1 Definitions

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 initialled by them for identification;
"Agreement" or "Power Purchase Agreement" or "PPA"	means this document including its recitals and Schedules;
"Appropriate Commission"	means the Uttar Pradesh Electricity Regulatory Commission constituted under the Electricity Act, 2003, or such other succeeding authority or commission as may be notified by Government of UP 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;
"Auxiliary Consumption" or Normative Auxiliary Consumption or AUX	in relation to a period means the quantum of energy consumed by auxiliary equipments of the generating station and transformer losses within the generating station and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the Units of the generating station
"Availability Based Tariff" or "ABT" or "UPERC Regulations"	Shall mean all the regulations contained in the Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions of Generation Tariff) Regulations, 2009, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;

  
PPA  
Gazipur TPP (2x 660 MW)  
Shakti Bhawan Extd.  
Lucknow.



"Availability Factor" or "Availability" in relation to the Power Station for any period means the average of the daily average Declared Capacities (DCs) for all the days during that period expressed as a percentage of the Installed Capacity of the generating Station minus Normative Auxiliary Consumption in MW, and shall be computed in accordance with the following formula:

$$\text{Availability (\%)} = 10000 \times \sum_{i=1}^N \text{DC}_i / \{ N \times \text{IC} \times (100 - \text{AUX}_n) \} \%$$

Where,

IC = Installed Capacity of the generating Station in MW;

DC<sub>i</sub> = average Declared Capacity for the i<sup>th</sup> day of the period in MW

N = Number of days during the period; and

AUX<sub>n</sub> = Normative Auxiliary Consumption as a percentage of gross generation

"Available Capacity" means in each Settlement Period Power Station's Declared Capacity (as is grossed up for Normative Auxiliary Consumption) in that Settlement Period;

"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 of Uttar Pradesh in which the concerned Procurer's registered office is located;

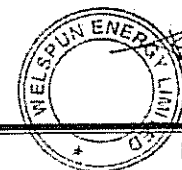
"Capacity Charge" or "Capacity Charges" or "Fixed Charge" shall have meaning ascribed thereto in Schedule 7;

"Capacity Notice" shall have the meaning ascribed thereto under ABT or the Grid Code;

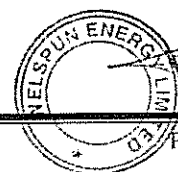
"Capital Cost" shall mean the total expenditure actually incurred by Seller, in setting up and constructing the Power Station, as approved by Appropriate Commission;

"Capital Structure Schedule" shall mean sources of finance used to finance the Capital Cost as provided in the Financing Agreements;

  
Gazipur TPP (2 x 660 MW)  
Shakti Barwin Extn.,  
Lucknow.



"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 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 Certificate 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 that 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 :

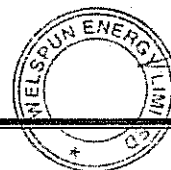
(i) in the financial year in which Scheduled COD of the first Unit would have occurred, a Contract Year shall end on the date immediately before the Scheduled COD of the first Unit and a new Contract Year shall begin once again from the Scheduled Commercial Operation Date of the first Unit and end on 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 as determined by the UPERC for the applicable Contract Year;

"Contracted Capacity"	means Hundred percent (100%) of Installed Capacity.
"Control Centre" or "Nodal Agency"	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;
"Current Rate(s) of Exchange"	shall mean the market rate(s) of foreign exchange not exceeding the highest State Bank of India (SBI) TT selling rates applicable to any liability of Seller in respect of any installment of the principal or any interest on any foreign Debt or where applicable in respect of any return on foreign equity as on the date on which such installment or as the case may be such return on foreign equity becomes due;
"Day"	Shall mean the 24 hour period beginning at 00:00 hours (IST);
"Date of Financial Closing" or "Investment Approval Date"	shall mean the date upon which the Financing Agreements have been executed and the same is approved by the Board of Directors of the Seller;
"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 Current Rate(s) of Exchange;
"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

  
Gazipur TPP (2 x 660 MW)  
U. P. P. C. L.,  
Shakti Bhawan Estate,  
Lucknow



(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;

“Delivery Point “ or  
“Interconnection Point”

means the points of delivery specified in Schedule 8 for fulfilling the obligation of the Seller to deliver the Electrical Output to the Procurers;

“Direct Non-Natural  
Force Majeure Event”

shall have the meaning ascribed thereto in Article 12.3(ii)(1);

“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 (30<sup>th</sup>) 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;

“Electricity Laws”

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

“Electrical Output”

means the net electrical output of the Power Station at the Delivery Point, as expressed in kWh;

“Emergency”

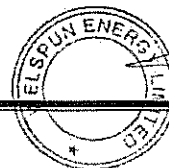
means a condition or situation that, in the opinion of the Procurers or RLDC or SLDC or the agency responsible for operating and maintaining the Interconnection and Transmission Facilities or the transmission company, as the case may be, poses a significant threat to the Procurer's or the said agency's 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

Gazipur TPP (2 x 660 MW)


EE. (P.P.A.)

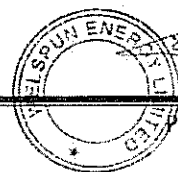
U. P. P. C. L.

Shakti Bhawan Bldg.,  
Lucknow.



"Energy Charges" or "Variable Charges"	equipment; Shall have the meaning ascribed to this term under Schedule 7;
"Expiry Date"	means the 25 <sup>th</sup> 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 25 <sup>th</sup> anniversary of the COD of the Power Station shall occur on June 1, 2038, i.e. in the Contract Year 2038-39;
"Final Test Certificate"	<p>Means</p> <ol style="list-style-type: none"> <li>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</li> <li>a certificate of the Independent Engineer certifying the result of a Repeat Performance Tests in accordance with Article 8.2.1 of this Agreement;</li> </ol>
"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 there under;
"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, 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;
"Fuel" or "Primary Fuel"	means primary fuel used to generate electricity namely, domestic coal and/or imported coal;
"Fuel Supply Agreements"	means the agreement(s) entered into between the Seller and the Fuel Supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station. In case the transportation of the Fuel is not the responsibility of the Fuel Supplier, the term shall also include the separate agreement between

  
 Gazipur 475 (2x360 MW)  
 U.P.P.C.L.  
 Shakti Bhawan Extn.,  
 Lucknow.



the Seller and the Fuel Transporter for the transportation of Fuel in addition to the agreement between the Seller and the Fuel Supplier for the supply of the Fuel;

"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 Unit(s);

"Fuel Supplier"

Northern Coalfields Ltd or any other coal company as per coal allocation by Ministry of Coal, GoI including any domestic/international coal supplier(s) and/or traders within or outside India;

"GOI"

Shall mean Government of the Republic of India;

"GOUP"

Shall mean the Government of the State of Uttar Pradesh;

"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;

"Gross Station Heat Rate or GHR"

means the heat energy input in kCal required to generate one kWh of electrical energy at generator terminals;

"Independent Engineer"

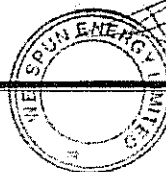
means an independent consulting engineering firm or group appointed by the Seller in consultation with the UPPCL/Lead Procurer eight (8) months prior to Scheduled COD of the first Unit, to carry out the functions in accordance with Article 4.7.1 and Article 6, Article 12 and Article 8 herein.

Provided that separate Independent Engineer may be appointed for the purposes of Article 4.7.1, Article 6, Article 12 and Article 8;

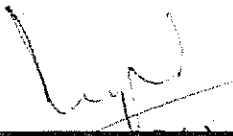
provided further that the separate Independent Engineer may be appointed for each financial year for the purposes of Article 8, and in such case, such Independent engineer shall be appointed at least ninety (90) days prior to the beginning of the financial year;

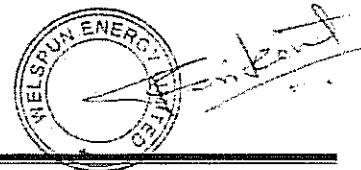
"Indirect Non-Natural Force Majeure Event"	Shall have the meaning ascribed thereto in Article 12.3(ii)(2).
"Indian Governmental Instrumentality"	means the GOI, Government of Uttar Pradesh and any ministry or, department or board or agency other regulatory or quasi-judicial authority controlled by GOI or Government of States where the Procurers and Project are located and includes the Appropriate Commission;
"Infirm Power"	shall have the meaning ascribed thereto in Article 11.1;
"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;
"Installed Capacity"	means the summation of the name plate capacities of all the Units of the Generating Station or the capacity of the generating station (reckoned at the generator terminals) as approved by the Commission from time to time. Provided that for the purpose of this Agreement installed capacity means in relation to the first Unit 660 MW and second Unit 660 MW rated gross name plate capacity each and in relation to the Generating Station as a whole means 1,320 MW rated gross name plate capacity, or such capacities as may be determined in accordance with Article 6.3.4 or Article 6.3.5 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) ;

*[Signature]*  
**SB. (P.P.A.)**  
**P. C. L.**  
 Gazipur TPP (2 x 660 MW)  
 Shakti  
 Lucknow.



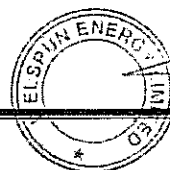
"Invoice" or "Bill"	means either a Monthly Tariff Invoice, a Supplementary Invoice or a Procurer Invoice;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 11.3.4;
"Law"	means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, 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 ;
"Lead Procurer"	shall have the meaning ascribed thereto in Article 2.5;
"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:  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 grossPower Station or Unit Maximum Continuous Rating as defined in the Grid Code;

  
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"Minimum Offtake Guarantee"	means guaranteed offtake of sixty five per cent (65%) of the total Contracted Capacity for all Procurers taken together during a Contract Year.
"Month"	Means a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	Means a monthly invoice comprising Capacity Charges (applicable after COD of the first unit) and Energy Charges, including incentive and penalty, as per Schedule 7 hereof;
"MVA"	shall mean mega-volt ampere.
"MW"	shall mean megawatt.
"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" or "Target Availability"	Means equal to eighty five per cent (85%) Availability at the Delivery Point on Contract Year basis.
"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 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 Month"	shall mean the period from the midnight following the Commercial Operation Date till the end of 2400 hours on the last Day of that Month and thereafter the period commencing at 0000 hours on the first Day of the Month and ending at 2400 hours on the last Day of the Month;

- "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 Agreement;
- "Performance Test " Means the test carried out in accordance with Article 1.1 of Schedule 5 of this Agreement;
- "Plant Load Factor" or "PLF" for a given period, means the total sent out energy corresponding to Scheduled Generation during the period, expressed as a percentage of sent out energy corresponding to Contracted Capacity in that period and shall be computed in accordance with the following formula:
- $$PLF (\%) = 10000 \times \frac{\sum_{i=1}^N SG_i}{\{ N \times CC \times (100 - AUX_n) \}} \%$$
- Where:
- (1) "CC" Contracted Capacity in MW;
  - (2) "SG<sub>i</sub>" = Scheduled Generation in MW for the Settlement Period i (only for the Procurers);
  - (3) "N" = Number of Settlement Periods during the period; and
  - (4) "AUX<sub>n</sub>" = Normative Auxiliary Consumption (%)
- "Preliminary Default Notice" Shall have the meaning ascribed thereto in Article 14 of this Agreement;
- "Promoter" Promoter means **Welspun Energy Limited** who have 100% share in the company (the Seller) and shall maintained minimum 26% equity at all times till commissioning of the Project and shall also remain bound by the obligations under MOU dated 31.12.2010 jointly with the Company
- "Power Station" or "Generating Station" Means the:
- (a) coal fired power generation facility comprising of any or all the Units;
  - (b) any associated fuel handling, treatment or storage facilities of the power generation facility referred to above;
  - (c) any water supply, treatment or storage facilities required for the operation of the power generation facility referred to



above;

- (d) the ash disposal system including ash dyke [as applicable];
- (e) township area for the staff colony; and
- (f) bay/s for transmission system in the switchyard of the power station,
- (g) 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" or Generating Plant 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;

"Project Documents" Mean

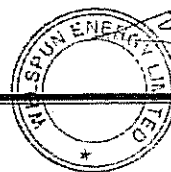
- a) MOU dated 31<sup>st</sup> December, 2010;
- b) Construction Contracts;
- c) Water Supply Agreement;
- d) Fuel Supply Agreements including the Fuel Transportation Agreement, if any;
- e) Financing Agreements;
- f) O&M contracts;
- g) any other agreements designated in writing as such, from time to 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 and power generation equipment and mine of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of:


- a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project;

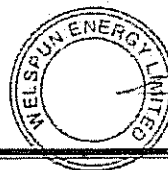
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- b) the requirements of Indian Law; and
- c) the physical conditions at the Site;

"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;
"Return on Equity"	Shall have the meaning ascribed thereto in Schedule-7.
"RLDC"	Means the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region in which the Project is located;
"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;
"Secondary Fuel"	Shall mean fuel oil and / or any other liquid fuel;
"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;

  
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"SERC"	means the State Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;
"Scheduled COD" or "Scheduled Commercial Operation Date"	means for the first Unit, fifty two (52) months from the date of Financial Closure and six months thereafter for next Unit of the generating plant, as determined and announced by the Seller to the Procurers, subject to the extension of time by Procurers in accordance with the provisions herein or due to Force Majeure Events;
"Scheduled Connection Date"	Shall mean the date falling 210 days before the Scheduled COD of first Unit;
"Scheduled Energy"	(i) means the quantum of ex-bus energy in kWh scheduled to be injected into the grid by the Unit corresponding to Scheduled Generation;
"Scheduled Generation" or "SG"	At any time or for any period or time block means schedule of generation in MW ex-bus given by the State Load Despatch Centre;
"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;
"Stabilisation Period"	shall mean, a period of One hundred Eighty (180) days commencing on the Commercial Operation Date of the each Unit;
"State Transmission Utility" or "STU"	shall have the meaning ascribed thereto in the Electricity Act 2003;
"Supercritical Technology"	means technology with minimum steam parameters at steam turbine inlet as decided with the Construction Contractor;

"Supplementary Bill"	Means a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 11;
"Tariff Payment"	Means the payments under Monthly Bills as referred to in Schedule 7 and the relevant Supplementary Bills;
"Tariff"	Means the tariff as computed in accordance with Schedule 7;
"Tariff Period"	means the period beginning on the COD of first Unit 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 the last Tariff Period shall end on the Expiry Date of this Agreement.
"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;
"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, i.e. 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"> <li>(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</li> <li>(b) all accrued interest and financing fees payable under the</li> </ul>

Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in Schedule 7 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity 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);

"US \$ " or "USD" or "Dollar"

Means the lawful currency of United States of America;

"Unit"

Means one steam generator, steam turbine, generator and associated auxiliaries of the Power Station

"Unscheduled Interchange" or "UI"

shall have the meaning ascribed thereto in Rule 24 of the UPERC (Terms and Conditions of Generation Tariff) Regulations 2009 as amended or revised from time to time;

"UPERC"

shall mean Uttar Pradesh Electricity Regulatory Commission;

"UPPTCL System"

shall mean the electrical supply and transmission system owned, used or controlled by UP Power Transmission Corporation Ltd. or its successor in UP for the purpose of transmitting and distributing electricity to the Procurers

"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;

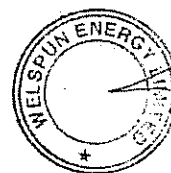
"Working Capital"

shall have the meaning ascribed to this term under Schedule 7;

"Year"

means a financial year starting from 1<sup>st</sup> April of a year to 31<sup>st</sup> March of the next year.

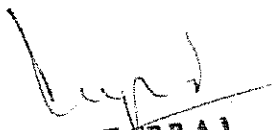
  
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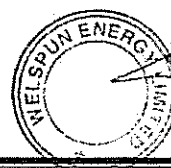


## 1.2 Interpretation


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

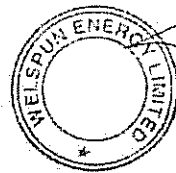
- 1.2.1 A "Recital", an "Article", a "Schedule" and a "paragraph/Clause" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph/clause respectively of this Agreement.
- 1.2.2 An "affiliate" of any party shall mean a company that either directly or indirectly controls or 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.
- 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.

  
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Shakti Bhawan Extn.  
Lucknow.



- 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 In case any thing in this Agreement is found in consistence with UPERC Regulations or orders passed by UPERC, then UPERC Regulations/Orders shall prevail over this Agreement.

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



## 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:

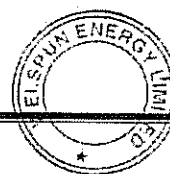
- i. if either all the Procurers (jointly) or Seller exercises a right to terminate, pursuant to Article 3.3, Article 4.5.3, Article 14.4.5 or Schedule 10 of this Agreement or any other provision of this Agreement; or
- ii. in such other circumstances as the Seller and all the Procurers (jointly) may agree, in writing.

### 2.3 Extension of term/Renewal

2.3.1 The Term of this Agreement can be extended beyond the Term of Agreement ("Renewal") by delivering written notice by either Party not later than one hundred and eighty (180) days prior to the end of the Term of Agreement, in which event the Term of this Agreement shall extend by mutual Agreement of the Parties for a mutually agreed period with such amendments as shall be mutually agreed by the Seller and the Procurers and approved by UPERC, as may be applicable; The extension in term of Agreement, as agreed by the Parties, would be allowed by the Commission after prudence check on a petition filed by the Seller before 90 days from the expiry of term of PPA.

2.3.2 Where either party signifies its intention to extend the term of this Agreement and negotiations between them commence, then this agreement shall be deemed to have been extended beyond the Term of

  
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Shakti Bhawan Extn  
Lucknow



Agreement until the negotiations are ended, provided that during this spill over period the terms and conditions for supply and purchase of power and other matters incidental thereto, will remain unchanged;

2.3.3 Notwithstanding anything to the contrary contained herein, if either Party exercises its right of renewal as aforesaid and if the Seller and the Procurers are unable to agree on the terms and conditions applicable during the mutually agreed period of the extended term within a period of one hundred and eighty (180) days from the Expiry Date, then the Term of Agreement shall end on the date of expiry of the Term of Agreement as automatically extended by spill over period.

2.3.4 Consequences on non-extension

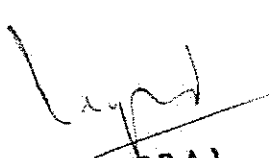
2.3.4.1 Sale of Energy to third party

If at the expiry of the Term of Agreement, the Agreement is not extended pursuant to the above provisions, then the Seller may, subject to applicable laws, sell the Contracted Capacity under this Agreement to any third party. In such case, the Procurers/UPPCL/SLDC/STU shall have no objection in wheeling such power, subject, however, to the payment of wheeling charges by the Seller or the third party buyer, as determined by the UPERC.

2.3.4.2 Sale of the Power Station

If at the expiry of the Term of Agreement, the Agreement is not extended, the Seller may also exercise its option to sell the Power Station as it may decide and in such event the Seller shall have discretion to sell the Power Station to any third party or the Procurer(s).

2.3.5 Extension on Force Majeure

  
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Notwithstanding anything to the contrary contained in this Agreement, the Scheduled Commercial Operation Date of any Unit shall be extended by the duration of any Force Majeure Event occurring during the Construction Period and as approved by the Commission.


## 2.4 Survival

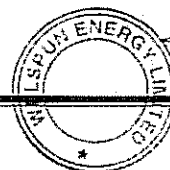
- 2.4.1 The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, including the right to receive Liquidated Damages as per the terms of this Agreement, nor shall it affect any continuing obligations for which this Agreement provides,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

## 2.5 Lead Procurer

- 2.5.1 The Procurers hereby appoint and authorise "Procurer No. 2 Purvanchal Vidyut Vitran Nigam Ltd [hereinafter referred to as the "Lead Procurer"] to represent all the Procurers for discharging the rights and obligations of the Procurers, which are required to be undertaken by the Procurers jointly as mentioned in Schedule 12 of this Agreement. Accordingly, all the Procurers shall follow and be bound by the decisions of the Lead Procurer on all such matters. Each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on such matters shall be deemed to have been on its/his behalf and shall be binding on each of the Procurers. The Seller shall be entitled to rely upon any such action, decision or communication from the Lead Procurer. It is clarified that this Article 2.5 is not intended to and shall not render the Lead Procurer liable to discharge individual Tariff payments of the other Procurers.

The Procurers hereby also appoint and authorise "Procurer No. YY" [Insert name of the Alternate Lead Procurer] (hereinafter referred to as the "Alternate Lead Procurer"), to act as Lead Procurer as per the provisions of this Article 2.5.1, on the occurrence of any Event of Default specified in Article 14.2 by the Lead Procurer. In such an event, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Preliminary Default Notice referred to in Article 14.4.2 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the Alternate Lead Procurer shall thereafter act as the Lead Procurer. In such a case, if the Seller so notifies, the Alternate Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under this Article 2.5.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the Procurer 2 in its capacity as Lead Procurer

  
(P.P.A.)  
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Lucknow.



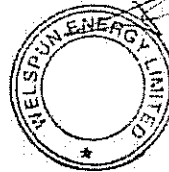
before such change, shall continue to be valid, in accordance with this Agreement.

In the event of Procurer YY becoming the Lead Procurer as per this Article, all the Procurers shall also appoint any of Procurers, other than Procurer 2, as an Alternate Lead Procurer and thereafter the provisions of this Article 2.5.1 shall be applicable.

2.5.2 Notwithstanding anything contained above, any decision which is required to be taken by the Procurers jointly under the provisions of Article 14 shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers as defined in Article 2.5.3 below.

2.5.3 Any decision taken by Procurers who taken together constitute minimum sixty five per cent (65%) of the Contracted Capacity of the Power Station and constitute in number atleast fifty per cent (50%) of the total number of Procurers ("Majority Procurers"), shall be binding on the Lead Procurer and all other Procurers. The Majority Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice.

*Signature*  
S.B. (P.P.A.)  
U.P.P.C. L.  
Shakti Bhawan Extn  
Lucknow.



**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, Promoter has provided to GOUP, the Bank Guarantee of an aggregate amount of Rupees sixty six crores (Rs. 66 crores) in accordance with the provisions of Clause 16 of the MOU dated 31<sup>st</sup> December, 2010. The MOU is valid till 18 months from the date of execution and the Bank Guarantee shall remain valid beyond six months of the period of the MOU. In case of breach of the MOU or any part thereof by above said company the said Bank Guarantee can be invoked by GOUP.


The Promoter shall provide 3 months before Schedule COD for the same aggregate amount of Bank Guarantee as provided with GoUP with the procurers having validity before 3 months from scheduled COD to after 3 months from scheduled COD. In case the actual COD is different from the scheduled COD then the validity of performance guarantee shall be adjusted accordingly so that it remains with the procurers upto after 3 months from actual COD.

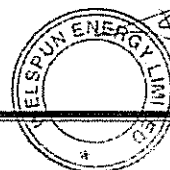
3.1.1A Not Used.

3.1.2 The Seller agrees and undertakes to duly perform and complete the following activities within eighteen [18] Months from the Effective Date unless such completion of activities 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 materially prejudice its rights or the performance of its obligations under this Agreement ;
- ii) the Seller shall have obtained coal linkage from Standing Linkage Committee (Long Term), GOI and provided the copies of the same to the Procurer;
- iii) the Seller shall have

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

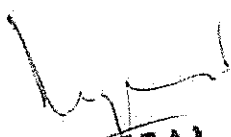
  
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Gazipur, Lucknow.

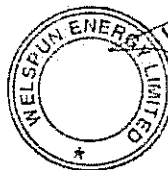


- b) Not used.
- c) Seller shall have achieved Financial Closure;
- iv) the Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required;
- v) the Seller shall have finalised the specific delivery point for supply of power in consultation with the Procurer;
- vi) the Seller shall have paid the price of 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.
- vii) 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 i.e (i) for the first Unit 52 months and for the second Unit 58 months , from the date of Financial Closure, or
  - b) that it intends to prepone the Scheduled COD to be (i) for the first Unit, [Insert Date] and for the second Unit [Insert Date] ; (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 date of Financial Closure.
- ix) Not Used.

3.1.2A The Procurers agrees and undertakes to duly perform and complete the following activities within eighteen [18] Months from the Effective Date unless such completion is affected due to the Seller's failure to comply with their obligations under Article 3.1.2 of this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the Seller

1. GoUP/UPPCL/the Procurers shall have facilitated supply of 53 Cusec water for the project and the required water use agreement have been duly executed with the concerned department/Authority of Government of U.P.
2. To the extent same are within their respective jurisdiction of, GOUP and/or Procurers shall have provided or caused to be provided all necessary permits and shall have provided Governmental Approvals for the electricity, and water supply required for the construction of the Units

  
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3. UPPCL/the Procurers shall also have reasonably assisted the Company in obtaining coal linkage from GoI, by providing appropriate recommendations.

4. the Seller has taken possession of land assembly with the support from GoUP.

**3.1.3 Not used**

**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 and 3.1.2A.


**3.3 Consequences of non-fulfillment of conditions under Article 3.1**

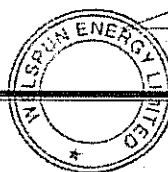
3.3.1 If the conditions specified in Article 3.1 are not duly fulfilled within the relevant stipulated time or after extended time, the Procurer or the Seller shall have the right to terminate this Agreement by giving a Termination Notice to the Seller/ Procurers in writing of at least seven (7) days to explain and/or perform

3.3.2 In case of inability of the Seller to perform the activities specified in Article 3.1 within the relevant stipulated time period or during extended period, otherwise than for the reasons directly attributable to the Procurers/ UPPCL/GOUP or Force Majeure event, this Agreement may be terminated by the UPPCL/the Lead Procurer at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Seller and in such case, the Seller shall be liable to pay liquidated damages, as may be determined by UPERC; provided that the amount of liquidated damages shall in no case exceed the amount of bank guarantee given by the Promoter as stated under Article 3.1.1

3.3.3 Similarly, in case of inability of UPPCL/Procurers to perform the activities specified in Article 3.1 within the relevant stipulated time period or during extended period, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to UPPCL/the Lead Procurer and in such case, the Procurer shall be liable to pay liquidated damages, as may be determined by UPERC, against site development and other charges, to Seller. Bank Guarantee of the Promoter shall be released forthwith

3.3.4 Any extension/increase in time period provided hereinabove shall also lead to equal increase in the time period of Bank Guarantee provided by the Seller under


  
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N. P. C. L.  
Gazipur TPP (2 x 660 MW)  
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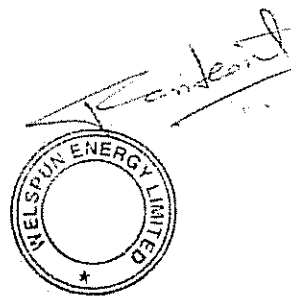


clause 3.1.1. The new scheduled COD shall be decided with the approval of Commission accordingly.

3.4 Not used

3.5 Not used

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



#### 4 ARTICLE 4 : DEVELOPMENT OF THE PROJECT

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

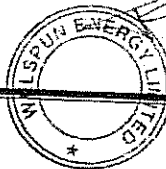
4.1.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

- 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;
- 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 Facilities 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 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 in proportion to the contracted capacity;



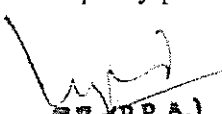
- d) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; and
- e) fulfilling obligations undertaken by them under this Agreement.

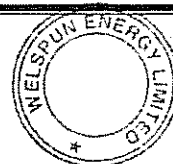
#### 4.3 Purchase and sale of Available Capacity and Scheduled Energy

- 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 hundred percent (100%) of the Available 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 hundred percent (100%) of the Available Capacity of the Power Station to each Procurer in proportion of each Procurer's then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.
- 4.3.3 The Scheduled Generation and Electrical Output attributable to hundred percent (100%) of Available Capacity shall be provided to each Procurer in proportion of each Procurer's then existing Allocated Contracted Capacity pursuant to Dispatch Instructions.
- 4.3.4 Not used

#### 4.4 Right to Available Capacity and Scheduled Energy

- 4.4.1 Subject to other provisions of this Agreement, the entire Contracted Capacity shall at all times be for the exclusive benefit of the Procurers and the Procurers 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 attributable to Procurers then existing Allocated Contract Capacity.
- 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.
  - (c) Lead Procurer has rejected Seller's proposal to procure coal from any source other than coal linkage as per clause 6.5
- 4.4.3 If any one or more than one Procurer do not avail power upto the Available Capacity provided by the Seller corresponding to such Procurer's or Procurers's

  
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Allocated Contracted 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 Capacity Charges from the Concerned Procurer(s) for such un-availed Available Capacity. In such a case the surplus amount received over variable charge shall be adjusted against the Fixed Charge liability of such Procurer(s) in respect of quantum of such capacity and/or power sold to third parties as provided below.

In case the surplus amount over variable charge is higher than the Fixed Charge liability of such Procurer(s) in respect of quantum of such capacity and/or power sold by Seller to third parties, such excess amount shall be retained by Seller. In case the surplus amount over Variable Charges is lower than the Fixed Charge liability of such Procurer(s) in respect of the quantum of such capacity and/or power sold by Seller to third parties, such short fall amount shall be payable by the respective Procurer(s). Provided that in such case, if the power is sold to its affiliate Company then it should not be sold at a tariff less than the agreed in this PPA. In such case, the Procurers/UPPCL/SLDC/STU shall have no objection in wheeling such power.

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 and other incidental usage of the same category.

4.4.5 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

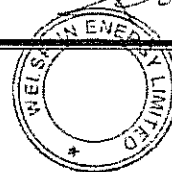
#### 4.5 Extensions of time

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) 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 Date of the Power Station as a whole, would not be extended by more than 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:

$$SLDb = [CCun \times dn \times DR1], \text{ if } dn \leq 180$$

$$SLDb = [CCun \times 180 \times DR1] + [CCun \times (dn - 180) \times DR2], \text{ if } dn > 180$$

Where:

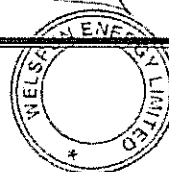
a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Commercial Operation Date of the Unit up to and including the day on which Unit is actually Commissioned;

b) "CCun" is the Contracted Capacity of the Unit "n";

c) "dn" is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date of the Unit "n" up to and including the day on which such Unit is actually Commissioned;

d) "DR1" is Rs. Five Hundred Fifty (550) of damages per MW per day of delay in case "dn" is less than 180days and "DR2" is Rs. Five thousand five hundred sixty

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Lucknow.



(5.560) of damages per MW per day of delay in case "dn" is equal to or more than 180 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 the amount of such Liquidated damages shall in no case for each Unit exceed Rupees Rs. 33 crore. 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:

- (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.

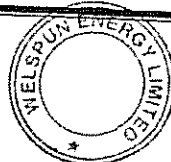
If the Seller fails to pay the amount of damages within the said period of ten (10) days, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Bank Guarantee. If the then existing Bank Guarantee is for an amount which is less than the amount of the liquidated 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

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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) 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
- b) a 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 Installed 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 Capacity 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 Capacity 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.

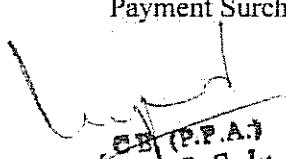
c) In case of an Indirect Non Natural Force Majeure Event (or Natural Force Majeure affecting the Procurer/s), the Procurers shall make payments for amounts ("Debt Service") relatable to such Unit, which are due under the Financing Agreements, subject to a maximum of Capacity Charges based on Normative Availability, for the period of such events in excess of three (3) continuous or non-continuous Months in the manner provided in (d) below.

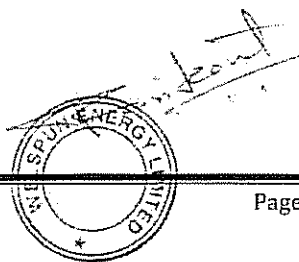
d) In case of delay due to Direct and Indirect Non Natural Force Majeure Events (or Natural Force Majeure affecting the Procurer/s), the Procurer shall be liable to make payments mentioned in (b) and (c) above, after Commissioning of the Unit, in the form of an increase in Capacity Charges. Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) 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 Installed 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 Capacity Charge for such Unit along with interest at the same rate as Late Payment Surcharge; and

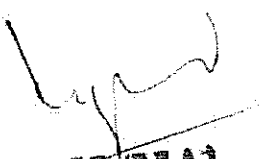
  
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Lucknow.

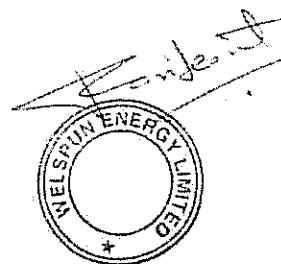


- c) If the Seller fails to achieve Commissioning by the Scheduled Commercial Operation Date, it shall also pay liquidated damages to the Procurer for such Unit calculated in accordance with Article 4.6.

**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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Lucknow.



## 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

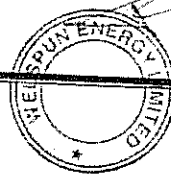
The Seller acknowledges that, before entering into this Agreement, it has had sufficient opportunity to investigate the Site and accepts full responsibility for its condition (including but not limited to its geological condition, on the Site, the adequacy of the road and rail links to the Site and the 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.

The cost of R&R if any shall be borne by Seller as per GOUP direction.

### 5.3 Information Regarding Interconnection Facilities

The Lead Procurer 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.

  
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Lucknow.



#### 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.,

#### 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) 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 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.

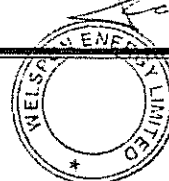
#### 5.7 Co-ordination of Construction Activities

5.7.1 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 Facilities

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

  
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Lucknow.

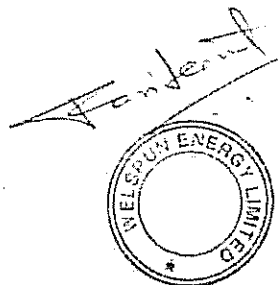


shall be responsible for coordinating all construction activities relating to the Project and who shall have access at all reasonable times to the other party's land for the purpose of apprising the progress of the work being carried on, subject to such designated persons or the party appointing them 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).



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



## 6 ARTICLE 6 : SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

### 6.1 Synchronization

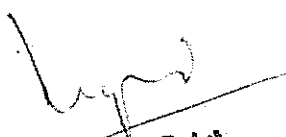
- 6.1.1 The Seller shall give the Procurers and RLDC/SLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to synchronise a Unit to the Grid System.
- 6.1.2 Subject to Article 6.1.1, Unit may be synchronised 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

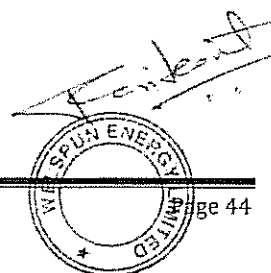
### 6.2 Commissioning

- 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 each designate qualified and authorised representatives to 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 (jointly) and the Independent Engineer with copies of the detailed Commissioning Test results. Within five (5) days of receipt of the Commissioning Test results, the Independent Engineer shall provide to the Procurers and 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

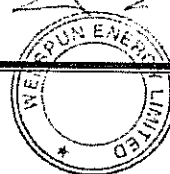
- 6.3.1 Unit shall be Commissioned on the day after the date when all the Procurers receive a Final Test Certificate of the Independent Engineer stating that:
  - a) the Commissioning Tests have been carried out in accordance with Schedule 5; and are acceptable to him; and

  
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- b) the results of the Performance Test show that the Unit's Tested Capacity, is not less than ninety five (95) percent of its Installed Capacity ( as existing on the Effective Date) .
- 6.3.2 If 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 and the Independent Engineer. 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 (i) If Unit's Tested Capacity after the most recent Performance Test mentioned in Article 6.3.3 has been conducted, is less than its Installed Capacity (as existing on the Effective Date) the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test:
- a) the Unit's Installed Capacity shall be reduced to its Tested Capacity, as existing at the most recent Performance Test referred to in Article 6.3.3 and Capacity Charges shall be paid with respect to such reduced Contracted Capacity;
  - b) Not Used
  - c) the Seller shall not be permitted to declare the Available Capacity of the Unit at a level greater than its Tested Capacity;
  - d) the Availability Factor of the derated Unit shall be calculated by reference to the reduced Installed Capacity; and

  
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- e) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Installed Capacity of the Power Station as a result of that derating (taking into account the contracted capacity of any Unit which has yet to be commissioned) .

(ii) If at the end of Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.3.3, whichever is earlier, , the Tested Capacity is less than the Installed Capacity (as existing on the Effective Date) the consequences mentioned in Article 8.2.2 shall apply for a period of one year. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.3.3, whichever is earlier.

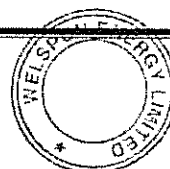
- 6.3.5 If Unit's Tested Capacity as at the end of the Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.3.3, whichever is earlier, is found to be more than it's Installed Capacity (as existing on the Effective Date) , the Tested Capacity shall be deemed to be the Unit's Installed Capacity. if any Procurer/s agrees and intimates the same to the Seller within thirty (30) days of receipt of the results of the last Performance Test to purchase hundred percent (100%) of such excess Tested Capacity and also provide to the Seller additional Letter of Credit and Collateral Arrangement (if applicable) for payments in respect of hundred percent (100%) of such excess Tested Capacity agreed to be purchased by such Procurer/s. In case the Procurer/s decide not to purchase hundred percent (100%) of such excess Tested Capacity, the Seller shall be free to sell such excess Tested Capacity to any third party and the Unit's Contracted Capacity shall remain unchanged, notwithstanding that the Tested Capacity exceeded the Installed Capacity.

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 of a Unit shall be solely and completely to his account and the Procurer's or Procurers' liability shall not exceed the amount of the Energy Charges payable for such power output, as set out in Schedule 7.

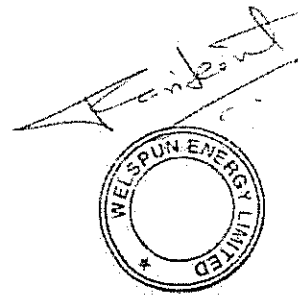
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## 6.5 Fuel

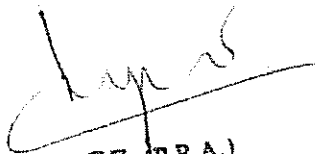
The responsibility for arrangement of Fuel shall be with the Seller who shall procure the Fuel under coal linkage granted to the Seller by the Central Government on the recommendations of GoUP. In case of any short supply, procurement of fuel indigenous / imported preferably through long term contract or on spot-purchase / short-term contract / E-auction basis from domestic and/or international suppliers /traders shall be within or outside India. The Seller shall obtain the prior consent of Lead Procurer about procurement of coal from any source other than coal linkage. In case the permission is not granted by the Lead Procurer within seven (7) working days from the date of receiving the application, it would be considered as deemed permission and if rejected then it would be considered as procurer's inability to procure which would make conditions of clause 4.4.3 of the agreed PPA applicable and loss of availability due to rejected fuel quantity shall be taken into account while computing availability and fixed charges.


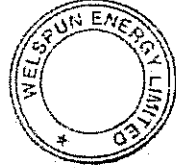
  
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U. P. P. C. L.  
Shakti Bhawan Bata  
Lucknow



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 shutdown or expected to be shut down except under Force Majeure or when the operation of the Unit is not permissible due to technical consideration.


  
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Shakti Bhawan E.C.  
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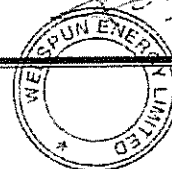
  


## 8 ARTICLE 8 : CAPACITY, AVAILABILITY AND DISPATCH

### 8.1 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 Installed Capacity of the commissioned units (excluding the unit(s) under planned outage for capital maintenance in consultation with the Regional Power Committee or SLDC) 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 Installed Capacity (as existing on the Effective Date) of the Commissioned Unit, 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 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 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 project is shut down or

  
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Lucknow



expected to be shut down except under force majeure or when the operation of unit is not permissible due to technical consideration.

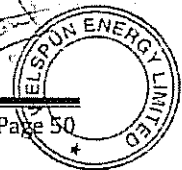
- 8.1.5 The Procurers requiring the Repeat Performance Test, may jointly, for reasonable cause, defer any Repeat Performance Test for up to fifteen (15) days from the date originally notified to the Seller in accordance with Article 8.1.2 if such Procurers jointly notify the Seller in writing at least 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 joint request of the Procurers shall be permitted only once in respect of each of the Repeat Performance Tests.

- 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 of 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 Derating

- 8.2.1 A Repeat Performance Test shall be concluded when all the Procurers receive the Final Test Certificate of the Independent Engineer stating that the Repeat Performance Test has been carried out satisfactorily in accordance with Schedule 5 and certified the Unit's (or if all the Units have been Commissioned, the Power Station's) then current Tested Capacity as demonstrated by the results of the Repeat Performance Test.
- 8.2.2 (i) If a Unit's (or if all the Units have been Commissioned, of the Power Station's) then current Tested Capacity as established by the Repeat Performance Test and the Final Test Certificate issued by the Independent Engineer, is less than its Installed Capacity as existing on the Effective Date, the Seller shall not be



permitted to declare the Available Capacity of the Unit (or if all the Units have been Commissioned, of the Power Station's) at a level greater than its Tested Capacity, in which case:


- a) the Unit's (or if all the Units have been Commissioned, of the Power Station's) Installed Capacity shall be reduced to its most recent Tested Capacity.
- b) Not Used;
- c) the Availability Factor of the derated Unit (or if all the Units have been Commissioned, of the Power Station's) shall be calculated by reference to the reduced Installed Capacity, and;
- d) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Installed Capacity of the Power Station as a result of that derating (taking into account the Installed Capacity of any Unit which has yet to be Commissioned);

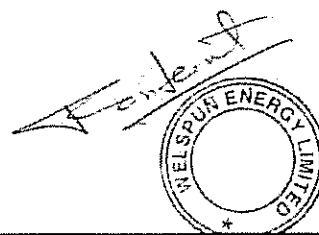
(ii) The consequences mentioned in sub-Article (i) above shall apply from the completion date of each Repeat Performance Test.. If at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier, the Tested Capacity is less than the Installed Capacity (as existing on the Effective Date ), the consequences mentioned in Article 8.2.2 shall apply for a period of at least one year after which the Seller shall have the right to undertake a Repeat Performance Test. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier

8.2.3 If the Independent Engineer certifies that it is unable to give a Final Test Certificate because events or circumstances beyond the Seller's reasonable control have prevented the Repeat Performance Test from being carried out in accordance with Schedule 5, the Procurers shall reschedule a Repeat Performance Test as soon as reasonably practicable.

8.2.4 If a Unit's—or if all the Units have been Commissioned, of the Power Station's , Tested Capacity is found to be more than it's Installed Capacity, the provisions of Article 6.3.5 shall apply mutatis mutandis.

### 8.3 Availability


  
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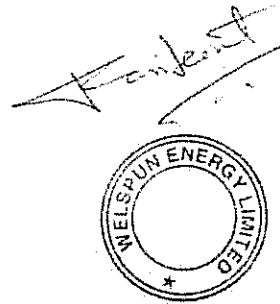


The Seller shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

#### 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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Shakti Bhawan Ecto  
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## 9 ARTICLE 9 : METERING AND ENERGY ACCOUNTING

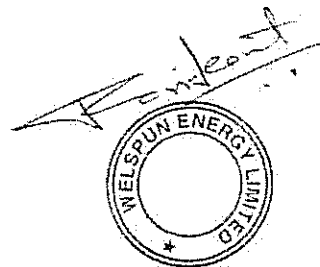
### 9.1 Meters

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 STU in installation of one set of required main and standby special energy meters for accurate recording of energy supplied by Seller. For these STU meters (110V, 1A, 4-wire), the Seller shall provide the required connection from EHV current transformers/ bushing CTs/ voltage transformers/ CVTs on EHV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better. The Seller may install any further meters for its own comfort at its own cost.

### 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.

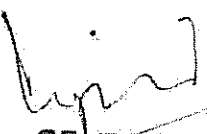
### 10.2 Application of Insurance Proceeds

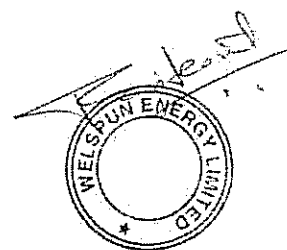
Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

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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**U. P. P. C. L.**  
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Lucknow



## 11 ARTICLE 11 : BILLING AND PAYMENT

### 11.1 General

From the COD of the 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 Procurers avails of any Electrical output from the Seller prior to the Commercial Operation Date ("Infirm Power") of the Unit, then the cost of Infirm Power shall be the energy charge calculated on the basis of cost of Fuel and the norms of Gross Station Heat Rate, Secondary Fuel consumption and Normative Auxiliary Consumption specified for calculation of Variable Charges during Stabilization Period.

Provided that the Seller shall inform to the Control Centre about its schedule for supply of such power two hrs ahead (as a special case) to testing of the Unit. Provided also that the start up power drawn by the Unit from the grid shall be adjusted with ex-bus energy and such energy shall be billed to Procurers proportion to its percentage share in Installed Capacity

### 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.

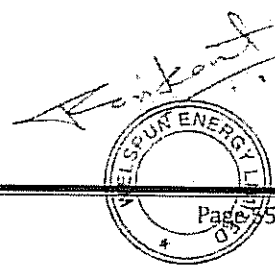
Provided that:

- 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:

  
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Lucknow.



- i. Availability and energy account for the relevant Month as per REA for Monthly Bill and RLDC / SLDC'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.

In case of payment default, all payments made by the Procurers shall be appropriated by the Seller in the following order of priority:

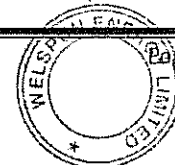
1. towards Late Payment Surcharge, payable by the Procurers, if any;
2. towards earlier unpaid Monthly Bill, if any; and
3. towards the then current Monthly Bill.

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 calculated @ 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 Lucknow (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 Lucknow 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 Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of one point two five percent (1.25%) per month as per UPERC Regulations.

11.3.5 For payment of Bills of capacity charge and energy charges through the letter of credit on presentation, a rebate of two percent (2%) shall be allowed. If the payments are made other than through a Letter of Credit but within a period of one months from the date of presentation of bills by seller a rebate of 1% shall be allowed as per UPERC Regulations.

The above rebate will be allowed only to those Procurers who credit to Seller's account the full Monthly Bill.


However, no rebate shall be payable on the bills raised on account of Change in Law relating to taxes, duties and cess.

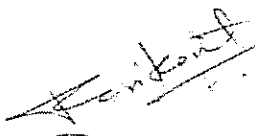
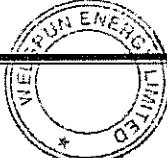
#### 11.4 Payment Mechanism

##### 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 for presentation of L/C documents in terms of Article 11.3.5, 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 the Scheduled COD or the Revised Scheduled COD (as applicable) of the first Unit, each Procurer shall through a scheduled bank at Lucknow 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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V.P.P.C.L.  
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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 estimated average monthly billing 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 fifteen (15) 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 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 fulfilment 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.

#### 11.4.2 Collateral Arrangement

- 11.4.2.1 As further support for each Procurer's obligations, on or prior to the Effective Date, each Procurer and the Seller shall execute separate Tripartite Default Escrow Agreement (referred as "Default Escrow Agreement") along with the Banker(s) designated as Escrow Agent for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement. Each of the Procurers and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby each Procurer shall agree to hypothecate, to the Seller, effective from forty five (45) days prior to the Scheduled COD or Revised Scheduled COD of the First Unit (as applicable), the amounts to the extent as required for the Letter of Credit as per Article 11.4.1.1 routed through the Default Escrow Account in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 11.4.1.1.

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

11.4.2.2 On the occurrence of all of the following events in respect of any Procurer:

(i) A period of not less than two (2) years from COD of Power Station, has elapsed; and

(ii) Such Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency mutually agreed between Seller and the Lender/s, consistently for a period of at least three (3) years; and

(iii) Immediately prior to the three (3) year period mentioned in sub-clause (ii) above, for a period of at least two (2) years there has been no Procurer Event of Default under Article 14 of the PPA, by such Procurer,

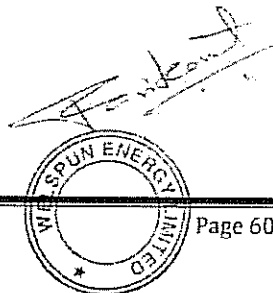
such Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the concerned Procurer in writing within thirty (30) days of receipt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

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 11.4.2.2 ceases to be true, then within 90 days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

11.4.2.3 Letter of Credit will be replenished for the drawals made, before the next due date from the date drawl of the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement.

### 11.5 Third Party Sales on default

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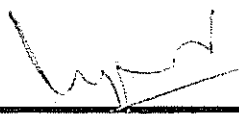
11.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the payment mechanism provided in this Agreement, the Seller shall follow the steps as enumerated in Articles 11.5.2 and 11.5.3.

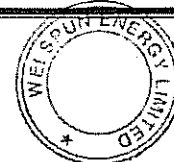
11.5.2 On the occurrence of the event mentioned in Article 11.5.1 and after giving a notice of at least seven (7) days to the defaulting Procurer(s), the Seller shall have the obligation to offer twenty five (25) per cent of the Contracted Capacity pertaining to such defaulting Procurer ("Default Electricity") to the other non - defaulting Procurers. The non defaulting Procurers have the right to receive the whole or any part of such Default Electricity by giving a notice within a further two (2) Business Days, in the following manner:

- a) In ratios equal to their then existing Allocated Contracted Capacities at the same Tariff as would have been applicable to the defaulting Procurer. Provided that, if any of the non-defaulting Procurer(s) does not elect to receive the Default Electricity so offered, the Seller shall offer the balance of the Default Electricity to other non-defaulting Procurer(s) at the same Tariff in proportion to their additional requirement as intimated.
- b) At a lower tariff as may be specified by non-defaulting Procurer(s) to the extent of their capacity requirements, in descending order of the tariff. Provided that, the Seller has the right to obtain tariff quotes from third party(s) for sale of Default Electricity not requisitioned under (a) above. The tariff quotes received from non-defaulting Procurer(s) and such third party(s) shall be ranked in descending order of the tariff and the Seller shall sell Default Electricity in such descending order and in compliance with Article 11.5.3, to the extent applicable.

In case of both (a) and (b) above if non- defaulting Procurer(s) receive Default Electricity, then, subject to applicability of Article 11.4.2.2 of this Agreement, such non defaulting Procurer(s) shall within seven (7) days of exercising the right of election, either open an additional Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 11.4 or increase the value of escrow cover under the Default Escrow Agreement and related security under Agreement to Hypothecate cum deed of Hypothecation secure payment for that part of the Default Electricity as such non- defaulting Procurer elects to receive.

Provided further within two (2) Months of such election by the non-defaulting Procurer(s), unless the event outlined in Article 11.5.7 has occurred, such Procurer(s) shall open a Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 11.4 and shall increase the

  
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value of escrow cover under the Default Escrow Agreement and related Agreement to Hypothecation cum Deed of Hypothecation. Provided that in case the events mentioned in Article 11.4.2.2 (i), (ii) and (iii) are true, then the requirement with respect to Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation in this Article 11.5.2 shall be applicable as per Article 11.4.2.2.

11.5.3 If all the non defaulting Procurers do not make the election to receive the Default Electricity or a part thereof, within two (2) Business Days of it being so offered under and as per Article 11.5.2, or all such Procurers expressly waive their first right to receive the same, the Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

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

11.5.4 If the Collateral Arrangement is not fully restored by the Defaulting Procurer within thirty (30) days of the non-payment by a Procurer of a Invoice by its Due Date, the provisions of Article 11.5.2 and Article 11.5.3 shall apply with respect to one hundred (100) per cent of the Contracted Capacity. Provided that in case the events mentioned in Article 11.4.2.2 (i), (ii) and (iii) are true, then this Article 11.5.4 shall be applicable as per Article 11.4.2.2.

11.5.5 Provided that, in the case of Article 11.5.3 or 11.5.4, 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 Energy Charges.

11.5.6 In case of third party sales or sales to any other non defaulting Procurers as permitted by this Article 11.5, the adjustment of the surplus revenue over Energy Charges (applicable to the defaulting Procurer) attributable to such electricity sold, shall be adjusted as under :

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

The liability of the defaulting Procurer towards making Capacity Charge payments to the Seller even for electricity sold to third parties or other non defaulting Procurers or remaining unsold during such periods will remain unaffected. Provided such Capacity Charge payment liability shall cease on the date which occurs on the Expiry of a period of three (3) years and hundred (100) days from the date of occurrence of a Procurer Event of Default under Article 14.2 (i), provided if prior to such date, such Procurer Event of Default has not



ceased and regular supply of electricity for a period of at least ninety (90) continuous days has not occurred.

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 and restores Default Escrow Account (if applicable) as mentioned in Article 11.4.2.1 ; or
- (b) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 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;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

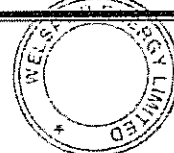
11.6.5 Upon receipt of notice of disagreement to the Bill Dispute Notice under Article 11.6.4, authorised representative(s) or a director of the board of directors/member

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. 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/ SLDC (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.

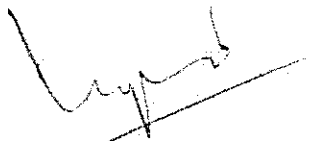
11.8.2 Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurers by the 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.

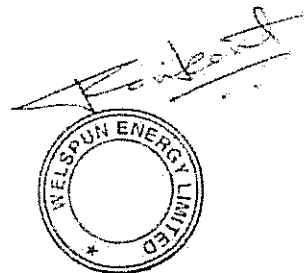
11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 11.3.4.

#### **11.9 Payment for Start up Power**

As ascribed in Article 11.1.

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.

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



## 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:

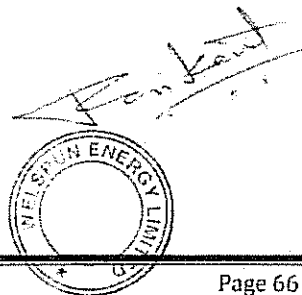
- a. late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Project; or
- b. a delay in the performance of any of the Seller's contractors.

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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U. P. P. C. L.  
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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) Radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site by the Affected Party or those employed or engaged by the Affected Party.
- c) Industry wide strikes and labor disturbances having a nationwide impact in India.

**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:

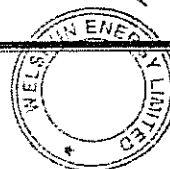
- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 12.2;
- c. Non-performance 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

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Shakti Bhawan Extn,  
Lucknow



Agreement, as soon as practicable after becoming aware of each of these cessations.

#### 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

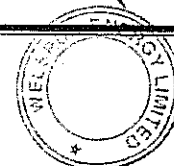
Subject to this Article 12:

- (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 Capacity Charges based on Normative Availability, relatable to such Unit, which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer(s) from the Seller, in the form of an increase in Capacity Charge. Provided such Capacity Charge increase shall be

determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure had not occurred.

Provided that the Procurers will have the above obligation to make payment for the Debt Service only (a) after 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 Capacity Charges equal to Debt Service.

- e) If the average Availability of the Power Station is reduced below eighty five (85) 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 five (85) 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 five (85) 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 Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure in the form of an increase in Capacity Charge. Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure had not occurred.
- (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 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 capable of delivering the Installed Capacity and being Available, had there




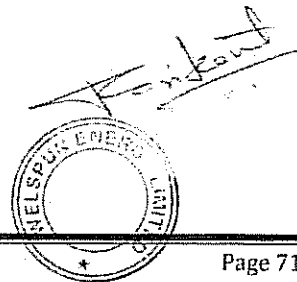
been no such Direct or Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer/s). In case, the Available Capacity as established by the said Repeat Performance Test (provided that for such Repeat Performance Test, the limitation imposed by Article 8.1.1 shall 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 Capacity 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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**U. P. P. C. L.**  
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 Lucknow



## 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 Effective Date:

(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 or Procurers as the case may be, 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 cost of implementing Environmental Management Plan for the Power Station (;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the 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 Law

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.

#### 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 as approved by UPERC. In case of Dispute, Article 17 shall apply.

**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 Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

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

**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.

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.

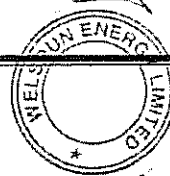
**13.4 Tariff Adjustment Payment on account of Change in Law**

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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Lucknow



## 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 Installed Capacity, as existing on the Effective Date, and such Tested Capacity remains below ninety two (92) percent even for a period of three (3) Months thereafter; or
- iv) after Commercial Operation Date of all the Units of the Power Station, the Seller fails to achieve Average Availability of sixty five percent (65%), for a period of twelve (12) consecutive Months or within a non-consecutive period of twelve (12) Months within any continuous aggregate period of thirty six (36) Months, or
- v) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore required to be made to Procurer/s under this Agreement, within three (3) Months after the Due Date of an undisputed invoice /demand raised by the said Procurer/s on the Seller or (b) of an amount upto Rupees One (1) Crore required to be made to Procurer/s under this Agreement within six (6) Months after the Due Date of an undisputed invoice/demand, or
- vi) any of the representations and warranties made by the Seller 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 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 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 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 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 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) Not Used
- xiii) Not Used
- 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
- 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 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.

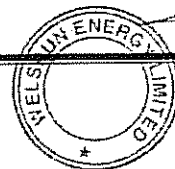
#### 14.3 Procedure for cases of Seller Event of Default

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.

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 Capacity 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.

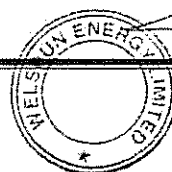
14.4.2 Without in any manner affecting the rights of the Seller under Article 14.4.1, on the occurrence of any Procurer Event of Default specified in Article 14.2 the Seller shall have the right to deliver to all the Procurers a Seller Preliminary Default Notice, which notice shall specify in reasonable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

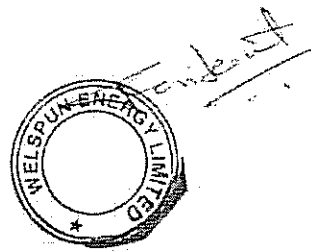
14.4.5 (i) After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have been remedied, the Seller shall be free to sell the then existing 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 Capacity Charges based on Normative Availability to the Seller for the period three (3) years from the eighth day after the expiry of the Consultation Period. Provided further that in such three year period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurer/s. For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for the three year period. During such period, the Seller shall use its best effort to sell the Allocated Contracted Capacity and 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

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Lucknow



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

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



## 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 (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.

(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, 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.

## 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 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

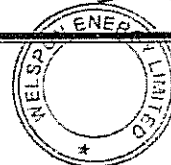
16.2.1 Notwithstanding anything contained in Article 16.1, the Seller may create any encumbrance over all or part of the receivables, Payment Mechanism or the other assets of the Project in favour of the Lenders or the Lender's Representative on their behalf, as security for:

- (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 16.2.1 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 subrogation. For the purposes of this Article, Additional Compensation


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Lucknow.

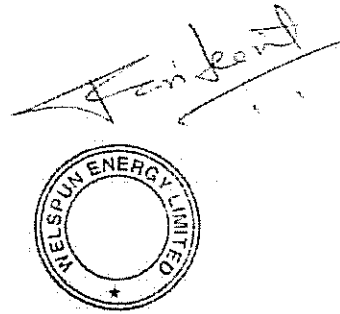


shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurers as well as compensated by any person other than the Procurers for the same event.

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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Lucknow



## 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.

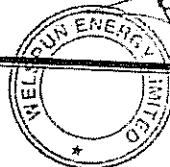
17.2.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 17.2.1 or Article 17.2.2, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in 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.

SB (P.P.A.)  
H.P.C.L.

Gazipur Thermal Power Station  
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.

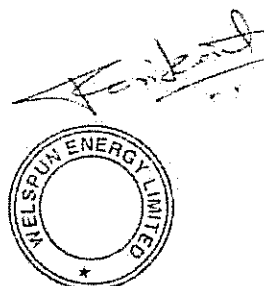
17.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 17.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this 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 Lucknow, Uttar Pradesh. 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.

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



## 18 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 not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

(a) to their professional advisors;

(b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

(c) disclosures required under Law.

without the prior written consent of the other Parties.

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.

#### 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.

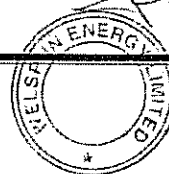
#### 18.8 No Partnership

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 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 (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.

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



### 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 to be given under this Agreement shall be in writing and in the English Language.

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

#### Seller :

Chairman  
Welspun Energy UP Private Limited  
Welspun House, 7th Floor  
Kamla City, Lower Parel (West)  
Mumbai -400013

#### Procurer 1:

Managing Director  
Paschimanchal Vidyut Vitran Nigam Limited  
Hydel Inspection House, Hydel Colony, Victoria Park, Meerut-250001  
Fax: 0121-2666062  
Phone: 0121-2665734

#### Procurer 2:

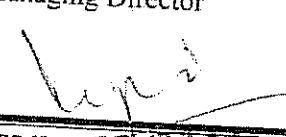
Managing Director  
Poorvanchal Vidyut Vitran Nigam Limited  
Vidyut Nagar, Bhikharipur, P.O. DLW, Varanasi-221010  
Fax: 0542-2319158  
Phone: 0542-2318437

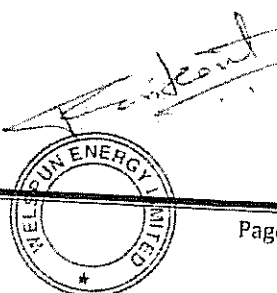
#### Procurer 3:

Managing Director  
Madhyanchal Vidyut Vitran Nigam Limited  
4A Ghokle Marg, Lucknow-226001  
Fax: 0522-2208769  
Phone: 0522-2208737

#### Procurer 4:

Managing Director

  
Gazipur TPP (2 x 60 MW) P. A. I.  
U. P. P. C. L.  
Shakti Bhawan Extn.  
Lucknow.



Dakshinanchal Vidyut Vitran Nigam Limited  
Urja Bhavan, NH - 2 (Agra - Delhi Bypass Road), Sikandra, Agra - 282002

Fax: 0522-2208769  
Phone: 0522-2208737

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**

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 supercede 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 Seller before the date of this Agreement, regarding the subject matter of this Agreement.

#### 18.17 No Consequential or Indirect Losses

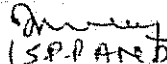
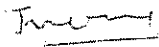
The liability of the Seller and the Procurers shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event except as otherwise provided expressly in this agreement shall the Procurers or the Seller claim from one another any indirect or consequential losses or damages.

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Lucknow.

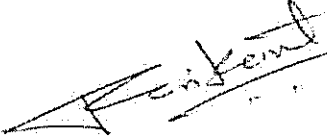
For and on behalf of  
[Procurer1]

  
Signature with seal  
Shakti Bhawan Extn.  
Lucknow.

Witness:


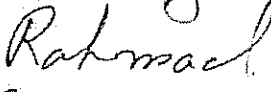
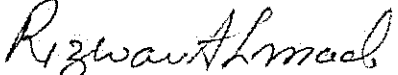
1.   
(S.P. PANDEY) EEPPA
2.   
(Jagant Verma)  
EEPPA

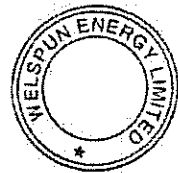
For and on behalf of  
[THE Seller]




Signature with seal

Witness:

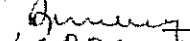
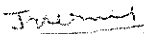
1.   
Tanmay Saha
2.   
Rahmad  





For and on behalf of  
[Procurer2]

  
CE. (P.P.A.)  
U.P.P.C. L.  
Signature with seal Shakti Bhawan Extn.  
Lucknow


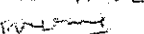
Witness:

1.   
(S.P. PANDEY) EEPPA
2.   
(Jayant Verma) EECPA


For and on behalf of  
[Procurer3]

  
CE. (P.P.A.)  
U.P.P.C. L.  
Signature with seal Shakti Bhawan Extn.  
Lucknow

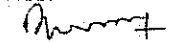
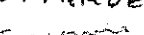
Witness:

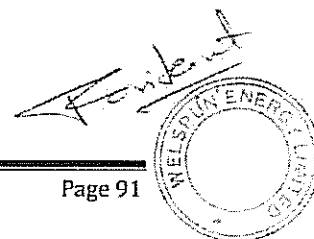
1.   
(S.P. PANDEY) EEPPA
2.   
(Jayant Verma) EECPA

For and on behalf of  
[Procurer4]

  
CE. (P.P.A.)  
U.P.P.C. L.  
Signature with seal Shakti Bhawan Extn.  
Lucknow

Witness:

1.   
(S.P. PANDEY) EEPPA
2.   
(Jayant Verma) EECPA



## 1 SCHEDULE 1 : NAMES AND DETAILS OF THE PROCURERS

### Procurer 1:

Managing Director  
Paschimanchal Vidyut Vitran Nigam Limited  
Hydel Inspection House, Hydel Colony, Victoria Park, Meerut-250001  
Fax: 0121-2666062  
Phone: 0121-2665734

### Procurer 2:

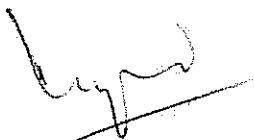
Managing Director  
Poorvanchal Vidyut Vitran Nigam Limited  
Vidyut Nagar, Bhikharipur, P.O. DLW, Varanasi-221010  
Fax: 0542-2319158  
Phone: 0542-2318437

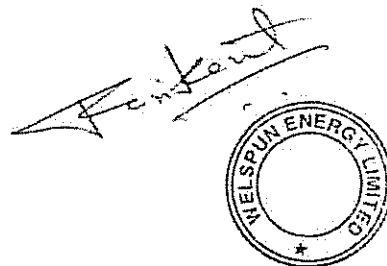
### Procurer 3:

Managing Director  
Madhyanchal Vidyut Vitran Nigam Limited  
4A Ghokle Marg, Lucknow-226001  
Fax: 0522-2208769  
Phone: 0522-2208737

### Procurer 4:

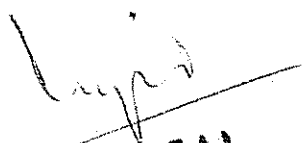
Managing Director  
Dakshinanchal Vidyut Vitran Nigam Limited  
Urja Bhavan, NH - 2 (Agra - Delhi Bypass Road), Sikandra, Agra - 282002  
Fax: 0522-2208769  
Phone: 0522-2208737

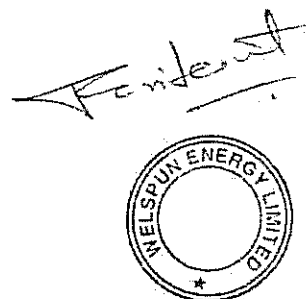
  
**CB. (P.P.A.)**  
**U. P. P. C. L.**  
Shakti Bhawan Extn.  
Lucknow.



## 1A SCHEDULE 1A : SITE

The site is located in the village Katya, Subash, Hazipur-Ktya, Gaura and Pahai in Jhaksiya and Saidpur Tehsil of Gazipur district. This location is around 6 km away from Varanasi-Gorakhpur Rail;way line. Nearest Town/city is Varanasi (35 km) and Gazipur (45 km). Approximately 900-1000 acre land is required. The nearest water source is river Ganga which is 11 km away and Ch. Charan Singh Dev Kali Nahar is connected to river Ganga (4 km) away.

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



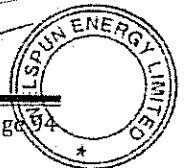
## 2 SCHEDULE 2 : INITIAL CONSENTS

The following clearances have been / will be obtained with respect to the Unit: -

Sl. No.	Clearances	Clearing Authority
1	Signing of MOU	GOUP
2	Water availability	Irrigation Department (GoUP)
3	State Government Clearance approval of Feasibility Report	GOUP / UPPCL
4	Pollution Clearance (Water & Air)	UP Pollution Control Board
5	Environmental Clearance	Ministry of Environment and Forests(GOI)/
6	Forest Clearance	GOUP / Department of Forests
7	Civil Aviation Clearance for Chimney Height	National Airport Authority / Indian Air Force
8	Company Registration	Registrar of Companies
9	Approval of PPA and various project agreements	UPPCL/UPERC
10	Project Cost / Tariff Approval	UPPCL/UPERC
11	Rehabilitation & Resettlement of displaced Families by Land Acquisition	GOUP/ Ministry of Environment and Forests (MoEF)
12	Land Availability and acquisition (if required)	GOUP
13	Fuel Linkage	Ministry of Coal (GOI)
14	Financing	Financial Institutions
15	Transportation of Fuel	Ministry of Railways /other transporters

Gazipur TPP (2x660 MW)  
U. P. P. C. L.  
Shakti Bhawan Extn.  
Lucknow.

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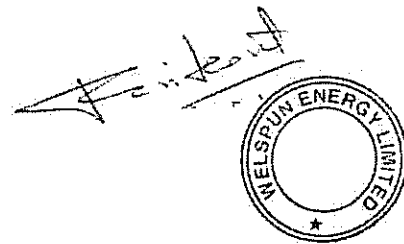


**SCHEDULE 3 : CALCULATION OF 'X' DAYS**

(Refer Article 11.5.7)

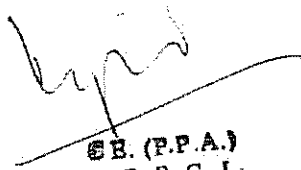
Percentage of Monthly Invoice which is the subject of default under Article 11.4 as notified in the Notice (issued under Article 11.5.2) relatable to the present occurrence	Number of times a Notice has been issued under Article 11.5.2 to the defaulting Procurer prior to present occurrence			
	1 <sup>st</sup> time	2 <sup>nd</sup> time	3 <sup>rd</sup> time	4 <sup>th</sup> 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

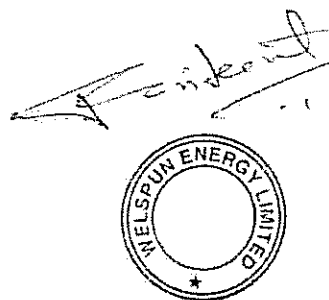
*[Signature]*  
**OB. (P.P.A.)**  
**U. P. P. C. L.**  
 Shakti Bhawan Extn  
 Lucknow



### 3 SCHEDULE 4 : FUNCTIONAL SPECIFICATION

(To be decided during detail engineering )

  
SB. (P.P.A.)  
U. P. P. C. L.  
Shakti Bhawan Extn  
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 corrections in final gross 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 Installed 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 Installed Capacity as existing on the Effective Date and within the electrical system limits and the Functional Specifications.
- (ii) For the purposes of any Performance Test pursuant to this sub-article 1.1, 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.

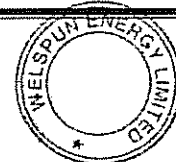
(b) **Grid System Frequency**

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.

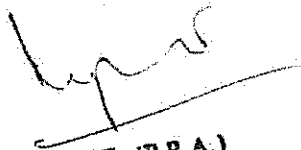
Gazipur TPP (2 x 660 MW)  
E.E. (P.P.A.)  
U. P. P. C. L.  
Shakti Bhawan Extn.  
Lucknow.

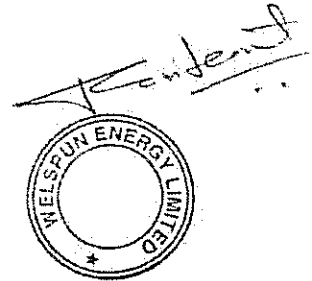


(d) **Fuel quality and cooling water temperature**

The Unit must operate to its Installed Capacity with Fuel quality and-water temperature available at the time of Testing and no adjustment shall be allowed for any variation in these parameters

- 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.
  - iv Further, as a part of the Performance Test, the Unit shall be tested for compliance with parameters of Supercritical Technology
- 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.

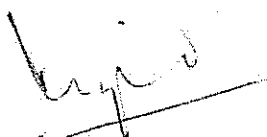
  
**C.B. (P.P.A.)**  
**U. P. P. C. L.**  
Shakti Bhawan Etn  
Lucknow

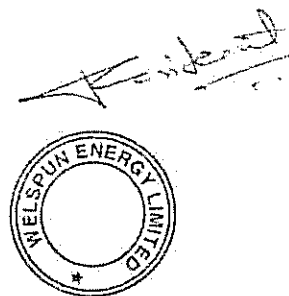


## 5 SCHEDULE 6 : AVAILABILITY FACTORS

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. Not used;
- 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.

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



## 6 SCHEDULE 7 : TARIFF

### 7.1 General

7.1.1 Procurers shall pay to the Seller the Tariff and Incentive Charge for each Tariff Period as set out in this Agreement. Tariff will be determined on a two-part basis comprising Fixed Charge (Capacity Charge) and Variable Charges (Energy Charges) and shall be computed for each Tariff Period. The Tariff (Fixed Charge, Variable Charges) and Incentive shall be determined by Appropriate Commission.

7.1.2 The Seller shall make an appropriate application to Appropriate Commission for determination of provisional tariff and/or final tariff or revision thereof from time to time, in accordance with the UPERC Regulations.

7.1.3 Not Used

### 7.2 Not used

### 7.3 Capacity Charge Payment

7.3.1 The Fixed Charge or Capacity Charge shall mean with respect to any Tariff Period during the Term of this Agreement the aggregate of the following for such Tariff Period :

- (a) Interest on loan capital;
- (b) Depreciation, including Advance Against Depreciation;
- (c) Return on Equity;
- (d) Operation and Maintenance expenses including insurance;
- (e) Interest on working capital; and

- (f) Contribution towards R&M or any compensation allowance, whichever permitted.

### 7.3.2 Debt-Equity Ratio

For determination of Tariff, the debt-equity ratio as on the date of COD shall be 70:30. In case equity employed is more than 30%, the amount of equity for determination of Tariff shall be limited to 30% and the balance amount shall be considered as the normative loan. However, where actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of tariff. The debt and equity amount so arrived at shall be used for calculating interest on loan, return on equity, Advance Against Depreciation and Foreign Exchange Rate Variation.

### 7.3.3 Interest on Debt/Loan Capital

Interest on Debt/loan capital shall be computed on normative basis on all outstanding loans in accordance with UPERC Regulations.

### 7.3.4 Depreciation

7.3.4.1 For the purpose of tariff, Depreciation shall be computed in the following manner, namely:

- (i) The value base for the purpose of depreciation shall be the historical cost of the asset.
- (ii) Depreciation shall be calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in UPERC Regulations.

The residual life of the asset shall be considered as 10% and depreciation shall be allowed the upto maximum of 90% of the historical capital cost of the asset. Land is not a depreciable asset (except leasehold land if any) and its cost shall be excluded from the capital cost while computing 90% of the historical cost of the asset.

- iii) On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.
- iv) Depreciation shall be chargeable from the first Year of operation. In case of operation of the asset for part of the Year, depreciation shall be charged on pro rata basis

#### 7.3.5 Advance against Depreciation (AAD)

In addition to allowable Depreciation, the Seller shall be entitled to Advance against Depreciation, computed in the manner given hereunder:

**AAD = Debt Repayment amount subject to a ceiling of  $1/10^{\text{th}}$  of Debt minus Depreciation.**

Provided that Advance against Depreciation shall be permitted only if the cumulative Debt Repayment upto a particular Year exceeds the cumulative Depreciation upto that Year;

Provided further that Advance against Depreciation in a Year shall be restricted to the extent of difference between cumulative Debt Repayment and cumulative Depreciation upto that Year.

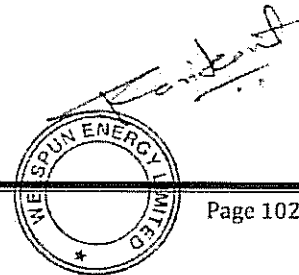
#### 7.3.6 Return on Equity

Return on equity shall be computed on the equity base determined in accordance with UPERC Regulations @ 15.50% per annum. Provided that in case the Unit(s) of the Seller is Commissioned within the timelines as specified in UPERC Regulations, the Seller shall also be entitled to an additional return of 0.5%.

Provided that equity invested in foreign currency shall be allowed a return up to the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the Due Date

Explanation

Gazipur TPP (2 x 660 MW) C. L.  
Shakti Bhawan Extn.  
Lucknow.



The premium raised by the Seller while issuing share capital and investment of internal resources created out of free reserve of the Seller, if any, for the funding of the Power Station, shall also be reckoned as paid up capital for the purpose of computing Return on Equity, provided such premium amount and internal resources are actually utilised for meeting the capital expenditure of the Seller and forms part of the approved financial package

7.3.7 Operation and Maintenance expenses (O & M Expenses)

- (a) O&M expenses for each Tariff Period shall be computed based on the UPERC Regulations as applicable in the relevant Tariff Period
- (b) The expenses on regulatory fee, payment to pollution control board, fringe benefit tax, impact of pay revision, cost of water and water cess shall be paid additionally at actuals.
- (c) Compensation Allowance shall be paid as per provisions of UPERC Regulations

7.3.8 Working Capital

7.3.8.1 Working Capital shall be the aggregate of the following:

- (i) Cost of coal for 1½ months for pit-head generating stations and 2 months for non-pit-head generating stations, corresponding to the Target Availability;
- (ii) Cost of Secondary Fuel oil for two months corresponding to the Target Availability;
- (iii) Operation and Maintenance expenses for one Month;
- (iv) Maintenance spares @ 20% of Operation and Maintenance expenses; and
- (v) Receivables equivalent to two months comprising of Fixed Charge and Variable Charges calculated on the Target Availability.

7.3.8.2 The rate of interest on Working Capital shall be on normative basis and shall be equal to the short term Prime Lending Rate of State Bank of India (notwithstanding the rate of interest actually paid by the Seller) as on 1<sup>st</sup> April of the Year in which the COD of Unit is occurred. Interest on working capital shall be payable on normative basis notwithstanding that the Seller has not taken working capital loan from any outside agency or such other rate as may be determined/approved by UPERC from time to time."

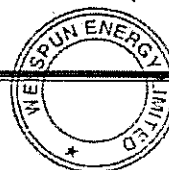
7.3.9 Recovery of Fixed Charge (Capacity Charge)

- (a) The recovery of full Fixed Charge (Capacity Charge) will be allowed at Target Availability as per UPERC Regulations. Recovery of Fixed Charge below the level of Target Availability shall be on pro rata basis.
- (b) The Fixed Charge shall be payable every month as per prevalent UPERC Regulations.
- (c) Each Procurer shall pay Fixed Charge in proportion to its percentage share in Installed Capacity of the Power Station.
- (d) While calculating Availability the extent of backing down as ordered by SLDC/RLDC shall be deemed as Availability achieved.

7.3.10 Taxes, duties, levies and impositions etc.

Statutory taxes, levies, duties, royalty, cess or any other kind of imposition(s) imposed/levied/charged by the Government (Central/State) and/or any other local authorities/bodies on generation of electricity including auxiliary consumption or any other type of consumption including water, environment protection, sale or on supply of power/electricity and/or in respect of any of its installations associated with the Power Station payable by the Seller to the authorities concerned shall be governed by the Regulation and orders of UPERC applicable from time to time.

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U. P. P. C. L.



#### 7.3.11 Tax on Income

Tax on the income streams of the Seller from its core business shall be computed as an expense and shall be permitted to be recovered from Procurers in proportion to its percentage share in Installed Capacity of the Power Station in accordance with UPERC Regulations.

#### 7.3.12 Extra Rupee Liability

Extra rupee liability towards interest payment and loan repayment corresponding to normative foreign debt or actual foreign debt, as the case may be in the relevant Year shall be permissible provided it directly arises out of Foreign Exchange rate variation and is not attributable to the Seller or its suppliers or contractors. The Seller shall be entitled to recover Foreign Exchange Rate Variation on Year to Year basis as income or expense in accordance with UPERC Regulations.

### 7.4 Energy Charges

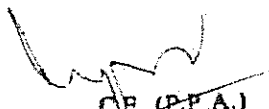
7.4.1 Energy Charges (Variable Charges) of Tariff shall cover the fuel cost; both the cost of Primary Fuel (i.e. landed cost of coal) and the cost of Secondary Fuel (landed cost of fuel oil etc.).

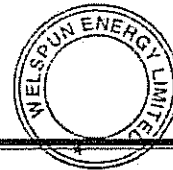
#### 7.4.2 Computation of Variable /Energy Charges

Energy Charges (Variable Charges) shall cover fuel costs and shall be worked out on the basis of ex-bus energy scheduled to be sent out from the Units corresponding to Scheduled Generation as per the following formula:

Energy Charges (Rs) = Rate of Energy Charges in Rs/kWh X Scheduled Energy (ex-bus) for the Month in kWh corresponding to Scheduled Generation.

Where,

  
C.E. (P.P.A.)  
U.P. P. C. L.  
Shakti Bhawan Bkta.



Rate of Energy Charges (REC) shall be the sum of the cost of normative quantities of primary and secondary fuel for delivering ex-bus one kWh of electricity in Rs/kWh and shall be computed as under:

$$REC = \frac{100\{P_p \times (Q_p)_n + P_s \times (Q_s)_n\}}{(100-(AUX_n))} \text{ (Rs/kWh)}$$

Where,

$P_p$  = Price of primary fuel namely coal in Rs/Kg.

$(Q_p)_n$  = Quantity of primary fuel required for generation of one kWh of electricity at generator terminals in Kg, and shall be computed on the basis of normative Gross Station Heat Rate (less heat contributed by secondary fuel oil) and gross calorific value of coal as fired.

$P_s$  = Price of Secondary Fuel oil in Rs./ml,

$(Q_s)_n$  = Normative Quantity of Secondary Fuel oil in ml/kWh, and

$AUX_n$  = Normative Auxiliary Consumption as % of gross generation.

#### 7.4.3 Adjustment of Rate of Energy Charges (REC) on account of variation in price or heat value of fuels

Initially, Gross Calorific Value of coal shall be taken as per actual of the preceding three months. Any variation shall be adjusted on month to month basis on the basis of Gross Calorific Value of coal received and burnt and landed cost incurred by the Seller for procurement of coal. No separate petition need to be filed with the Appropriate Commission for Fuel price adjustment. In case of any dispute, an appropriate application in accordance with UP Electricity Regulatory Commission (Conduct of

Business Regulations), 1999, as amended from time to time or any statutory re-enactment thereof, shall be made before UPERC.

#### 7.4.4 Landed Cost of Coal

The landed cost of coal shall include price of coal corresponding to the grade/quality of coal inclusive of royalty, taxes, cess and duties as applicable, processing, handling and transportation cost by rail/road or any other means, and, for the purpose of computation of energy charges, shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the Fuel Supplier during the month as per UPERC Regulations. .


#### 7.5 Incentive Charge

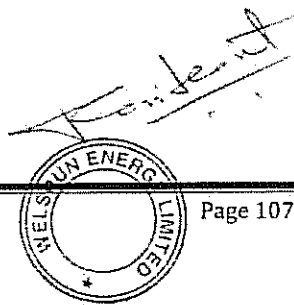
7.5.1 Incentive shall be payable at a flat rate of 25 paise per KWH for ex-bus Scheduled Energy corresponding to Scheduled Generation in excess of ex-bus energy corresponding to Target PLF. This Incentive shall be paid on annual basis and shall be paid in the Monthly Tariff Payment for the first month of the next Contract Year

7.5.2 In case of commissioning of Power Station ahead of schedule, as setout in the approval of Appropriate Commission, the Seller shall be eligible for incentive of an amount equivalent to reduction of interest during construction. However actual interest during construction shall be considered for calculation of final and completed project cost for tariff determination. The incentive shall be recovered through tariff in twelve equal monthly installments during first year of operation of the Unit. In case of delay in commissioning, as setout by the Appropriate Commission, interest during construction for the period of delay shall not be allowed to be capitalized for determination of tariff, unless it is shown that the delay is on account of force majeure conditions

7.5.3 The obligation to pay incentive Charge will be supported by Letter of Credit.

#### 7.6 Unscheduled Interchange (UI) Charges

  
C.E. (P.P.A.)  
Gazipur TPP (2 x 660 MW) P. C. L.  
Shakti Bhawan Extn.  
Lucknow



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.

7.7 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 Procurers.

7.8 Penalty and rights relating to Minimum Guaranteed Quantity of Fuel

In case Seller has to pay penalty to the Fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year Availability of the Commissioned Unit is greater than the Minimum Offtake Guarantee but all Procurers taken together have not Scheduled Energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amount, on Procurers, who have individually not achieved Minimum Off-take Guarantee during that Contract Year, in proportion to their difference between Scheduled Energy assuming offtake corresponding to Minimum Offtake Guarantee and Scheduled Energy (as applicable to such Procurer/s) for the following amount::

- (a) penalty paid to the Fuel Supplier under the Fuel Supply Agreements in that Contract Year, along with documentary proof for payment of such penalty, or
- (b) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) for all Procurers made for all the months in that Contract Year multiplied by  $(1 - x/y)$  where:

Where:

X is the Scheduled Energy during the Contract Year for all Procurers (in kwh); and

Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for all Procurers during the Contract Year (in kwh).

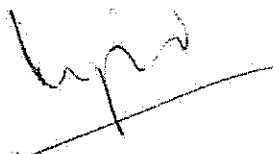
Provided, within ten (10) days of the end of each Month after the COD of the Unit, the Seller shall provide a statement to all Procurers, providing a comparison of the cumulative dispatch for all previous Months during the Contract Year with the Minimum Offtake Guarantee of Procurers. Further, such statement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

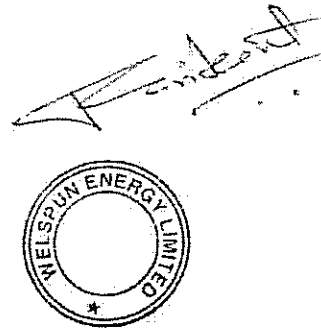
#### 7.9 Records

For the purposes of this Agreement, the assets, liabilities, Equity, revenue and expenses of the Seller shall be recorded and maintained in the accounts of the Seller in Rupees. Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/ or make copies of the records and data of the other Party relating to this Agreement

#### 7.10 Norms of Operation

(To be decided by UPERC seperately)

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

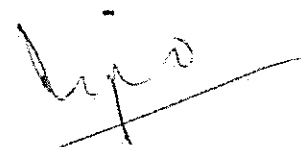


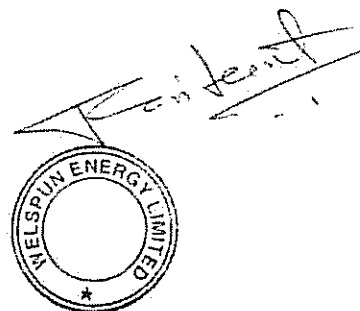
**7 SCHEDULE 8 : DETAILS OF INTERCONNECTION POINT AND FACILITIES**

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 after Power System Studies

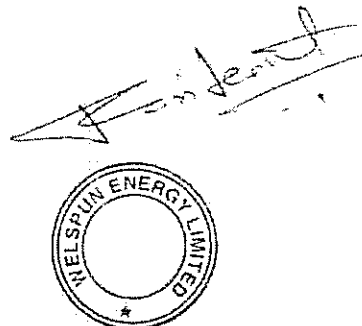
  
**CE. (P.P.A.)**  
**U. P. P. C. L.**  
Shakti Bhawan Extn  
Lucknow.



8 SCHEDULE 9 : DETAILS OF POWER EVACUATION ARRANGEMENTS  
TO BE PROVIDED BY UPPTCL

SNO	Particulars

*[Signature]*  
CE. (P.P.A.)  
U. P. P. C. L.  
Shakti Bhawan Extn  
Lucknow.



## 9 SCHEDULE 10 : REPRESENTATION AND WARRANTIES

### 1. Representations and Warranties by the Procurers

Each Procurer through UPPCL 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 ;

1.1.a That UPPCL has been duly authorized on behalf of all the Procurers to act as their co-ordinating agency and represent, sign and execute this Agreement on their behalf and to do all other relevant things as may be required;

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;

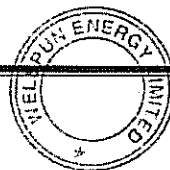
1.4 The said Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;

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.

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

  
CE. (P.P.A.)  
U.P.P.C.L.  
Gazipur, Dist. 660100, U.P.  
Lucknow



## 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:

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;

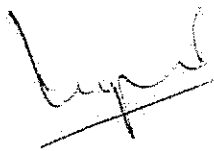
2.3 The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, 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;

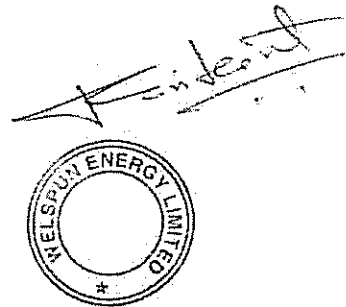
2.4 The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;

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.

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

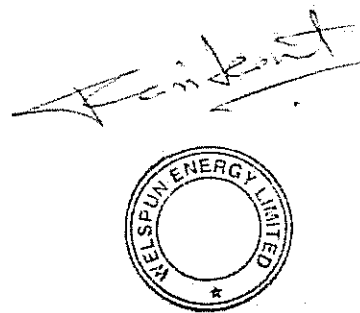
The Seller makes all the representations and warranties above to be valid as on the date of this Agreement.

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



10 SCHEDULE 11 : NOT USED

*Signature*  
CE (PDA)  
UPPCL  
Secy. Bhiwari Extn.  
Lucknow.



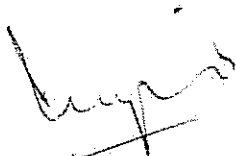
## 11 SCHEDULE 12 : LIST OF ARTICLES

[applicable in case of procurement by more than one Procurers]

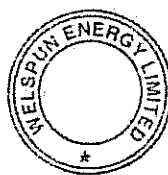
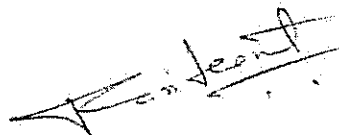
List of Articles under which rights and obligations of the Procurers (including all matters incidental thereto and related follow-up), which are required to be undertaken by the Procurers jointly, will be performed by Lead Procurer for and on behalf of all the Procurers

- Article 1.1
- Article 2.2
- Article 3.1.2
- Article 4.3.2
- Article 4.7.2
- Article 5.3
- Article 5.5
- Article 6.2.3
- Article 8.1.1
- Article 8.1.2
- Article 8.1.3
- Article 8.1.4
- Article 8.1.5
- Article 8.1.6
- Article 8.2.2 (c)
- Article 13.3.2
- Article 14.1 (ii)
- Article 14.1 (ix)
- Article 14.1 (x)
- Article 14.1 (xi)
- Article 14.3.1

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




**C.B. (P.P.A.)**  
**U. P. P. C. L.**  
Shakti Bhawan Extn  
Lucknow.

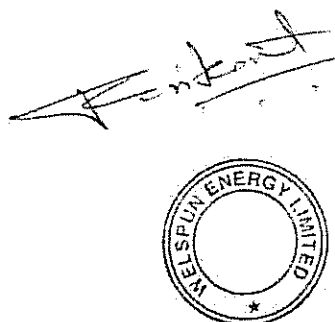


## 12 SCHEDULE 13 : ALLOCATED CONTRACTED CAPACITY

Contracted Capacity allocated to each of the Procurers shall be as under


Name of the Procurer	Allocated Contracted Capacity (%)
Paschimanchal Vidyut Vitran Nigam Ltd (Procurer 1)	30%
Poorvanchal Vidyut Vitran Nigam Ltd. (Procurer 2)	30%
Madhyanchal Vidyut Vitran Nigam Ltd (Procurer 3)	20%
Dakshinanchal Vidyut Vitran Nigam Ltd (Procurer 4)	20%

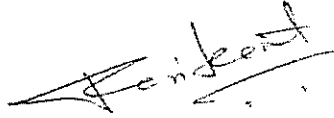
  
**CE. (P.P.A.)**  
**U. P. P. C. L.**  
**Shakti Bhawan Bata**  
**Lucknow.**



### 13 SCHEDULE 14 : CAPITAL STRUCTURE SCHEDULE

(This will be filled up before NTP)


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

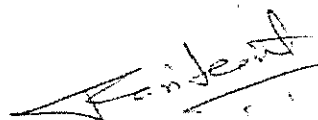




14 SCHEDULE 15 : FORMAT OF THE PERFORMANCE GUARANTEE


(To be Provided by UPPCL Separately)

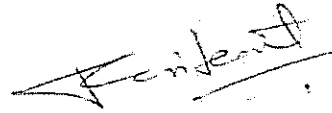
  
CE (PPA),  
U P P. C. L.,  
Shakti Bhawan Extn.,  
Lucknow.





15 SCHEDULE 16 : NOT USED

  
CE (PRA)  
U.P. P.C. L.  
Shanti Bhawan Extn,  
Lucknow.





## 16 SCHEDULE 17 : SUBSTITUTION RIGHTS OF THE LENDERS

### 1. Substitution of the Seller

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

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

### 2. Procurers Notice of Default

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

### 3. Substitution Notice

In the event of failure of the Seller to rectify the Event Of Default giving rise to Preliminary Default Notice, the lenders, upon receipt of a written advice from the procurers confirming such failure, , either on their own or through its representative ("the Lenders' Representative") shall be entitled to notify the Procurers and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the "Substitution Notice").

### 4.- Omitted

### 5. Interim operation of Project

a) On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 17 of this Agreement.

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

c) If the Procurers refuse to takeover the Project on request by the Lenders in accordance with clause 5(b) above, the Seller shall have the duty and obligation to continue to operate the Project in accordance with the PPA till such time as the Selectee is finally substituted under clause 8.8 hereof.

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

6. Process of Substitution of Seller

The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurers and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Lead Procurer referred to in clause 8.5, such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other Project Documents executed between the Seller and the Procurers, in accordance with these terms of substitution.

The Lenders and the Seller shall ensure that, upon the Lead Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Project to such Selectee simultaneously with the amendment or novation of the PPA and other Project Documents executed between the Seller and the Procurers in favour of the Selectee as mentioned in clause 1 (b).

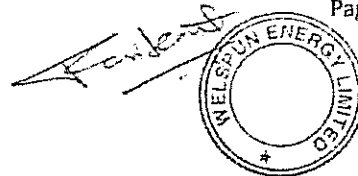
7. Modality for Substitution

7.1 Criteria for selection of the Selectee.

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

- (a) if the Seller is proposed to be substituted during the Construction Period, the Selectee shall possess the technical and financial capability to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurers under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;
- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and any of the Procurers, involving sums greater than Rupees twenty (20) crores at any time in the last two (2) years as on the date of the substitution of the Seller.

*[Handwritten signature]*  
CE. (P.P.A.)  
D.P.P. C. B.  
Shakti Bhawan Extn.  
Lucknow.



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

#### 8. Modalities

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

- 8.1 The Lenders' Representative shall on behalf of the Lenders propose to the Procurers (the "Proposal") pursuant to sub-clause 8.2 below, the name of the Selectee for acceptance, seeking:
- (a) grant of all the rights and obligations under the PPA and the other Project Documents executed between the Procurers and the Seller, to the Selectee (as substitute for the Seller);
  - (b) amendment of the PPA and the other Project Documents executed between the Procurers and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other Project Documents executed between the Procurers and the Seller; and
  - (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.
- 8.2 The Proposal shall contain the particulars and information in respect of the Selectee the data and information as any of the Procurers may reasonably require. The Procurers may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.
- 8.3 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurers of the Proposal:
- (a) observe, comply, perform and fulfil the terms, conditions and covenants of the PPA and all Project Documents executed between Seller and the Procurers or a new power purchase agreement or respective Project Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective Project Document; and

- (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurers as if such Selectee was the Seller originally named under such Financing Agreements.
- 8.4 At any time prior to taking a decision in respect of the Proposal received under clause 8.1, the Procurers may require the Lender / Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurers as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.
- 8.5 All Procurers shall convey their approval or disapproval of such Proposal, through the Lead Procurer, to the Lender / Lender's Representative. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:
- (a) the date of receipt of the Proposal by the Procurers; or
  - (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under clause 8.2 above is received;
- whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer(s) or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 7.1.

- 8.6 Upon approval of the Proposal and the Selectee by the Procurers, the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 8.7 Following the rejection of a Proposal, the Lenders and/or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this clause shall apply mutatis mutandis to such fresh Proposal.
- 8.8 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurers and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurers and upon transfer of ownership and complete possession of the Project by the Procurers or the Seller, as the case may be, to the Selectee. The Procurers shall novate all the Project Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the

Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Project and assumption of all the rights and obligations of the Seller under the PPA and the Project Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurers shall in no way be responsible to bear the same.

8.9 Upon the substitution becoming effective pursuant to sub-clause 8.8 above, all the rights of the Seller under the PPA shall cease to exist:  
Provided that, nothing contained in this sub-clause shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurers against the erstwhile Seller or the Selectee.

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

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

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

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

## 9. Seller's Waiver

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

9.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in clause 8.9, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

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

10. Interim Protection Of Service And Preservation Of Security

10.1 Appointment of a Receiver

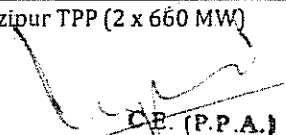
10.1.1 In every case of the Lenders issuing a Substitution Notice and the Procurers refusing to takeover the Project and the Seller failing to operate the Project in accordance with Clause 5(c) above and the Procurers not electing to act as Receiver as per sub-clause 10.1.1A hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

10.1.1A Provided that in event of the Procurers refusing to take over the Project and the Seller failing to operate the Project in accordance with Clause 5 (c) above, and if the assets of the Project are, in the opinion of the Procurers, necessary and required for the operation and maintenance of the Project, the Procurers shall be entitled to elect to act as the Receiver for the purposes of this Clause and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurers so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.

10.1.2 Upon appointment of the Court appointed Receiver or the Procurers acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurers and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the lenders in accordance with the terms of its appointment.

10.1.3 When acting as a Receiver or operator in accordance with this clause 11 or clause 5(b), Procurers shall be entitled to be remunerated for such services as may be determined by Central Electricity Regulatory Commission. Furthermore, when acting as a Receiver, the Procurers shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or

Gazipur TPP (2 x 660 MW)

  
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loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurers.


11. Substitution Consideration

11.1 The Lenders and Procurers shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurer's respective dues, to the exclusion of the Seller.

11.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

12. Change in the Procurers or Lenders

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

  
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