

**POWER PURCHASE AGREEMENT**

FOR

**PURCHASE OF 1,000 MW OF POWER  
ON LONG TERM BASIS FOR A PERIOD OF 12 YEARS**

Between

**Chattisgarh State Power Distribution Company Limited**  
**CSPDCL**  
(Supplier)

And

**Southern Power Distribution Company of Telangana Limited**  
**TSSPDCL**  
(Procurer – I; Lead Procurer)

&

**Northern Power Distribution Company of Telangana Limited**  
**TSNPDCL**  
(Procurer – II)

Dated:22<sup>nd</sup> September 2015

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**POWER PURCHASE AGREEMENT  
FOR PURCHASE OF 1,000 MW OF POWER ON LONG TERM BASIS**

**THIS POWER PURCHASE AGREEMENT** is made on the 22<sup>nd</sup> day of September of 2015 at Hyderabad, pursuant to the Memorandum of Understanding (MoU) entered into by the Government of Telangana with the Government of Chhattisgarh on 03 November of 2014, for procurement of about 1,000 MW of power from the Government of Chhattisgarh;

**BETWEEN**

**Chhattisgarh State Power Distribution Company Ltd - CSPDCL**, (hereinafter referred to as the “**Supplier**”), a company incorporated under the Companies Act 1956, having its registered office at Vidyut Sewa Bhawan, Daganiya, Raipur – 492 013, Chhattisgarh (hereinafter referred to as “**CSPDCL**” or “**the Supplier**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **FIRST PART**.

**AND**

**Southern Power Distribution Company of Telangana Limited (TSSPDCL)**, a company incorporated under the Companies Act 1956, having its registered office at 6-1-50 , Mint Compound, Hyderabad (hereinafter referred to as “**Lead Procurer**” or “**Procurer-I**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns), along with **Northern Power Distribution Company of Limited (TSNPDC)** a company incorporated under the Companies Act 1956, having its registered office at H.No.2-5-3/2, Vidyut Bhavan, Nakkalagutta, Hanmakonda, Warangal (hereinafter referred to as “**Procurer-II**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as Parties of the **SECOND PART**.

CSPDCL and TSSPDCL & TSNPDCL are individually referred to as “**Party**” and collectively referred to as ‘**Parties**’. TSSPDCL and TSNPDCL are collectively referred to as “Procurers”.

**Whereas:**

- A. The Supplier, which has a back to back long term PPA with the Chhattisgarh State Power Generation Company Ltd (CSPGCL) for procurement of 1,000 MW from the 2x500 MW Thermal Power Station, situated at Marwa in Janjgir-Champa District, has been identified by the Govt. of Chhattisgarh to supply 1,000 MW of power to the Procurers;
- B. The MoU, entered into between the states of Chhattisgarh & Telangana, stipulates that the ‘**Delivery Point**’ for supply of power from the Marwa Thermal Power Station (Marwa TPS) would be the ex-bus gantry of the Marwa TPS and the Tariff for the Marwa TPS would be determined by the CSERC, as per provisions of EA 2003. All other charges, like Trading Margin, transmission/ wheeling charges, Open Access charges, for transfer of power from the Delivery Point onwards shall be borne by the Procurers;
- C. The Supplier, “**Chhattisgarh State Power Distribution Company Ltd, Raipur**”, which is a Distribution Licensee in the state of Chhattisgarh, executes this Agreement and shall be construed as **Supplier/Seller** for the purposes of this Agreement and to undertake all the responsibilities and obligations of the Supplier/Seller;
- D. Both the ‘Supplier’ and the ‘Procurers’ hereby agree to execute this Power Purchase Agreement, setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the ‘Supplier’ to the ‘Procurers’;
- E. The Procurers agree, as per the terms and subject to the conditions of this Agreement and as per Section 86 (1) (b) of Electricity Act 2003, to procure power up to the Aggregate Contracted Capacity and pay the Supplier the Tariff as determined by the Hon’ble Chhattisgarh State Electricity Regulatory Commission (CSERC), along with the Trading Margin, as approved by the Hon’ble State Electricity Regulatory Commission (TSERC);

- F. The Suppliers have agreed to make an application to the Hon'ble CSERC for the determination of Tariff and further Procurers have agreed to make an application to TSERC for adoption of Tariff as determined by Hon'ble CSERC, along with the Trading Margin and approval of PPA as per the provisions of the Electricity Act 2003.

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

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

.....  
**For and on behalf of**  
**[SUPPLIER]**

Name: .....

Designation:.....

Address: Vidyut Sewa Bhawan,  
Daganiya, Raipur – 492 013

.....  
Signature with seal

**Witness:**

1. ....

2. ....

.....  
**For and on behalf of**  
**[PROCURERS]**

Name: .....

Designation: .....

Address: H.No.6-1-50 , Mint Compound,  
Hyderabad.

.....  
**[PROCURERS]**

Name: .....

Designation: .....

Address: H.No.2-5-3/2, Vidyut Bhavan,  
Nakkalagutta, Hanmakonda,  
Warangal.

.....  
Signature with seal

**Witness:**

1. ....

2. ....

## 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 the Appropriate Commission (as defined hereunder), or the General Clauses Act, as amended or re-enacted from time to time, failing which, it shall bear its ordinary English meaning.

**“Act” or “E Act 2003”** shall mean the Electricity Act, 2003 as amended from time to time; or **“Electricity Act, 2003”**

**“Affiliate”** shall mean a company that, either directly or indirectly,  
i. controls or  
ii. is controlled by or  
iii. is under common control with  
the Supplier or the Procurer(s) (as would be applicable in the context of use in this Agreement) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

**“Agreement”** or **“Power Purchase Agreement”** or **“PPA”** shall mean this Power Purchase Agreement, including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;

**“Aggregate Contracted Capacity”** with respect to the Supplier, shall mean the aggregate capacity of 1,000 MW at low voltage side of the step up transformer terminals situated at Marwa thermal power station;

**“Appropriate Commission”** shall mean the Chhattisgarh State Electricity Regulatory Commission (CSERC), or the Telangana State Electricity Regulatory Commission (TSERC), or the Central Electricity Regulatory Commission (CERC), as the case may be;

**“Authorized Representative”** shall mean the Chairman & Managing Director of TSSPDCL or his authorized representative, the ‘Lead Procurer’ and the body corporate authorized by the Procurer(s) to carry out this Power Purchase Agreement (PPA); Similarly, in respect of the ‘Supplier’, shall mean & Managing Director of CSPDCL or its authorised representative, the body corporate authorized by the Supplier;

<b>“Auxiliary Consumption”</b>	shall have the same meaning as in the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions of Tariff according to multi-year Tariff principles and Methodology and procedure for determination of expected Revenue and Charges) Regulations, as amended from time to time;
<b>“PAFM” or “PAFY”</b>	shall have the same meaning as in the Tariff regulations of CSERC;
<b>“Business Day”</b>	shall mean with respect to the ‘Supplier’ and the ‘Procurer(s)’, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State(s) of Chattisgarh & Telangana;
<b>“Capacity Charge” or “Capacity Charges”</b>	shall mean the fixed charges as determined by the CSERC and shall comprise of the elements as enumerated under Clause 4.2.1(i) of Schedule 4 of this Agreement;
<b>“Central Transmission Utility” or “CTU”</b>	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
<b>“CERC”</b>	shall mean the Central Electricity Regulatory Commission, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
<b>“Change in Law”</b>	shall have the meaning ascribed thereto in Article 9 of this Agreement;
<b>“Competent Court of Law”</b>	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
<b>“Consents, Clearances and Permits”</b>	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
<b>“Contract Year”</b>	shall mean the period commencing on the Scheduled Delivery Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;  Provided further, that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

<b>“Contracted Capacity”</b>	with respect to each Procurer, shall mean the power contracted by the ‘Supplier’ from the Power Station for supply to the Telangana State DISCOMs, viz., TSSPDCL and TSNPDCL, as per the proportion laid out in Schedule 5 of this Agreement and which is co-terminous with the approved transmission capacity by the CTU for evacuation of the power from the Supplier’s Delivery point
<b>“CSERC”</b>	shall mean the Chhattisgarh State Electricity Regulatory Commission, constituted under Section-82 of the Electricity Act, 2003 or its successors;
<b>“Delivery Date”</b>	shall mean the date on which the Supplier commences supply of the Aggregate Contracted Capacity, or part thereof, to the Procurer(s), subject to the approval of the CTU for utilization of the Transmission Corridor;
<b>“Delivery Point”</b>	shall mean the same as Interconnection Point as per this Agreement;
<b>“Developer”</b>	shall mean the Chhattisgarh State Power Generation Company Limited, including its successors and assigns, i.e., the owner of the Power Station from which the Supplier shall supply the Aggregate Contracted Capacity to the Procurer(s);
<b>“Dispatch Instruction”</b>	shall mean any instruction issued by the Procurer(s) through the concerned SLDC or WRLDC to the Supplier, in accordance with the applicable Grid Code and this Agreement;
<b>“Dispute”</b>	shall mean any dispute or difference of any kind between a Procurer and the Supplier or between the Procurers (jointly) and the Supplier, in connection with or arising out of this Agreement, including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 13 of this Agreement;
<b>“Due Date”</b>	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received by the Procurer(s) or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer(s);
<b>“Effective Date”</b>	shall have the meaning set forth in Article 2.1.1 of this Agreement;
<b>“Electricity Laws”</b>	shall mean the Electricity Act 2003 and the rules and regulations made thereunder from time to time, and any other Law pertaining to electricity, including regulations framed by the Appropriate Commission, along with amendments thereto and replacements



thereof;

<b>“Energy Accounts”</b>	shall mean the accounts, prepared by either the RPC or the relevant RLDC, as the case may be, used for the billing and settlement of Capacity Charges, Energy Charges and for settlement of deviations and other charges, and shall include the Regional Energy Accounts;
<b>“Energy Charge” or “Energy Charges”</b>	shall mean the charges as determined by the CERC and shall comprise of the elements as enumerated under Clause 4.2.1(ii) of Schedule 4 of this Agreement;
<b>“Event of Default”</b>	shall mean the events as defined in Article 10 of this Agreement;
<b>“Expiry Date”</b>	shall mean the date which is the 12th anniversary of the Delivery Date or such extended period as mutually agreed upon by both Parties;
<b>“Force Majeure” or “Force Majeure Event”</b>	shall have the meaning ascribed thereto in Article 8 of this Agreement;
<b>“Fuel”</b>	shall mean the primary fuel used to generate electricity, namely domestic coal;
<b>“Grid Code” / “IEGC”</b>	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act;
<b>“Governmental Instrumentality”</b>	shall mean any department, division or sub-division of the Government of India or Governments of States of Chhattisgarh and Telangana and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the above State Government(s), as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any part of the services or obligations of the Supplier under or Pursuant to this Agreement;
<b>“Injection Point”</b>	shall mean the same as that of the ‘Inter Connection Point’;
<b>“Installed Capacity”</b>	shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;
<b>“Insurances”</b>	shall mean the insurance cover to be obtained and maintained by the Developer in accordance with Article 14 of this Agreement;
<b>“Interconnection”</b>	shall mean the facilities on the Procurers’ side of the Delivery Point

<b>Facilities</b>	for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay & switching equipment and protective devices, safety equipment and, subject to Article 4, the Metering System required for supply of power as per the terms of this Agreement;
<b>“Interconnection Point”</b>	shall mean the ex-bus gantry of the Power Station (500MW x 2 Nos.), located in Marwa, Chhattisgarh State,
<b>“Invoice” or “Bill”</b>	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
<b>“Late Payment Surcharge”</b>	shall have the meaning ascribed thereto in Article 7 of this Agreement;
<b>“Law”</b>	shall mean in relation to this Agreement, all laws, including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by a Government Instrumentality and having force of law and shall further include, without limitation, all applicable rules, regulations, orders, notifications by an Government Instrumentality pursuant to or under any of them and shall include, without limitation, all rules, regulations, decisions and orders of the Appropriate Commission;
<b>“Lead Procurer”</b>	shall mean the Southern Power Distribution Company Limited or ‘TSSPDCL’;
<b>“Letter of Credit” or “L/C”</b>	shall have the meaning ascribed thereto in Article 7.4 of this Agreement;
<b>“Meters” or “Metering System”</b>	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014, as amended from time to time;
<b>“Month”</b>	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
<b>“Monthly Bill” or “Monthly Invoice”</b>	shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable) as determined by the CERC, prepared pursuant to the REA, including any incentive or penalty, as per Schedule 4 of this Agreement, and an applicable Tariff Margin, as per the approval

accorded by the Hon'ble TSERC;

<b>“MOU”</b>	shall mean the memorandum of understanding signed on 3 November 2014 between the state governments of Telangana and Chhattisgarh, pursuant to an understanding for sale of 1,000MW of power from the Power Station by Chhattisgarh to Telangana on a long term basis;
<b>“Normative Annual Plant Availability Factor” or “NAPAF”</b>	Shall mean eighty five percent (85%) of the Aggregate Contracted Capacity at the Interconnection Point for full recovery of fixed charges on a Contract Year basis. The calculation of the availability is at Schedule 4.3.1;
<b>“Operating Period”;</b>	shall mean the period commencing from the Delivery Date, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
<b>“Party” and “Parties”</b>	shall have the meaning ascribed thereto in the recital to this Agreement;
<b>“Payment Mechanism”</b>	shall have the meaning ascribed thereto in Article 7.4 of this Agreement;
<b>“Power Station”</b>	shall mean the Marwa TPS power generation facility of the Developer of installed capacity of 1,000 MW, located at Marwa village in Janjgir-Champa district of the State of Chhattisgarh ;  This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system, including ash dyke [ <i>if applicable</i> ]; bay/s for transmission system in the switchyard, buildings/structures, equipment, and machinery,
<b>“Power Station’s Net Capacity”</b>	shall mean 1,000 MW, being the Installed Capacity of the Power Station measured at ex-bus, reduced by the normative auxiliary power consumption as prescribed by CSERC from time to time;
<b>“Preliminary Default Notice”</b>	shall have the meaning ascribed thereto in Article 10 of this Agreement;
<b>“Procurers”</b>	shall mean the Southern Power Distribution Company of Telangana Limited (TSSPDCL) and Northern Power Distribution Company of Telangana Limited (TSNPDC), with TSSPDCL being the Lead Procurer;

<b>“Prudent Utility Practices”</b>	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:  a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station;  b) the requirements of Indian Law; and  c) the physical conditions at the site of the Power Station;
<b>“Rebate”</b>	shall have the same meaning as ascribed thereto in Article 7.3.6 of this Agreement;
<b>“Regional Energy Accounts” or “REA”</b>	shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
<b>“Revised Scheduled Delivery Date”</b>	shall have the meaning ascribed thereto in Article 6 of this Agreement;
<b>“RLDC”</b>	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
<b>“RPC”</b>	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
<b>“Rupees” or “Rs”</b>	shall mean Indian rupees, the lawful currency of India;
<b>“Scheduled Delivery Date”</b>	shall have the meaning ascribed thereto in Article 6.1.1 of this Agreement;
<b>“Scheduled Energy” or “Scheduled Generation”</b>	shall mean scheduled generation as defined in the Central Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014;

<b>“TSERC”</b>	shall mean the Telangana State Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 or its successors;
<b>“SLDC”</b>	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) of Chhattisgarh and , as appropriate;
<b>“SLDC Charges”</b>	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer(s);
<b>“State Transmission Utility” or “STU”</b>	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
<b>“Supplementary Bill”</b>	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 7 of this Agreement;
<b>“Supplier”</b>	shall mean the Chattisgarh State Power Distribution Company Ltd (CSPDCL) and it’s successors, which has entered into a back to back PPA with Developer on 03 January 2011;
<b>“Tariff”</b>	shall mean the sum total of Energy Charges and Capacity Charge, as determined by the Chhattisgarh State Electricity Regulatory Commission as per the provisions of the EA 2003, and shall have such items as laid out in Clause 4.2.1 of Schedule 4 of this Agreement;
<b>“Tariff Payment”</b>	shall mean the payments to be made under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;
<b>“Termination Notice”</b>	shall mean the notice given by either Party for termination of this Agreement in accordance with Articles 8 or 10 of this Agreement;
<b>“Term of Agreement”</b>	shall have the meaning ascribed thereto in Article 2.2 of this Agreement;
<b>“Trading Margin”</b>	shall be the margin applicable over and above the Tariff, as approved by the TSERC for supply of the Agreement Contracted Capacity pursuant to the provisions of this Agreement;

- “Week”** shall mean 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”** shall mean the charges paid by the Procurer(s) as transmission tariff for usage of intervening CTU/STU networks for the transmission of power from the Delivery Point, as approved by the Appropriate Commission.

## 1.2 Interpretation

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

- 1.2.1 **“Agreement”** shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2 An **“Article”**, a **“Recital”**, a **“Schedule”** and a **“paragraph / clause”** shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 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;
- 1.2.4 **“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;
- 1.2.5 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;
- 1.2.6 **“Rupee”**, **“Rupees”**, and **“Rs.”** shall denote Indian Rupees, the lawful currency of India;
- 1.2.7 The **“winding-up”**, **“dissolution”**, **“insolvency”**, or **“reorganization”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation

carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- 1.2.8 Words importing the singular shall include the plural and vice versa;
- 1.2.9 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.10 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.11 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.12 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.13 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.14 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.15 The words “**hereof**” or “**herein**”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.16 The terms “**including**” or “**including without limitation**” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

## **2 ARTICLE 2 : TERM OF AGREEMENT**

### **2.1 Effective Date**

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

### **2.2 Term of Agreement**

2.2.1 Subject to the terms of this Agreement, this Agreement shall continue in force from the Effective Date to Expiry Date, unless earlier terminated to Article 2.3.

2.2.2 On the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually extended by all the parties on mutually agreed terms and conditions at least one hundred and eighty (180) days prior to the expiry of the initial term of this Agreement. The Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the Parties.

### **2.3 Early Termination**

2.3.1 This Agreement shall terminate before the Expiry Date:

- (i) if both the Procurers jointly and the Supplier exercise the right to terminate, pursuant to Articles 10.3 or 10.4 respectively, as the case may be; or
- (ii) in such other circumstances as the Seller and both the Procurers (jointly) may agree, in writing.

### **2.4 Survival**

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination, including those under, Article 8 (**Force Majeure**), Article 10 (**Events of Default and Termination**), Article 11 (**Liability and Indemnification**), Article 13 (**Governing Law and Dispute Resolution**), Article 15 (**Miscellaneous Provisions**), and other Articles and Schedules of this Agreement which expressly or by their nature, survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



### **3 ARTICLE 3 : OPEN ACCESS & TRANSMISSION**

#### **3.1 Open Access**

3.1.1 Subject to Article 3.1.2 and Article 3.1.3, the sale of electricity, pursuant to this Agreement, shall be at the Delivery Point, viz., the ex-bus gantry of the Power Station, situated in Marwa village of Chhattisgarh state and it shall be the obligation and responsibility of the 'Procurers' to make the required arrangements for evacuation of electricity onwards from the Delivery Point.

3.1.2 The 'Procurers' shall be required to apply for open access as per the applicable regulations specified by the Appropriate Commission and shall apply for open access well in advance so as to start evacuating the Contracted Capacity from the Injection Point onwards.

3.1.3 The 'Procurers' shall strive to obtain open access from the concerned SLDC/RLDC/CTU for the period equivalent to at least the Term of the Agreement.

#### **3.2 Charges**

3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to securing of open access on the transmission network of the concerned transmission licensee / STU / CTU from the 'Delivery Point' and beyond shall be borne by the Procurers.

#### **3.3 Losses**

3.3.1 The 'Procurers' shall be liable to bear all the transmission losses in respect of the power evacuated from 'Interconnection Point' and beyond.

## **4 ARTICLE 4: SCHEDULING, METERING & ENERGY ACCOUNTING**

### **4.1 Allocation of Generation Capacity**

- 4.1.1 The Supplier shall provide one hundred percent (100%) of the Power Station's Net Capacity to the Procurer(s) at the Delivery Point as per the terms of this Agreement.
- 4.1.2 The allocation of the Aggregate Contracted Capacity among the Procurers would be as per the allocation detailed in Schedule 5 of this Agreement.

### **4.2 Scheduling**

- 4.2.1 CSPDCL, in concurrence with CSPGCL, shall make the scheduling as per the IEGC and the decision taken on the Scheduling at the appropriate RPC forum.
- 4.2.2 The supply of energy output at the Delivery Point shall be on a round the clock (RTC) basis.
- 4.2.3 The actual energy available for sale at the Delivery Point shall be net of Auxiliary Consumption.
- 4.2.4 Both the Supplier and the Procurers shall mutually agree on the preventive maintenance schedule for each unit at the beginning of each Contract Year, and such schedules would be subject to the directions of the RPC/RLDC as may be required from time to time.

### **4.3 Metering**

- 4.3.1 For installation of Meters, Meter Testing, Meter calibration and Meter readings and all the matters incidental thereto, the 'Supplier' and the 'Procurers' shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations 2006, the Grid Code and the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014, as amended and revised from time to time.
- 4.3.2 The metering point for the purpose of all billing for supply of power under the terms of this Agreement would be the Delivery Point, in line with the provisions of the MOU.

### **4.4 Energy Accounting**

- 4.4.1 Both the 'Supplier' and the 'Procurers' agree to facilitate issue of Regional Energy Accounts by 1st day of every month.
- 4.4.2 Regional Energy Account issued each month by the respective RPC/RLDC or any other Competent Authority shall be binding on all the Parties for the purpose of raising of the Monthly Bills.

- 4.4.3 Any change in the methodology of preparation of the Regional Energy Accounts shall be pursuant only to decisions taken in the respective RPC forums and both the Parties agree to abide by the methodology so finalized.

## **5 ARTICLE 5: TARIFF**

### **5.1 Tariff Determination:**

5.1.1 The Tariff for the Aggregate Contracted Capacity supplied from the Power Station would be as determined by the Hon'ble Chhattisgarh State Electricity Regulatory Commission (CSERC) from time to time as per the provisions of the Electricity Act 2003, and the terms of the power purchase agreement between CSPGCL and CSPDCL dated 03 January 2011, as appended at Schedule-2 of this PPA.

5.1.2 The Tariff shall comprise of Capacity/Fixed Charges and, Energy / Variable Charges, as indicated in Schedule-4 and, shall be borne by the Procurers. In addition to the Tariff, a Trading Margin as approved by the TSERC, shall also be payable by the Procurers to the Supplier. Any other charges i.e., including but not limited to transmission, wheeling charges, open access charges, etc., incidental to the sale of the Aggregate Contracted Capacity by the Supplier to the Procurers under this Agreement, shall be borne by the Procurers in addition to the Tariff.

5.1.3 All taxes levied by the competent authority, electricity duty, cess or otherwise any levy, by whatever name or names called or either described by an Indian Governmental Instrumentality, in respect of the energy generated by the Developer, including cess or on Auxiliary Consumption or any other type of consumption, including water, environment protection shall be paid for by the Supplier, and reimbursed by the Procurers. Applicable service charges on the Trading Margin, if any, shall also be borne by the Procurers.

#### **5.1.4 Adhoc Tariff**

- a. The Supplier shall approach the CSERC for determination of the Tariff as per the provisions of the power purchase agreement dated 3 January 2011 between the CSPGCL and the Supplier.
- b. It shall be the obligation of the Procurers to seek all necessary approvals from the competent authority for this sale of power by the Supplier before the commencement of the supply of the Aggregate Contracted Capacity under this Agreement.
- c. Both the Supplier and the Procurers agree that the billing and payment shall be done on an adhoc or provisional basis as per the proposal submitted by CSPGCL to the CSERC.
- d. The Supplier shall inform the Lead Procurer of any adhoc Tariff determined by the CSERC for the sale of electricity under the power purchase agreement dated 03 January 2011, pending the determination of the actual Tariff, for the purpose of billing on a provisional basis, subject to adjustment as and when such Tariff is determined.

## **6 ARTICLE 6 : SUPPLY OF POWER**

### **6.1 Commencement of Supply of Power to Procurer(s)**

- 6.1.1 **Scheduled Delivery Date(s):** Subject to the approval to be accorded by the CTU for the Transmission corridor, the Supplier shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the dates on which the Developer commences supply of power from each of the Units of the Power Station under the agreement dated 03 January 2011, and which shall be commencement of supply of 500MW power from the date of commissioning of the first Unit of the Power Station by the Developer and the balance 500MW from the date of commissioning of the second Unit of the said Power Station, which shall be the **“Scheduled Delivery Date(s)”. The Scheduled Delivery Dates would come into effect post the approval of the transmission corridor from the CTU, indicating the quantum of power and the effective date of such transmission corridor being made available by the CTU to the Procurers. (Explanation;-Based on the approval obtained from CTU, indicating the quantum of power and effective date of availability of transmission corridor, the Scheduled delivery Date comes into effect.)**
- 6.1.2 It shall be the Procurers’ obligation to ensure the availability of the transmission corridor from the STU and/or CTU for onward transfer of Aggregate Contracted Capacity from the Delivery Point on or before the Scheduled Delivery Date(s), subject to the approval of such transmission corridor to be accorded by the CTU.
- 6.1.3 **Revised Scheduled Delivery Date(s):** However, the ‘Supplier’ and the ‘Procurers’ may mutually agree for commencement of supply of power in a phased maner from the Revised Scheduled Delivery Date(s) as specified in this Agreement.
- 6.1.4 The Supplier shall give the Procurer(s) and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

### **6.2 Extension of Time**

- 6.2.1 In the event that the Supplier is prevented from performing its obligations under Article 6.3 below by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date(s), as the case may be, due to:
- a. any Procurer(s) Event of Default; or
  - b. Force Majeure Events affecting the Procurer(s), or
  - c. Force Majeure Events affecting the Supplier,

the Revised Scheduled Delivery Date(s), Scheduled Delivery Date(s) and the Expiry Date shall be deferred, subject to the limit prescribed in Article 6.2.2, for a reasonable period but not less than ‘day for day’ basis, to permit the Supplier or the Procurer(s)

through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Supplier or the Procurer(s), or till such time such Event of Default is rectified by the Procurer(s).

- 6.2.2 In case of extension occurring due to reasons specified in Article 6.2.1(a) above, any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date(s) would not be extended by more than twelve (12) Months or the date on which the Supplier elects to terminate this Agreement, whichever is later.
- 6.2.3 In case of extension due to reasons specified in Article 6.2.1(b) and Article 6.2.1 (c), and if such Force Majeure Event continues even after the maximum period of twelve (12) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 10.6.
- 6.2.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date(s), Scheduled Delivery Date(s) or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 13.
- 6.2.5 As a result of such extension, the newly determined Scheduled Delivery Date and the Expiry Date, shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

### **6.3 Supplier's Obligations**

- 6.3.1 Subject to the terms and conditions of this Agreement, the Supplier undertakes to be responsible, at Supplier's own cost and risk, for:
- a. the commencement of supply of power up to the Aggregated Contracted Capacity to the Procurers, no later than the Scheduled Delivery Date(s) or the Revised Scheduled Delivery Dates, as the case may be, 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;
  - b. providing on a timely basis, all relevant information to the Procurers, which may be required for receiving power at the Delivery Point;
  - c. fulfilling all obligations undertaken by the Supplier under this Agreement;
  - d. Comply with the provisions of applicable law including the Grid Code;

### **6.4 Procurers' Obligations**

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

- a) ensure the availability of Interconnection Facilities and evacuation of power from the Interconnection Point onwards, before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;
- b) be responsible for payment of the Transmission Charges (from the Interconnection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurer(s). The Procurer shall reimburse any of the above charges, if required to be paid for by the Supplier pursuant to existing Law;
- c) be responsible for obtaining open access for transmission of the Aggregated Contracted Capacity from the Interconnection Point to beyond;
- d) be responsible for obtaining necessary approval from the competent authority for sale of the Aggregate Contracted Capacity as per the terms of this Agreement, and of this PPA at least ninety (90) days prior to the Scheduled Delivery Date(s) or the Revised Scheduled Delivery Date(s), as the case may be;
- e) make all reasonable arrangements for the evacuation of the Infirm Power from the Injection Point, subject to the availability of transmission capacity; and
- f) fulfill all obligations undertaken by the Procurer(s) under this Agreement.

After obtaining the open access approval from the CTU, the Lead Procurer shall be responsible for informing the Supplier and deliver to the Supplier copies of the same.

## **6.5 Joint Responsibility of the ‘Procurers’ and the ‘Supplier’**

- 6.5.1 The Procurers shall apply for the open access for the contracted quantum of energy and the period. If the Open Access is granted for 80% to 100% of the Contracted quantum of power Capacity for a particular period, the ‘Supplier’ will have to arrange for scheduling of a minimum of 80% of the Aggregate Contracted Capacity during that period in energy terms.
- 6.5.2 In case the open access is granted for less than 80% of the Aggregate Contracted Capacity in a particular period, the ‘Supplier’ shall ensure scheduling of that entire quantum approved for open access during that period.
- 6.5.3 Notwithstanding anything contained in Articles 6.5.1 and 6.5.2 above, the Supplier shall recover all Fixed Charges even in case the Procurers do not schedule the entire Aggregate Contracted Capacity, subject to the Power Station having declared Normative Availability as per the terms of this Agreement.

## **6.6 Purchase and sale of Available Capacity and Scheduled Energy**

- 6.6.1 Subject to the terms and conditions of this Agreement, the Supplier undertakes to sell to the Procurers, and the Procurers undertake to pay Tariff for all of the available

capacity up to the Aggregate Contracted Capacity and corresponding Scheduled Energy.

- 6.6.2 Unless otherwise instructed by both the Procurers jointly, the Supplier shall sell all the Available Capacity to each Procurer in the proportion listed out in Schedule 5 of this Agreement pursuant to the Dispatch Instructions of such Procurer.

### **6.7 Right to Contracted Capacity and Scheduled Energy**

- 6.7.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurers and the Procurers shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Supplier. The Supplier shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy.

- 6.7.2 a) Notwithstanding Article 6.7.1, the Supplier is free to sell such power to any third party prior to the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s) as the case may be and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from each such Revised Scheduled Delivery Date(s) or any part up to the Contracted Capacity which cannot be supplied to the Procurers due to the Procurers inability to obtain necessary open access to the transmission network.

- b) Further notwithstanding Article 6.7.1, the Supplier shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if

i. there is a part of available capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ("**Concerned Procurer**"), and

ii. such part has first been offered, at the same Tariff, to the other Procurers (by the Supplier), who was not ordinarily entitled to receive such part and it has chosen to waive or not to exercise its first right to receive such part of the available capacity within two (2) hours of being so offered the opportunity to receive such part, subject to the provisions regarding scheduling as per the IEGC.

- 6.7.3 If any Procurer does not avail of power up to the available capacity provided by the Supplier corresponding to such Procurer's Contracted Capacity, the Supplier shall be entitled to sell such available capacity not scheduled by such Procurer, to any person without losing the right to receive the Capacity Charges from the Concerned Procurer for such unavailed available capacity. In such a case, the sale realization in excess of the Energy Charges, shall be equally shared by the Supplier with the Concerned Procurer. If both Procurers do not avail of the available capacity corresponding to their Contracted Capacity, provisions of this Article shall be applicable to them *mutatis mutandis* and in such case, fifty percent (50%) of the excess over Energy Charges recovered by the Supplier from sale to third party shall be retained by the



Supplier and the balance fifty percent (50%) shall be provided by the Supplier to the Concerned Procurer(s) in the ratio of their available capacity not dispatched by such Concerned Procurer(s) and sold by the Supplier to third parties. During this period, the Supplier will also continue to receive the Capacity / Fixed Charges from such Procurers.

- 6.7.4 Any deviations between scheduled and actual drawal shall not be considered as sale to third party for the purposes of this Agreement and shall be dealt as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.
- 6.7.5 Upon the Procurers or any of the Procurers not availing of the available capacity, as envisaged under this Article, intimating to the Supplier of its intention and willingness to avail of the part or whole of the available capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Supplier shall, notwithstanding anything contained in the arrangement between the Supplier and any third party, commence supply of such capacity to the Concerned Procurer(s) from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurer(s) or the time for commencement of supply specified in such notice, subject to the provisions regarding scheduling as per IEGC.

## **6.8 Alternative Source of Power Supply**

- 6.8.1 During the Operating Period, if the Supplier is unable to provide supply of power to the Procurer(s) up to the Aggregate Contracted Capacity from the Power Station, except due to a Force Majeure Event or due to a Procurer Event of Default, the Supplier may supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement, subject to availability of surplus power with the Supplier. Such power shall be supplied to the Procurer(s) at a Tariff as per the terms of this Agreement. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC Charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges that would have normally been incurred for supply of power under this Agreement, the Supplier would be liable to bear such additional charges.

## **6.9 Transmission Losses**

Transmission losses from the Interconnection Point onwards would be borne by the Procurers.

## **7 ARTICLE 7: BILLING AND PAYMENT**

### **7.1 General**

7.1.1 From the commencement of supply of power, the 'Procurers' shall pay to the 'Supplier' the monthly Tariff Payments, on or before the Due Date, comprising of the Tariff as determined pursuant to Article 5 and Schedule 4 of this agreement. All Tariff Payments by the 'Procurers' shall be in Indian Rupees.

### **7.2 Delivery and Content of Monthly Bills**

7.2.1 The Supplier shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the current Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the current Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days. Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by the RLDC / SLDC or any other competent authority which shall be binding on both the Parties.

Provided that:

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

7.2.2 Each Monthly Bill shall include:

- a. all charges as per this Agreement for the energy supplied for the relevant Month based on relevant energy accounts issued by the respective RLDC/SLDC or any other competent authority, which shall be binding on both the Parties;
- b. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
- c. supporting data, documents and calculations in accordance with this Agreement.

### **7.3 Payment of Monthly Bills**

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

- 7.3.2 All payments made by the Procurer(s) shall be appropriated by the Seller in the following order of priority:
- a. towards Late Payment Surcharge, if any;
  - b. towards the earlier unpaid Monthly Bill(s), if any; and
  - c. towards the then current Monthly Bill.
- 7.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:
- a. deductions required by the Law; and
  - b. amounts claimed by the 'Procurers', if any, from the 'Supplier', through an invoice duly acknowledged by the 'Supplier', to be payable by the 'Supplier', and not disputed by the 'Supplier' within thirty (30) days of receipt of the said Invoice and such deduction or setoff shall be made to the extent of the amounts not disputed. It is clarified that the 'Procurers' shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.
- 7.3.4 The Supplier shall open a bank account at Raipur ("**Supplier's Designated Account**") for all Tariff Payments (including payment against Supplementary Bills) to be made by the Procurers to the Supplier, and notify the Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurers shall also designate a bank account at Hyderabad (the "**Procurers' Designated Account**") for payments to be made by the Supplier to the Procurers, if any, and notify the Supplier of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. The Supplier and the Procurers shall instruct their respective bankers to make all payments under this Agreement to the Procurers' Designated Account or the Supplier's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- 7.3.5 **Late Payment Surcharge**
- In the event of delay in payment of a Monthly Bill by the 'Procurers' beyond its Due Date, a Late Payment Surcharge shall be payable by the 'Procurers' to 'Supplier' at a rate as specified by the CSERC (Terms and Conditions for determination of tariff according to Multi-year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, and as amended from time to time. The Late Payment Surcharge shall be claimed by 'Supplier' through the Supplementary Bill.
- 7.3.6 **Rebate**
- For payment of any Bill before Due Date, a Rebate shall be paid by the 'Supplier' to the 'Procurers' as per the provisions of the Chhattisgarh State Electricity Regulatory

Commission (Terms and Conditions of tariff according to Multi- year Tariff principals and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, and as amended from time to time.

#### **7.4 Payment Security Mechanism**

##### **Letter of Credit (LC):**

7.4.1 The Procurers shall provide to Supplier, in respect of payment of its monthly bills, a monthly unconditional, revolving and irrevocable letter of credit ("**Letter of Credit**" or "**LC**"), opened and maintained by the Procurer(s), which may be drawn upon by the Seller in accordance with this article, at least one month before the Scheduled Delivery Date / Revised Scheduled Delivery Date.

7.4.2 Not later than one (1) Month before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, the Procurers shall open a Letter of Credit in favour of the Supplier, 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 be procured by the Procurer from a bank where at least thirty per cent (30%) of the Procurer's total monthly Revenues are normally deposited. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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

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

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 7.4.2 due to any reason whatsoever, the 'Procurers' shall restore such shortfall within fourteen (14) days.

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

7.4.4 In case of drawal of the Letter of Credit by the Seller, in accordance with this Article 7.4, the amount of the Letter of Credit shall be replenished and reinstated within fourteen (14) days.

7.4.5 If the 'Procurers' fail to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 7.6.7, 'Supplier' may draw upon the Letter of Credit, and accordingly the Bank shall pay without any reference

or instructions from the 'Procurers', an amount equal to such Monthly Bill or Supplementary Bill or part thereof, plus Late Payment Surcharge, if applicable, in accordance with Article 7.3.4 above, by presenting to the Scheduled Bank issuing the Letter of Credit, the following documents:

- a. a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer(s);
- b. a certificate from 'Supplier' 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
- c. calculations of applicable Late Payment Surcharge, if any.

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

7.4.7 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 Supplier.

7.4.8 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 'Supplier' and the 'Procurers'.

7.4.9 The Seller should establish to the bank that the Procurer has failed to pay a Bill or a Supplementary Bill or a part thereof by way of a certificate as provided in clause (b) of Article 7.4.5.

## **7.5 Third Party Sales by the 'Supplier'**

7.5.1 Notwithstanding anything contained in Article 6.7.1, upon the occurrence of an event where the 'Procurers' have not made payment of the undisputed amount by the Due Date of an Invoice through the Payment Mechanism provided in Article 7.4 of this Agreement, the 'Supplier' shall follow the steps as enumerated in Article 7.5.2.

7.5.2 In case the 'Supplier' is not able to realize the due payments from the Procurer beyond thirty (30) days after the Due Date, the 'Supplier' shall have the right to divert the Contracted Capacity of such Procurer(s) or part thereof and sell it to any third party.

'Supplier', under such circumstances, shall request the concerned SLDC/RLDC to divert such power to third party, as it may consider appropriate.

7.5.3 The liability of the defaulting Procurer(s) towards making Capacity Charge payments to the Supplier even for the Contracted Capacity, or part thereof, sold to third parties or to the other non- defaulting Procurer or remaining unsold during such periods will remain unaffected.

- 7.5.4 Sales to any third party under Article 7.5.2 above shall cease and regular supply of electricity to the Procurer(s) shall commence and be restored within twenty (20) days from the date on which the defaulting Procurer(s) pays the amount due to the Seller.

Provided that, the liability of the 'Procurers' to make the Tariff Payments to the Supplier as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available for usage by the 'Procurers'.

## **7.6 Disputed Bill**

- 7.6.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.
- 7.6.2 If a Party disputes the amount payable under a Monthly 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:
- a. the details of the disputed amount;
  - b. its estimate of what the correct amount should be; and
  - c. all written material in support of its claim.
- 7.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within seven (7) days of receiving the Bill Dispute Notice. In such a case, the excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 7.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice ("**Bill Disagreement Notice**") to the disputing Party, providing:
- a. reasons for its disagreement;
  - b. its estimate of what the correct amount should be; and
  - c. all written material in support of its counter-claim
- 7.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 7.6.4, authorized representative(s) or a director of the board of directors/ member of

board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

- 7.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 7.6.4, the matter shall be referred to Dispute resolution in accordance with Article 13.
- 7.6.7 In case of any Dispute relating to a Bill, the aggrieved Party shall invoke arbitration in terms of Article 13.3.2.
- 7.6.8 If a Dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 7.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 7.6.5 or settled by Dispute resolution mechanism, along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 7.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer(s) shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Month's Invoice (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 / Energy Accounts and in accordance with this Agreement.

## **7.7 Annual Reconciliation**

- 7.7.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to annual reconciliation at the end of each Contract Year to take into account the energy accounts/REA, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 7.7.2 The Parties, therefore, agree that as soon as all such data in respect of any of a full Contract Year, as the case may be, has been finally verified and adjusted, the 'Procurers' and the 'Supplier' shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the 'Procurers' or 'Supplier', as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant Contract Year, as may be, due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had

been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 13.

## **7.8 Payment of Supplementary Bill**

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

- a. Adjustments required by the Energy Accounts (if applicable);
- b. Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- c. Change in Law as provided in Article 9,

and, unless disputed under Article 7.6, such Supplementary Bill shall be paid by the other Party.

7.8.2 The 'Procurers' shall remit all amounts due under a Supplementary Bill raised by 'Supplier' to the Supplier's Designated Account by the Due Date and notify the 'Supplier' of such remittance on the same day or the 'Supplier' shall be eligible to draw such amounts through the Letter of Credit. Similarly, the 'Supplier' shall pay all amounts due under a Supplementary Bill raised by the 'Procurer(s)', if any, by the due date to the concerned Procurer's Designated Account and notify the 'Procurer(s)' of such payment on the same day. For such payments by such Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 7.3.5 shall equally apply.

7.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 7.3.4.



## **8 ARTICLE 8 : FORCE MAJEURE**

### **8.1 Definitions**

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

### **8.2 Affected Party**

8.2.1 An affected Party means 'the Supplier' or 'either of the Procurers' whose performance has been affected by an event of Force Majeure.

8.2.2 An event of Force Majeure affecting the CTU/ STU or any other agent of the Procurer(s), which has affected the transmission facilities from the Injection Point onwards, shall be deemed to be an event of Force Majeure affecting the Procurer(s). Any event of Force Majeure affecting the performance of the Supplier or affecting the transmission facilities from the Power Station to the Injection Point shall be deemed to be an event of Force Majeure affecting the Supplier, only if the event affects and results in interruptible or no power supply to the Procurer(s).

### **8.3 Force Majeure**

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

- a. **Natural Force Majeure Events:** (i) 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 one hundred (100) years; or (ii) explosion, accident to transmission facilities to delivery power from the Delivery Points to the receiving substation(s); or

#### **b. Non-Natural Force Majeure Events - Direct:**

- i. the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Developer / Seller to perform its obligations or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station, provided that a Competent Court of Law eventually declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down;

- ii. any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government(s) of the Procurer(s) or the Supplier or the Central Government of India), which is directed against the supply of power by the Supplier to the Procurer(s), provided that a Competent Court of Law eventually declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

**c. Non-Natural Force Majeure Events - Indirect:**

- i. 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 making the performance of obligations as specified herein as impossible; or
- ii. radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party; or
- iii. Industry wide strikes and labor disturbances having a nationwide impact in India. or
- iv. Failure of CSPGCL to supply the power from the Power Station to the Supplier contracted under the PPA between CSPGCL and the Supplier dated 03 January 2011.

**8.4 Force Majeure Exclusions**

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

- a. Non-performance, resulting from normal wear and tear typically experienced in power generation materials and equipment;
- b. Strikes or labour disturbance at the facilities of the Affected Party;
- c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- d. 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.

- e. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, material, spare parts, Fuel or consumables for the Power Station, or the delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 8.2.

## **8.5 Notification of Force Majeure Event**

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

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

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

## **8.6 Duty to Perform and Duty to Mitigate**

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

## **8.7 Available Relief for a Force Majeure Event**

- 8.7.1 Subject to this Article 8,
  - a. no Party shall be in breach of its obligations pursuant to this Agreement, except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event; and
  - b. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;

For avoidance of doubt, it is clarified that neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

## **9 ARTICLE 9: CHANGE IN LAW**

### **9.1 Definitions**

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

9.1.1 **“Change in Law”** means the occurrence of any of the following events after the Effective Date, resulting into any additional recurring/ non-recurring expenditure by the Supplier or any income to the Supplier:

- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- c. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Discom;
- e. any change in tax or introduction of any tax made applicable for sale of power by ‘Supplier’ to the ‘Procurers’ as per the terms of this Agreement;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of CSPDCL, or (ii) any change on account of regulatory measures by the Appropriate Commission, including calculation of Availability, UI or deviation charges or frequency intervals by CERC or TSERC, as applicable.

### **9.2 Relief for Change in Law**

9.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

9.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

### **9.3 Notification for Change in Law**

9.3.1 If the Supplier is affected by Change in Law in accordance with Article 9.1 above and wishes to claim relief for such a Change in Law under this Article 9, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or when it should reasonably have known of the Change in Law.

## **10 ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION**

### **10.1 Procurers' Event of Default**

10.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Procurer(s) Event of Default:

- a. a Procurer fails to meet any of its obligations, including as specified in Article 6.4;
- b. a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen percent (15%) of the undisputed part of the most recent Monthly / Supplementary Bill for a period of ninety (90) days after the Due Date and Supplier is unable to recover the amount outstanding to the 'Supplier' through the Letter of Credit; or
- c. the 'Procurers' fail to evacuate power from the Interconnection Point beyond a continuous period of six (6) months from the Scheduled Delivery Date;
- d. if (i) the 'Procurers' become 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 (ii) any winding up or bankruptcy or insolvency order is passed against the 'Procurers', or (iii) the 'Procurers' go 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 'Procurers' will not be a 'Procurers' Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Procurers and expressly assumes all obligations of the Procurers under this Agreement and is in a position to perform them; or

- e. the 'Procurers' repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from 'Supplier' in this regard; or
- f. except where due to any 'Supplier's' failure to comply with its material obligations, the 'Procurers' are in breach of any of their material obligations pursuant to this Agreement, and such material breach is not rectified by the 'Procurers' within thirty (30) days of receipt of first notice in this regard given by the 'Supplier'.
- g. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the 'Procurers'.

## **10.2 Supplier's Event of Default**

10.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, or due to the Procurers' failure to comply with their obligations, shall constitute the Event of Default on the part of defaulting Supplier:

- a. The Supplier repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurers in this regard; or
- b. the Supplier is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by the Supplier within thirty (30) days of receipt of notice in this regard from the Procurers to Supplier; or
- c. if
  - i. the 'Supplier' 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
  - ii. any winding up or bankruptcy or insolvency order is passed against 'Supplier', or
  - iii. the 'Supplier' goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,  
  
Provided that, it shall not constitute a 'Supplier Event of Default, where such dissolution or liquidation of the 'Supplier' is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to the 'Supplier' and expressly assumes all obligations of 'Supplier' and is in a position to perform them; or;
  - iv. occurrence of any other event which is specified in this Agreement to be a material breach or default of 'Supplier'.
- d. after 'the Delivery Date', the Supplier fails to make available at least 60% (sixty percent) of the Contracted Capacity in energy terms for a consecutive period of 12 (twelve) months.

## **10.3 Procedure for cases of Procurers' Event of Default**

10.3.1 Upon the occurrence and continuation of any Procurers' Event of Default under Article 10.1, the Supplier shall have the right to deliver to the Procurers a notice, stating its intention to terminate this Agreement ("**Supplier's Preliminary Default Notice**"), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

- 10.3.2 Following the issue of the 'Supplier's Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may mutually agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 10.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 10.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Procurers' Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Supplier shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer(s) committing Procurer Event of Default to any third party of its choice.

Provided that, such Procurer(s) shall have the liability to make payments for Capacity Charges based on Normative Availability to the Supplier for the period up to the Expiry Date, subject to maximum of three (3) years for long term or twelve months or half of the Term whichever is lower, from the eighth day after the expiry of the Consultation Period.

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

#### **10.4 Procedure for cases for 'Supplier's Event of Default**

- 10.4.1 Upon the occurrence and continuation of any 'Supplier's Event of Default specified in Article 10.2, the Procurers, through the Lead Procurer, shall have the right to deliver to the Supplier, a Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 10.4.2 Following the issue of a Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 10.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 10.4.4 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 Supplier's Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the 'Procurers' may terminate this Agreement by giving a



written Termination Notice of thirty (30) days to the Supplier, with a copy to the TSERC.

## **10.5 Consequences for Termination**

**10.5.1 Termination pursuant to a Supplier's Event of Default:** In case of termination of this Agreement due to a Supplier's Event of Default, then the Supplier shall reimburse to the Procurer the charges incurred by the Procurers for cancelling the agreements for open access.

**10.5.2 Termination pursuant to a Procurer's Event of Default:** In case of termination of this agreement due to Procurer event of default, the Procurers shall reimburse the Supplier, the amount as provided for in Article 10.3.4 above.

## **10.6 Termination due to Force Majeure:**

If the Force Majeure event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

## **11 ARTICLE 11: LIABILITY AND INDEMNIFICATION**

### **11.1 Indemnity**

11.1.1 The 'Procurers' shall indemnify, defend and hold the Supplier harmless against:

- a. any and all third party claims, actions, suits or proceedings against the Supplier for any loss of or damage to property of such third party, or death or injury to such third party, resulting from an act or omission of the Procurer, its contractors, servants, agents, officers or employees, 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 'Supplier', its contractors, servants or agents; and
- b. any and all losses, damages, costs and expenses, including legal costs, fines, penalties and interest arising from or in connection with any:
  - i. breach by the Procurers (its contractors, servants, agents etc.) of any of their obligations 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 the Supplier, its contractors, servants or agents, or
  - ii. any of the representations or warranties of the Procurers, if any, made under this Agreement, being found to be inaccurate or untrue.

11.1.2 The Supplier shall indemnify, defend and hold the 'Procurers' harmless against:

- a. any and all third party claims, actions, suits or proceedings against the 'Procurers', 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 Supplier 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 'Procurers', their 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 'Procurers' from third party claims arising by reason of:
  - i. a breach by the Supplier of any of its obligations under this Agreement

(Provided that, this Article 11 shall not apply to such breaches by the Supplier, 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 Procurers, their contractors, servants or agents, or

- ii. any of the representations or warranties of the Supplier, if any, made under this Agreement, being found to be inaccurate or untrue.

## **11.2 Procedure for claiming Indemnity**

### **11.2.1 Third party claims**

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

Provided however that, if:

- i. the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 11.2.1(b) below; and
- ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

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

An Indemnifying Party may, at its own expense, assume control of the defense 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 defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

## **11.3 Indemnifiable Losses**

- 11.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 11.1.1(b) or 11.1.2(b), the Indemnified Party

shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under Article 11.2, such event shall constitute a payment default under Article 7.

#### **11.4 Monetary Limitation of Liability**

11.4.1 A Party (“**Indemnifying Party**”) shall be liable to indemnify the other Party (“**Indemnified Party**”) under this Article 11 for any indemnity claims made in a Contract Year only up to an amount of Rupees 2.0 Crs (Rupees Two Crores only). With respect to the Procurers, the above limit of Rupees 2.0 Crs (Rupees Two Crores only) shall be divided in the ratio of their Contracted Capacity existing on the date of the indemnity claim.

#### **11.5 Limitation on Liability**

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

11.5.2 The Supplier shall have no recourse against any officer, director or shareholder of either of the ‘Procurers’ or any Affiliate of the ‘Procurers’ or any of its officers, directors or shareholders for such claims excluded under this Article. The ‘Procurers’ shall have no recourse against any officer, director or shareholder of the ‘Supplier’, or any Affiliate of the ‘Supplier’ or any of its officers, directors or shareholders for such claims excluded under this Article.

#### **11.6 Duty to Mitigate**

11.6.1 The Parties shall endeavour to take all reasonable steps so as to mitigate any loss or damage which has occurred under this Article 11.

## **12 ARTICLE 12: ASSIGNMENTS AND CHARGES**

### **12.1 Assignments**

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

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

Provided further that, any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

### **12.2 Permitted Charges**

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

## **13 ARTICLE 13: GOVERNING LAW AND DISPUTE RESOLUTION**

### **13.1 Governing Law**

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

### **13.2 Amicable Settlement and Dispute Resolution**

#### **13.2.1 Amicable Settlement**

- a. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“**Dispute**”) by giving a written notice (“**Dispute Notice**”) to the other Party, which shall contain: (i) a description of the Dispute; (ii) the grounds for such Dispute; and (iii) all written material in support of its claim.
- b. The other Party shall, within thirty (30) days of issue of the Dispute Notice issued under Article 13.2.1 (a) above, furnish: (i) counter-claim and defenses, if any, regarding the Dispute; and (ii) all written material in support of its defenses and counter-claim.
- c. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 13.2.1 (a), if the other Party does not furnish any counter claim or defense under Article 13.2.1 (b) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably.
- d. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 13.2.1 (c), the Dispute shall be referred for dispute resolution in accordance with Article 13.3.

### **13.3 Dispute Resolution**

#### **13.3.1 Dispute Resolution by the CSERC:**

- a. Where any Dispute
  - i. arising 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 CSERC,

such Dispute shall be submitted to adjudication by the CSERC. Appeal against the decisions of the CSERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

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

### **13.3.2 Dispute Resolution through Arbitration**

If the Dispute arises out of or in connection with any claims not covered in Article 13.3 , or if any Dispute arising out of or in connection with any claims covered in Article 13.3 remains unresolved, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules thereunder:

The Arbitration Tribunal shall consist of three (3) arbitrators. Each Party shall appoint one Arbitrator within thirty (30) days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within thirty (30) days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the Party fails to appoint an Arbitrator within thirty (30) days from the date of receipt of request or the two appointed Arbitrators fail to agree on the third Arbitrator within thirty (30) days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.

- i. The place of arbitration shall be Raipur. The language of the arbitration shall be English.
- ii. 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.
- iii. The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- iv. The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

### **13.4 Parties to Perform Obligations**

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

## **14 ARTICLE 14 : INSURANCES**

### **14.1 Insurance**

14.1.1 The 'Supplier' shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the **[financing agreements in the case of the Supplier's Power Station]**.

### **14.2 Application of Insurance Proceeds**

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

14.2.2 If a Natural Force Majeure Event renders the Power Station 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.

### **14.3 Effect on liability of the Procurer(s)**

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 'Supplier and Developer' (CSPDCL and CSPGCL) can claim compensation under any Insurance shall not be charged to or payable by the Procurer(s).



## **15 ARTICLE 15: MISCELLANEOUS PROVISIONS**

### **15.1 Lead Procurer**

15.1.1 The Procurers hereby appoint and authorise TSSPDCL (hereinafter referred to as the “**Lead Procurer**”) to represent both the Procurers for discharging the rights and obligations of the Procurers under this Agreement, which are required to be undertaken by all the Procurers. All the Procurers shall follow and be bound by the decisions of the Lead Procurer. Accordingly, each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on matters specified under this Agreement to be dealt with by the Lead Procurer, shall be deemed to have been on its/his behalf and shall be binding on each of the Procurer. The Supplier shall be entitled to rely upon any such action, decision or communication or notice from the Lead Procurer. It is clarified that provisions under this Article 15.1.1 are not intended to and shall not render the Lead Procurer liable to discharge Tariff Payments due to the Supplier from the other Procurer (viz., TSNPDCL).

15.1.2 On the occurrence of any Event of Default specified in Article 10.1 by the Lead Procurer, the Supplier may, at its option, within a period of fifteen (15) days from the date of issue of the Supplier’s Preliminary Default Notice referred to in Article 10.3.1 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the TSNPDCL shall be the new Lead Procurer, as per the provisions of this Article 15.1. In such a case, if the Supplier so notifies, the new Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under Article 15.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the TSSPDCL appointed under Article 15.1, in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.

15.1.3 Notwithstanding anything to the contrary contained above, the Procurers hereby agree and acknowledge that the Lead Procurer has the authority to take all actions and decisions, assume any obligations, as well as settle or compromise any issues under or pursuant to this Agreement, for and on behalf of the Procurers, and such decision shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Lead Procurer.

### **15.2 Amendment**

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

### **15.3 Third Party Beneficiaries**

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

#### **15.4 Waiver**

- 15.4.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party.
- 15.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

#### **15.5 Entirety**

- 15.5.1 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.
- 15.5.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Aggregate Contracted Capacity under this Agreement to the Procurer(s) by the Supplier shall stand superseded and abrogated.

#### **15.6 Confidentiality**

- 15.6.1 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.
- 15.6.2 Notwithstanding the provisions under Article 15.4.1, the 'Procurers' agree and acknowledge that 'Supplier' may, at any time, disclose the terms and conditions of the Agreement to any person, to the extent stipulated under Law.

#### **15.7 Affirmation**

- 15.7.1 The Seller and Procurer(s), both affirm that:
- a. neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back;

and

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

A breach of this Article shall amount to a material breach of this Agreement and allow the Party not at default to terminate this Agreement for cause effective immediately.

## **15.8 Severability**

- 15.8.1 The invalidity or unenforceability, 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.

## **15.9 Relationship of the Parties**

- 15.9.1 Subject to the provisions of clause 15.1, this Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship between the Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

## **15.10 Counterparts**

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

## **15.11 Notices**

- 15.11.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

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

Procurer1 : **Southern Power Distribution Company of Telangana Limited** (TSSPDCL)  
Address : 6-1-50 , Mint Compound, Hyderabad  
Attention : CGM (Commercial)  
Email : seipc@tssouthernpower.com  
Fax. No. : 040-23431452

Telephone No.: 040-23431008

Procurer2 : **Northern Power Distribution Company of Telangana Limited (TSNPDCL)**

Address : H.No.2-5-3/2,Vidyut Bhavan, Nakkalagutta, Hanmakonda, Warangal

Attention : CGM (IPC &RAC)

Email : gmplg@tsnpdcl.in

Fax. No. : 0870-2461519

Telephone No.: 0870-2461501

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

Address : Vidyut Sewa Bhawan, Dganiya, Raipur.

Attention: Managing Director

Email : mddiscom@cseb.gov.in

Fax. No. : 0771-4066566

Telephone No. :0771-2574200/4066902

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

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

## **15.12 Language**

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

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

### **15.13 Commercial Acts**

15.13.1 The Procurer(s) and the Supplier unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement to which it is a Party constitute private and commercial acts rather than public or governmental acts.

### **15.14 Restriction of Shareholders / Owners' Liability**

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

### **15.15 Taxes and Duties**

15.15.1 The 'Procurers' shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the 'Procurers, that are required to be paid by the 'Procurers' as per the Law in relation to the execution of the Agreement.

15.15.2 The 'Supplier' shall be indemnified and held harmless by the 'Procurers' against any claims that may be made against the 'Supplier' in relation to the matters set out in Article 15.15.1.

15.15.3 The 'Supplier' shall not be liable for any payment of taxes, duties, levies, cess whatsoever for discharging any obligation of the 'Procurers' by the 'Supplier' on behalf of Procurers or their personnel.

### **15.16 Discretion**

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

### **15.17 Order of priority in application**

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

- a. applicable Law, rules and regulations framed thereunder; and
- b. the terms and conditions of this Agreement.

**15.18 Compliance with Law**

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

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

.....  
**For and on behalf of**  
**[SUPPLIER]**

Name: .....  
Designation: .....  
Address: Vidyut Sewa Bhawan,  
Daganiya, Raipur – 492 013

.....  
Signature with seal

**Witness:**  
1. ....  
2. ....

.....  
**For and on behalf of**  
**[PROCURERS]**

Name: .....  
Designation: .....  
Address: H.No.6-1-50 , Mint Compound,  
Hyderabad.

.....  
**[PROCURERS]**

Name: .....  
Designation: .....  
Address: H.No.2-5-3/2, Vidyut Bhavan,  
Nakkalagutta, Hanmakonda,  
Warangal.

.....  
Signature with seal

**Witness:**  
1. ....  
2. ....

**SCHEDULE 1: MoU BETWEEN THE GOVT OF TELANGANA STATE AND  
THE GOVT OF CHHATTISGARH STATE DATED 03  
NOVEMBER 2014**

*(Copy Annexed)*

**SCHEDULE: 2**

**PPA BETWEEN CSPGCL & CSPDCL DATED 03 JANUARY 2011**  
***(Copy Annexed)***



### **SCHEDULE 3: AVAILABILITY FACTORS**

**3.1** The following matters shall be determined as per the provisions of the Grid Code, Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 :

- a) Scheduling and Dispatch; and
- b) Other matters which may be related to Availability or Availability Factor.

## **SCHEDULE 4: TARIFF**

### **4.1 General**

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) For the purpose of payments, the Tariff will be as determined by the Chhattisgarh State Electricity Regulatory Commission (CSERC) for the applicable Contract Year.

### **4.2 Monthly Tariff Payment**

#### **4.2.1 Components of Monthly Tariff Payment**

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

- i) Monthly Capacity Charge payment:
  - (a) Return on equity
  - (b) Interest on loan capital
  - (c) Depreciation
  - (d) Interest on working capital
  - (e) Operation & Maintenance expenses.
- ii) Monthly Energy Charge for Scheduled Energy comprises of the following:
  - (a) Landed Fuel Cost of Coal;
  - (b) Cost of Secondary Fuel Oil Consumption.
- iii) Transmission/Wheeling Charges, Open Access charges (SLDC/RLDC Charges).

#### **4.3: Normative Availability:**

- 4.3.1: The PAFM and PAFY shall be computed in accordance with the formula prescribed by the CSERC in its regulations, and as may be amended from time to time.

#### **4.4: Computation and Payment of Capacity Charge**

- 4.4.1 The Capacity Charges payable under this Agreement to the Procurers shall be as per the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

#### **4.5: Computation and Payment of Energy Charge**

- 4.5.1 The Energy Charges payable under this Agreement to the Procurers shall be as per the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

#### **4.6: Penalty on NAPAF**

Any penalty, if applicable in relation to supply falling short of the NAPAF under this Agreement, shall be as per the provisions of the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

#### **4.7 Contract Year Energy Incentive Payment**

**If plant Load factor exceeds Target Plant Load factor, an incentive shall be payable at the rate of 40% of fixed charge (in Rs/Kwh) for such contract year subject to a maximum of twenty five paise/Kwh, shall be allowed for ex bus sheduleed energy corresponding to schedule generation in excess of ex-bus energy corresponding to target Plant Load Factor.**

**SCHEDULE 5: NAME & DETAILS OF THE PROCURERS**

<b>Sl. No.</b>	<b>Name of Procurer(s)</b>	<b>Address of the Registered office of Procurer (s)</b>	<b>Law under which incorporated</b>	<b>% of Energy allotted</b>	<b>Contracted Capacity (MW)</b>	<b>Delivery Point</b>
1	Telangana State Southern Power Distribution Company Limited (TSSPDCL): <b>Lead Procurer</b>	6-1-50 , Mint Compound, Hyderabad	The Company Act, 1956	70.55	1000 MW (Gross, as per definition)	Same as Inter connection Point as per Agreement
2	Telangana State Northern Power Distribution Company Limited (TSNPDCL)	H.No.2-5-3/2, Vidyut Bhavan, Nakkalagutta, Hanmakonda, Warangal	The Company Act, 1956	29.45		

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**GOVERNMENT OF CHHATTISGARH**

**AND**

**GOVERNMENT OF TELANGANA**

**FOR**

**SUPPLY OF POWER**

**3<sup>rd</sup> November, 2014**

**RAIPUR, CHHATTISGARH**

**THIS MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as "MoU") is made on the 3<sup>rd</sup> day of November, 2014 at Raipur.

**BETWEEN**

**Government of Chhattisgarh** (hereinafter referred to as "GoCG"), which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors, authorised representatives and permitted assignee of the **FIRST PART**;

**AND**

**Government of Telangana** (hereinafter referred to as "GoTS"), which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors, authorised representatives and permitted assignee of the **OTHER PART**;

The "GoCG" and "GoTS" shall, in this MOU be individually referred to as "**PARTY**" and collectively as "**PARTIES**".

**WHEREAS:**

- A. The Government of Telangana has expressed its interest to procure power from Government of Chhattisgarh on a long term basis to meet its internal demand of power, assessed at 1,000 MW.
- B. The Government of Chhattisgarh is desirous of meeting the aforesaid requirement of power of the State of Telangana by supplying surplus power from its source on long term basis.

Now therefore, in consideration of the foregoing, the Government of Chhattisgarh and Government of Telangana have come together to record their intentions through this memorandum of understanding (MoU) as follows:

1. The Government of Chhattisgarh will supply and Government of Telangana will procure 1,000 MW power, on long term basis.



2. The Government of Chhattisgarh will supply the aforesaid power through Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) (herein after referred as the 'Supplier' in short) and Government of Telangana will procure the aforesaid power from CSPDCL, who had long term tie up of power from the upcoming Thermal Power Station of Chhattisgarh State Power Generation Company Ltd. (CSPGCL) at Marwa in district Janjgir-Champa of Chhattisgarh, for which CSPDCL has a long term Power Purchase Agreement with CSPGCL.
3. The Government of Telangana will procure the said power from CSPDCL through its nominated agencies, namely the Telangana Southern Power Distribution Company Limited (TSSPDCL) as lead procurer and Telangana Northern Power Distribution Company Limited (TSNPDCL), (herein after referred as 'Procurers' in short).
4. Both the PARTIES agree that the delivery point for the said power will be the ex-bus gantry of the Marwa Thermal Power Station of CSPGCL.
5. The Tariff for supplying the aforesaid power from Marwa Thermal Power Station will be determined by the Appropriate State Electricity Regulatory Commission (SERC), in accordance with the provisions of the Electricity Act 2003.
6. The rate for supply of power to the Procurers will be the Tariff as determined by the appropriate SERC for Marwa Thermal Power Station. All other charges, namely transmission/wheeling charges, open access charges including trading margin etc., for transfer of power from ex-bus of Marwa Thermal Power Station upto delivery point located in Telangana shall be borne by the Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited.
7. This MoU will be followed by the execution of Power Purchase Agreement(s) between the Procurers and the Supplier, which shall contain the detailed commercial, technical and other terms and conditions for supply of the aforesaid power from State of Chhattisgarh to State of Telangana.



8. The Procurers will be responsible to apply for and seek necessary approvals including approval of PPA(s), from the State Electricity Regulatory Commission regarding the purchase of power by them.
9. Both the PARTIES will provide all necessary assistance to the Supplier and Procurers to obtain, as required, necessary licence, statutory clearances, permits, approvals, NoCs, etc. required to give effect to the provisions of this MoU.
10. The validity, construction and enforceability of this MoU shall be governed in all respects by the Laws of India. The Parties hereto agree that in respect of any dispute arising upon, over or in respect of any of the terms of this MoU, only the Courts in Raipur shall have jurisdiction to try and adjudicate such dispute to the exclusion of all other Courts.
11. All disputes arising under this MOU shall be settled mutually through amicable settlement. In the event of any dispute not settled amicably, shall be referred to Mediation which should be resolved within 30 days. If not, the said dispute may be referred to Arbitration as per Arbitration & Conciliation Act, 1996. The Party who is raising the dispute will provide a panel of three (3) persons (who do not suffer any disqualification under the Arbitration & Conciliation Act, 1996 to become an Arbitrator). The other Party / Parties shall, within a period of thirty (30) days of receipt of the names of the members of such panel, will select and communicate one of the names out of the said panel to act as the Sole Arbitrator. In case of failure of the other Party / Parties to select and communicate the name of the Sole Arbitrator within this time period, the Party raising the dispute shall have the right to nominate and appoint the Sole Arbitrator. The Award of the Arbitrator shall be final and binding on the Parties. The venue of the Arbitration shall be Raipur.
12. Any of the parties to the MOU as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this MOU to the extent that such performance is impeded by an event of Force Majeure.
13. It is agreed by the both the PARTIES that the nodal officer for the purpose of giving effect to the terms of this MoU shall be the following:





a) **Managing Director,**  
**Chhattisgarh State Power Distribution Company Ltd.,**  
3<sup>rd</sup> Floor, 'Vidyut Sewa Bhawan', Dangania, Raipur – 492013.  
Phone: 0771-2574200, Fax:0771-4066566

b) **Chairman & Managing Director,**  
**Southern Power Distribution Company of Telangana Limited,**  
Corporate office, 6-1-50, Mint Compound, Hyderabad-500.063  
Phone: 040- 23431018 :Fax: 040-23452590

14. This MOU is only an instrument of understanding between the Parties. Further modifications, if required, shall be as per mutual consent.
15. Through this MOU, all the Parties affirm their commitment to fulfil and achieve the objectives mutually agreed upon in this MOU.
16. The Parties agree that the term of this MOU shall be for a period of six months from the date of its execution or till the execution of the Power Purchase Agreement, whichever is earlier, unless extended as per mutual agreement.

**IN WITNESS whereof, the duly authorized representatives of the Parties have signed on the day and year first hereinbefore written.**

**For and on behalf of**  
**Govt. of Telangana**

**For and on behalf of**  
**Govt. of Chhattisgarh**




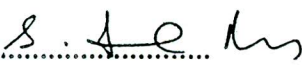
(Dr. S.K. Joshi)  
Principal Secretary (Energy)




(Aman Kumar Singh)  
Principal Secretary (Energy)

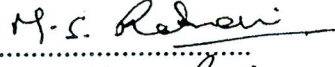
**WITNESS:**

1.   
Name: S. NARSING RAO  
Address: Ppt. Secy to CM

2.   
Name: B. ANANDA BABU  
Address: Secretary Energy  
Govt of CG

**WITNESS:**

1.   
Name: Subodh Kumar Singh  
Address: MD CSPDCL

2.   
Name: M.S. Ratnam  
Address: OSD Energy  
CG CLC.



GOVERNMENT OF CHHATTISGARH  
ENERGY DEPARTMENT  
MANTRALAYA  
MAHANADI BHAWAN,  
NAYA RAIPUR

No. 1471/F 27/01/2014/MoU /13/2/ED

Naya Raipur, dt, 02.05.2015

To,

✓ The Principal Secretary  
Government of Telangana,  
Energy Department,  
#359A, D Block,  
Telangana Secretariat,  
Hyderabad -500022.

Sub: Supply of 1000 MW power from Chhattisgarh Government to Telangana Government - regarding extension in the validity of the MoU dtd, 03.11.2014.

This has reference to MoU dtd. 3<sup>rd</sup> November 2014 for supply of 1000 MW power from Chhattisgarh Government to Telangana Government on long term basis. The Clause No. 16 of the said MoU stipulates that "the parties agree that the terms of this MoU shall be for a period of six months from the date of its execution or till the execution of the Power Purchase Agreement whichever is earlier unless extended as per mutual agreement".

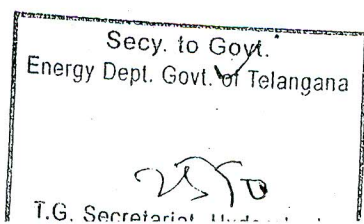
As the execution of PPA between Chhattisgarh State Power Distribution Co. Ltd., and Telangana State Southern Power Distribution Co. Ltd., is still under finalisation it was decided to have a meeting between the senior officers of the nominated agencies of the both States at Raipur to discuss various issues regarding commencement of power supply under the terms & conditions of the said MoU. Accordingly, a meeting was held on 2<sup>nd</sup> May 2015 to discuss various issues regarding implementation of the MoU and both the parties agreed to have extension in the validity of the said MoU for another six months during which effort shall be made to finalise and sign the PPA. A copy of the minutes of the meeting is enclosed.

In view of above I am directed to say that Government of Chhattisgarh has accorded approval to extend the validity of the said MoU for another six months, accordingly the said MoU shall be valid till date 2<sup>nd</sup> November 2015.

Encl: As above.

*M.S. Reddy*  
21/5/15  
Officer on Special Duty  
Government of Chhattisgarh  
Energy Department

Contd.....2.



Endt. No. 1472/F 27/01/2014/MoU/13/2/ED

Naya Raipur, dt, 02.05.2015

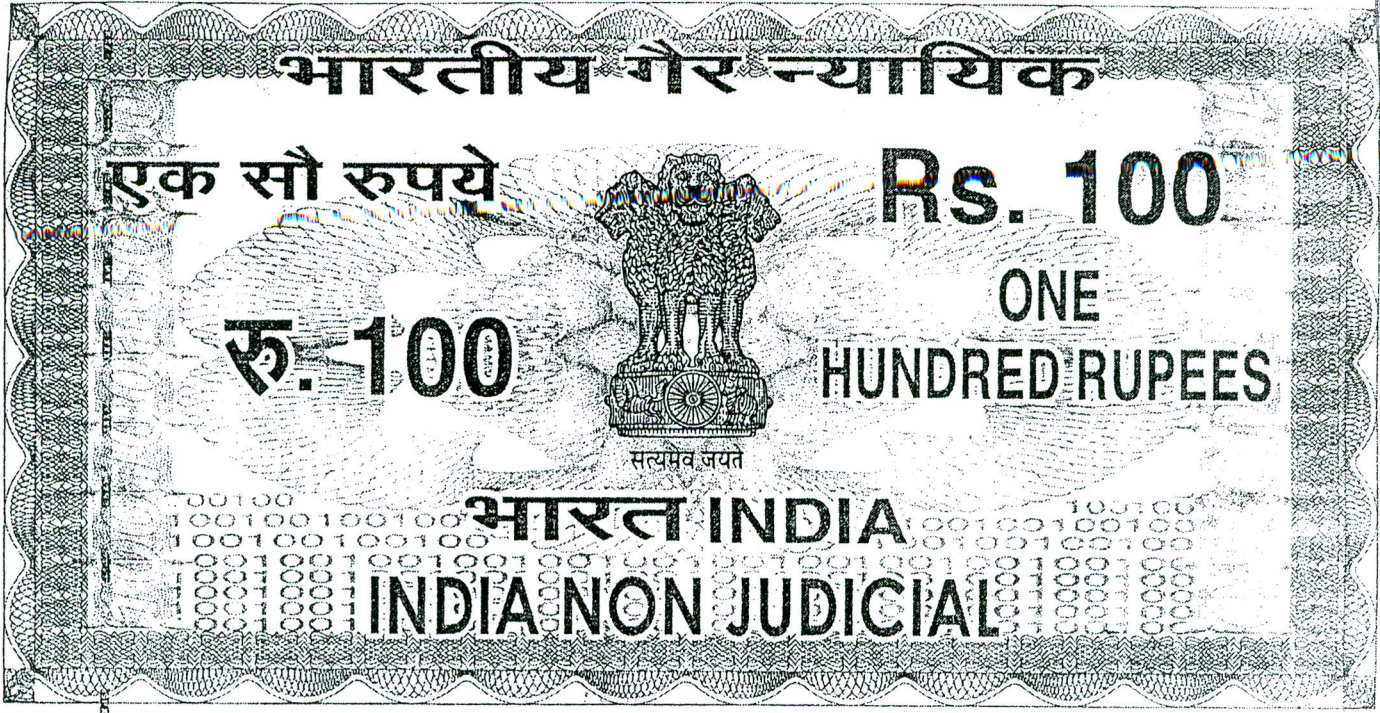
Copy to :-

1. The Principal Secretary, Government of Chhattisgarh, Energy Department for information please.
2. The MD., Chhattisgarh State Power Distribution Company Limited, Dangania, Raipur.
3. The MD., Chhattisgarh State Power Trading Company Limited, Dangania-Raipur
4. The MD., Chhattisgarh State Power Generation Company Limited, Dangania-Raipur.
5. The Director, (F&C), Chhattisgarh State Power Trading Company Limited, Dangania Raipur.

- to serial No. 2, 3, 4 & 5 for information and necessary action please.

*M. S. Radwan*  
215115

Officer on Special Duty  
Government of Chhattisgarh  
Energy Department



छत्तीसगढ़ CHHATTISGARH

C 182619

POWER PURCHASE AGREEMENT  
BETWEEN

CHHATTISGARH STATE POWER GENERATION COMPANY LTD.

AND

CHHATTISGARH STATE POWER DISTRIBUTION COMPANY LTD.

THIS POWER PURCHASE AGREEMENT hereinafter called the "Agreement" entered into at Raipur, on this *third* day of *January*, Two Thousand Eleven (.03/.01./2011) between Chhattisgarh State Power Generation Company Limited (CSPGCL) (a Government of Chhattisgarh undertaking, a successor company of Chhattisgarh State Electricity Board) and incorporated under the Indian Companies Act, 1956 having its registered office at Vidyut Sewa Bhawan, Dangania, Raipur(CG) which expression shall unless repugnant to the context or meaning thereof include its successors and assigns of the first part; and Chhattisgarh State Power Distribution Company Limited (CSPDCL) (a Government of Chhattisgarh undertaking, a successor company of Chhattisgarh State Electricity Board) which expression shall unless repugnant to the context or meaning thereof shall include its successors and permitted assigns as the second part.

*ASB*

*He*

दिनांक २२/११/२००७

C S P D C L +

खमार हाई स्कूल रायपुर

काठमाडौं

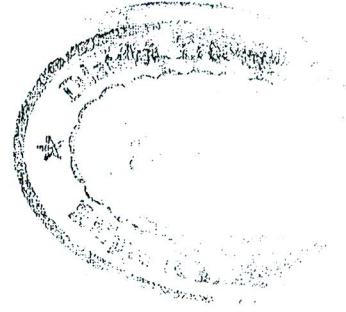
C S P D C L

रायपुर

उपरोक्त विषयको बारेमा जानकारी

गैर भन्ने बाबत

Prakash



*Ati*  
श्रीमती अमली देव तर्क  
स्टाफ बडर,  
डा० शम्भु नगर, रायपुर (७०१०)

Each of the parties first & second above is individually referred to as Company & collectively as the "Companies".

WHEREAS CSPGCL is setting up a coal fired Power Station named as Marwa Thermal Power Station (nominal capacity of 1000MW, 2 units of 500 MW each) at village Marwa-Tendubhata, of Janjgir-Champa District of Chhattisgarh State hereinafter specifically referred to as "Marwa TPS" and generally to be referred as "Station" to be owned and operated by CSPGCL.

AND WHEREAS CSPDCL is desirous of purchasing entire electricity from the station and CSPGCL is willing to sell electricity from the station on mutually agreed terms & conditions mentioned herewith.

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

#### 1.0 DEFINITIONS

- (a) The words or expressions used in this agreement but not defined hereunder shall have the same meaning assigned to them by the Electricity Act, 2003 and the Rules framed there under (as amended from time to time) and Regulations/orders issued by CSERC / CERC from time to time. The Words imparting the singular shall include the plural and vice versa.
- (b) The words or expressions mentioned below shall have the meanings respectively as assigned hereunder:

<b>Act, 2003</b>	The Electricity Act, 2003 as amended /modified from time to time.
<b>Availability</b>	Availability as defined in the CSERC (Terms & conditions of Tariff) Regulation, 2010 and relevant orders by CSERC as amended / replaced from time to time.
<b>Billing Centre</b>	The office as intimated by CSPGCL to CSPDCL from where the bills will be raised on them.
<b>Bulk Power Customer</b>	Bulk Power Customer in relation to the generating station shall mean the person to whom the capacity is contracted from the station.
<b>Busbars/ Ex-Bus</b>	Busbar of the station to which outgoing feeders are connected.
<b>CEA</b>	Central Electricity Authority





<b>CERC</b>	Central Electricity Regulatory Commission.
<b>CSERC</b>	Chhattisgarh State Electricity Regulatory Commission.
<b>CTU</b>	Central Transmission Utility
<b>Capacity Charges</b>	Capacity Charges are Fixed Charges as determined by CSERC.
<b>Charges for Supply of Electricity</b>	Shall mean and include all charges including the tariff to be paid by CSPDCL in respect of supply of electricity to them from the station in accordance with the provisions of this Agreement.
<b>Commercial Operation Date (COD)</b>	Date of Commercial Operation or COD in relation to a unit means the date declared by CSPGCL from 00.00 hrs of which, after notice to the Bulk Power Customer, scheduling process in accordance with the Indian Electricity Grid Code/ Chhattisgarh State Electricity Grid Code (CEGC) is fully implemented & in relation to the station as a whole, the date declared by CSPGCL after demonstrating peaking capability corresponding to installed capacity of the station through a successful trial run, after notice to the Bulk Power Customer.
<b>Company/ Companies</b>	Shall have the meaning prescribed thereto in the recital to this agreement.
<b>CEGC</b>	Chhattisgarh State Electricity Grid Code as notified by CSERC and as amended from time to time.
<b>Effective date</b>	Means the date of signing of this Agreement including payment security as envisaged under relevant article.
<b>Energy charges</b>	As defined in the relevant Regulations for Terms & Conditions of Tariff notified by CSERC.
<b>GOCG</b>	Government of Chhattisgarh.
<b>IEGC</b>	Indian Electricity Grid Code notified by CERC or any other competent authority and as amended from time to time.
<b>Infirm Electricity</b>	Means electricity generated prior to commercial operation of unit of the station.
<b>JMR</b>	Joint Meter Reading.
<b>LC</b>	Irrevocable Revolving Letter(s) of Credit.
<b>Main and Check Meter</b>	Meter for measurement and checking of import/export of energy on the outgoing feeders of the Station Busbars for Joint Meter Reading/ Billing / Energy Accounting.
<b>Monthly bill</b>	Monthly bill as raised by CSPGCL as per JMR/ SEA in line with the Regulation/ modalities approved by CSERC and as amended from time to time.
<b>Permitted Assigns</b>	Shall have the meaning as ascribed under the article 12 of this PPA.

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<b>SEA</b>	State Energy Account issued by <b>SLDC</b> .
<b>SLDC</b>	State Load Dispatch Centre
<b>STU</b>	State Transmission Utility
<b>Supplementary bills</b>	Shall have the meaning ascribed under the article 6 of this PPA.
<b>Tariff</b>	Tariff shall constitute capacity charges, energy charges, incentive & other charges as determined by CSERC. Additionally, statutory charges such as Taxes, Cess etc. for supply of electricity from the station shall be pass through to the bulk power customer.
<b>Third Party</b>	Any person other than to whom electricity is contracted under this Agreement.
<b>Unit</b>	Each unit of the station
<b>UI</b>	Unscheduled Interchange as defined in CERC (Unscheduled Interchange charges and related matters) Regulation, 2009 as amended or replaced from time to time.
<b>WRLDC</b>	Western Regional Load Dispatch Centre

## 2.0 GENERAL

This Agreement is for the period of 25 years from the Effective Date, subject to approval of the state Commission. An application for approval of the AGREEMENT shall be filed by CSPDCL with the Commission. The terms of this agreement shall stand modified as per the orders passed by the Commission in relation to this agreement.

The Parties also agree that any subsequent amendment / modification to this agreement shall be subject to approval from the Commission, which shall be obtained by CSPDCL after written agreement between the Parties.

### 2.1 **Installed capacity:**

The capacity of the Marwa TPS Stations is proposed to be 1000 (2X500) MW. The capacity of the station is subject to change installation of extension unit/units in future.

### 2.2 **Allocation of Capacity**

Currently the entire power so generated from the station stands for CSPDCL subject to amendment as per allocation by GoCG from time to time.






### **3.0 TRANSMISSION / WHEELING OF ELECTRICITY**

- 3.1 Sale of electricity shall be at the bus bars of the Station and it shall be the obligation and responsibility of CSPDCL to make the required arrangement for evacuation of electricity from such delivery points of CSPGCL.
- 3.2 Charges for utilization of transmission system(s) owned by the CSP Transmission Company Ltd. / other transmission licensee for wheeling of the electricity beyond bus bar of the Station, shall be paid directly by CSPDCL to the CSP Transmission Co. Ltd./ concerned transmission licensee. CSPGCL shall not be responsible for payment of such charges.
- 3.3 For timely and expeditious development of the required transmission system for evacuation of power from the said project CSPDCL shall initiate suitable action for connectivity. CSPDCL shall sign all necessary agreements, including BPTA, with CSP Transmission Co. Ltd. / concerned transmission licensee for developing the identified transmission system.

### **4.0 SCHEDULING, METERING AND ENERGY ACCOUNTING**

#### **4.1 Scheduling**

It is understood and agreed by and between the parties that CSPGCL shall operate the Station as a base load station as per the manufacturers guidelines, applicable grid operating standards, directions of the CSERC and relevant statutory provisions, as applicable from time to time. Methodology of generation scheduling shall be as per IEGC/ CEGC / decisions of the competent authority, as revised from time to time.

All charges/ fees related to scheduling and dispatch of electricity shall be borne by CSPDCL.

CSPGCL shall make declaration of the capacity at the bus bars of the Station after taking into account the capability of the Station to deliver Ex-Bus which shall be considered while calculating Declared Capacity (DC).

#### **4.2 DECLARED CAPACITY**

Declared Capacity or 'DC' means the capability of the Station to deliver Ex-Bus electricity in MW declared by the Station in relation to any period of the

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day or whole of the day, duly taking into account the availability of Coal as per the procedure laid down in IEGC/ CEGC.

Notwithstanding the following, Station shall be deemed as available to the extent of DC declared by the Station for any time period:

- a. Failure on account of Bulk Power Customer to transmit and wheel electricity from the Ex-Bus of the Station.
- b. Any other reason not attributable to CSPGCL restricting scheduling and dispatch of capacity at the Ex-Bus of the Station.

### 4.3 METERING

4.3.1 A set of Main and Check Meters of 0.2S accuracy class, as per CEA (Installation & operation of meters) Regulations 2006/ IEGC/ CEGC/ as applicable, or else as may be agreed mutually by the companies, shall be installed by STU/CSPGCL on all outgoing feeders (Ex Bus) of the Station.

4.3.2 The Main and Check meters shall be checked jointly at the time of installation as per the CEA (Installation & Operation of Meters) Regulations 2006 as amended from time to time / or else as may be agreed mutually and approved by CSERC,.

4.3.3 Data shall be downloaded from the meters at regular intervals as decided by SLDC for preparation of the SEA/ UI Account.

4.3.4 Regular cross checking and analysis of meter readings and meter failure or discrepancies shall be reckoned as per CEA (Installation & Operation of Meters) Regulations 2006 as amended from time to time. If the main meter or Check Meter is found to be not working at the time of meter readings or at any other time, CSPGCL shall inform the STU/ CSPDCL/ SLDC of the same.

4.3.5 In case of failure of meters, energy/ UI accounting for the period shall be as per procedure laid down by CSERC or as per the mutually agreed procedure. In case of absence of any such procedure, the following procedure shall be followed:

In case of failure of Main Meter, readings of Check Meter for the corresponding period shall be considered for energy/ UI accounting. If both the Main and Check Meter(s) fail to record or if any of the PT fuses is blown



out. energy shall be computed based on standby meters. In case of dispute, the decision of SLDC would be final and binding.

4.3.6 Periodic testing of both Main & Check Meters shall be carried out in the presence of representatives of CSPGCL and CSPDCL as per procedure laid out in CEA (Installation & Operation of Meters) Regulations, 2006. For any testing and/ or replacement, notice of seven days will be given.

4.3.7 Meters for interface tariff shall be programmed so as to register and store the readings from 00.00 hrs of 1<sup>st</sup> day of current month to 00.00 hrs of 1<sup>st</sup> day of next month. Joint monthly meter readings of the meters for interface tariff for billing shall be taken / downloaded at 11.00 hrs of 1<sup>st</sup> day of the next month and confirmation signed by the authorized representatives of CSPDCL and CSPGCL. No notice is required to be issued for monthly joint meter readings. In case any party is not able to attend meter readings at specified time, the meter reading taken by the other party shall be considered conclusive and binding on other party unless a written objection is filed by the party who failed to attend the joint meter readings within 10 days of communicating such readings to them.

#### 4.4 ENERGY ACCOUNTING

4.4.1 Both the Companies agree to facilitate issue of State Energy Accounts by 1<sup>st</sup> day of every month.

4.4.2 State Energy Account issued by SLDC or any other Competent Authority shall be binding on both the Companies for billing settlement and payment purposes.

4.4.3 Any change in the methodology of State Energy Accounting shall be done only as per the decisions taken in the Coordination Committee and both the parties agree to abide by the Methodology so finalized.

#### 5.0 TARIFF

##### 5.1 Terms and conditions:

5.1.1 The Tariff for the electricity supplied from the Station would be as determined by CSERC from time to time.

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5.1.2 Tariff for sale of electricity from the Station to CSPDCL shall comprise of Capacity Charge, Energy Charge, Incentive, UI and all other taxes/ charges.

**5.1.3 ADHOC TARIFF**

CSPGCL shall approach CSERC for determination of Provisional Tariff before Commercial Operation Date of any unit of the Station. In case this Tariff is not determined for any reason by CSERC prior to commencement of commercial operation of such unit of the Station, the Companies agree that billing and payment shall be done on adhoc basis as per the proposal of CSPGCL submitted to CSERC for Provisional Tariff. CSPGCL shall inform CSPDCL of such adhoc tariff and pending determination of such Tariff by CSERC billing on provisional basis would be carried out, subject to adjustment along with applicable interest as and when such Tariff is determined by CSERC.

**5.2 SALE OF INFIRM ELECTRICITY:**

Infirm electricity, i.e., sale of electricity prior to commercial operation of the unit, will be billed by CSPGCL based on methodology as notified by CSERC from time to time.

**5.3 TAXES, LEVIES, DUTIES, ROYALTY, CESS etc.:**

Statutory taxes, levies, duties, royalty, Cess or any other kind of levies imposed/ charged by any Government (Central/State) and/or any other local bodies/ authorities on generation of electricity including auxiliary consumption or any other type of consumption including water, environment protection, sale of electricity and/or in respect of any of its installations associated with the Station payable by CSPGCL to the authorities concerned shall be borne and additionally paid by the CSPDCL to CSPGCL.

**6.0 BILLING AND PAYMENT**

**6.1 Billing:**

The Charges for Supply of Electricity under this Agreement shall be billed by CSPGCL as determined from time to time by the Chhattisgarh State Electricity Regulatory Commission and the same shall be paid by the CSPDCL in accordance with the following provisions:

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- 6.1.1 CSPGCL shall present the bills for electricity supplied to CSPDCL from the Stations for the previous month as per CSERC Regulation based on Joint Meter Readings / State Energy Account issued by SLDC. The monthly bill so raised will be based on netting up for auxiliary back up (excluding construction supply). In case State Energy account is not released by SLDC by such time, then provisional bill will be raised by the CSPGCL on the basis of Joint Meter Reading taken on the metering date and corrections, if any based on SEA, will be incorporated in next monthly bill
- 6.1.2 O/o CE/ ED (C&CP) of CSPGCL shall carry out billing and associated functions. CSPGCL would submit the bills to O/o CE/ ED(Commercial) CSPDCL, Raipur.
- 6.1.3 The Monthly Bill for the Stations shall include the Charges for Supply of Electricity under this Agreement, other taxes, duties, Cess etc. including additional bill(s) for the past period(s) on account of orders of CSERC/ Appellate Tribunal for Electricity/ Other Courts/ Other Competent Authority(ies). If for certain reasons some of the charges which otherwise are in accordance with this Agreement, cannot be included in the main Monthly bills, such charges shall be billed as soon as possible through supplementary bill(s).
- 6.1.4 CSPDCL shall arrange payment of such Monthly Bill(s)/ Supplementary Bill(s) promptly through irrevocable Letter of Credit at the designated account of CSPGCL. The date of transfer of payment to CSPGCL account shall be considered as the date of payment for computation of rebate or late payment surcharge in respect of such payment. The bill(s) of CSPGCL shall be paid in full subject to the condition that –
- i) there is no apparent arithmetical error in the bill(s)
  - ii) the bill(s) is/are claimed as per the notified/ agreed tariff
  - iii) they are in accordance with the JMR/ State Energy Accounts issued by SLDC.
- 6.1.5 All payments made by the CSPDCL, shall be appropriated by CSPGCL for amounts due from the CSPDCL in the following order of priority:
- i) towards Late Payment Surcharge, payable if any;

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- ii) towards earlier unpaid bill(s) (to the extent amount is undisputed), if any; and
- iii) towards the statutory dues like taxes, duties, Cess, royalty etc. in the current bill(s).
- iv) towards the other charges in current Monthly Bill.

6.1.6 In case CSPDCL disputes any amount, even then, it shall pay 95% of the disputed amount forthwith and file a written objection with CSPGCL within 30 days of presentation of the bill, giving following particulars:-

- i) Item disputed, with full details/ data and reasons of dispute.
- ii) Amount disputed against each item.

Provided that non-acceptance of tariffs determined/ approved by CSERC shall not be a valid ground for dispute.

6.1.7 The amount of excess/ shortfall with respect to the said 95% payment based on finally determined amount in line with Article 7 shall be paid/ adjusted with the applicable interest @15% per annum from the date on which the amount in dispute was payable/ refundable.

#### **6.1.8 REBATE AND LATE PAYMENT SURCHARGE**

Rebate and Late Payment Surcharge shall be as per Terms and Conditions of Tariff issued by CSERC as applicable from time to time. No rebate shall be payable on the bills raised on account of taxes, duties, royalty/ Cess etc.

#### **6.2 ESTABLISHMENT OF LETTER OF CREDIT(LC) AND PAYMENT SECURITY MECHANISM :**

6.2.1 CSPDCL shall establish an irrevocable revolving Letters of Credit (LC) established in favour of CSPGCL with a public sector/scheduled commercial bank (as agreed by CSPGCL) at least one month prior to the commencement of power supply from the first unit of the Station.

6.2.2 The LC shall cover 105% of one months estimated billing in respect of power supplied from the Station to CSPDCL. This shall be in addition to the obligation of CSPDCL to establish similar letters of credit for supply of energy to CSPDCL from all other generating Stations of CSPGCL.



6.2.3 The amount of LC shall be reviewed each half year commencing April and October in each financial year on the basis of the average of billing of previous 12 months and the LC amount shall be enhanced /reduced accordingly not later than 1<sup>st</sup> July and 1<sup>st</sup> January respectively of the same financial year.

6.2.4 The LC shall be established for a minimum period of one year. CSPDCL shall ensure that LC remains valid at all times during the entire/extended validity of this Agreement. LC shall be renewed not later than 30 days prior to expiry of existing LCs.

6.2.5 LC shall specify the manner and dates when bill (s) can be presented to Bank by CSPGCL. The bills so presented by CSPGCL to the Bank shall be promptly paid on their presentation.

6.2.6 All costs relating to opening and maintenance and negotiation of LC shall be borne by the CSPDCL.

6.2.7 In case of drawl of the LC amount by CSPGCL in accordance with the terms of this article, the amount of the LC shall be reinstated automatically not later than 7 days from such drawl. CSPDCL shall arrange to furnish to CSPGCL a certificate to this effect from Bank(s) providing LC. In the event LC is not reinstated within 7 days, regulation of power supply to the extent of 2.5% of the allocated capacity will start with immediate effect from 0.00 hrs on 8<sup>th</sup> day. CSPGCL will have right to divert 2.5% of the allocated capacity to third party(ies) and or reduced the schedule of CSPDCL by the same quantum.

Provided that CSPDCL shall continue to be liable to pay the capacity charges in proportion to its allocated capacity during the period of regulation / diversion of capacity or till the capacity is reallocated to other bulk power customer(s) / third party(ies).

6.2.8 Notwithstanding the obligations of CSPDCL to pay all the dues as per this agreement in the event of default in opening of LC of requisite amount in favour of CSPGCL or non payment of bills within a period of 60 days of billing, CSPGCL shall be entitled to regulate / divert the allocated capacity of the CSPDCL to any other Bulk Power Customer(s) / third party(IES) as per the provisions of generic procedure of Regulation of power supply issued by

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CERC or any other competent authority from time to time, read with the provisions of PPA till the time default is set right.

In case of default in payment of bills beyond a period of 90 days of billing, CSPGCL shall have right to reallocate power to other Bulk Power Customer(s).

It is clarified that the above arrangement shall not be construed as relieving CSPDCL of any of its obligations to CSPGCL including obligation of payment of capacity charges.

For the removal of any doubt, it is clarified that in case of default CSPDCL shall continue to be liable to pay the capacity charges in proportion to its allocated capacity during the period of regulation/ diversion of capacity or till the capacity is reallocated to other bulk power customer(s)/ third party(ies).

#### **7.0 SETTLEMENT OF DISPUTES**

All differences or disputes between the companies arising out of or in connection with this Agreement shall be mutually discussed and amicably resolved within 90 days.

#### **8.0 FORCE MAJEURE**

Neither Company shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of God or any other such reason beyond the control of concerned Company. Any company claiming the benefit of this clause shall reasonably satisfy the other company of the existence of such an event and give written notice within a reasonable time to the other party to this effect. Generation/drawl of power shall be started as soon as practicable by the companies concerned after such eventuality has come to an end or ceased to exist.

#### **9.0 IMPLEMENTATION OF THE AGREEMENT**

All discretions to be exercised and directions, approvals, consents and notices to be given and actions to be taken under these presents unless otherwise expressly provided herein, shall be exercised and given by the signatories to

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this Agreement or by the authorized representative(s) that each company may nominate in this behalf and notify in writing to the other company by hand/ Registered Post. Any other nomination of authorized representative(s) shall be informed likewise in writing to / by CSPDCL within one month of signing of the Agreement. Notwithstanding any nomination, the CE/ED (C&CP) CSPGCL, Raipur as well as CE/ ED (Commercial) CSPDCL Raipur shall be authorized to act for the respective companies.

the Parties shall co-ordinate with one another on a regular basis in order to resolve all operational issues, including interface metering, load scheduling and other day to day matters and for the said purpose shall form such co-ordination committees consisting of such officers as the Parties may mutually agree. The "Operation Co-ordination Committee" and "State Energy Accounting Committee" shall be formed within one month from the synchronization of the first unit. The committees shall have at least one member of each of the parties for representing their view. The Co-ordination Committees shall settle the Procedures, which will regulate the relations between the Parties in respect of connection of the Generating System to the Distribution System, the repair and maintenance of Points of Supply and interface metering and making available of data and evidence relating to metering at each of the Points of Supply. The Operating Procedures prepared by the Co-ordination Committee may be amended from time to time by agreement between the Parties.

In the event of any enactment / amendment / repeal of any law, regulation or tax by any Government / Authority (including local governments such as Municipal Corporations, Janpad Panchyat etc.) after the date of effectiveness of this agreement, detrimentally or beneficially affecting CSPGCL, then both parties shall meet and endeavor to agree to an amendment to this Agreement to pass on the impact of such an event to CSPDCL. While determining the consequence of Change in Law under this Article, 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 the affected Party to the same economic position as if such Change in Law has not occurred. The amendment shall be intimated to the State Commission.

*[Handwritten signature]*

Further, the parties acknowledge and accept that in the Agreement it is not possible to envisage all and every events and circumstances that may arise in the course of the dealings between the parties. In the course of the implementation of the Agreement, the parties may be faced with matters which have not been expressly dealt within this Agreement. The parties shall discuss and find an appropriate solution to such matters amicably and act on best endeavor basis keeping in view the interest of both the parties. If the parties are unable to arrive at a settlement, the matter may be referred to the State Government for settlement.

#### **10.0 NOTICE**

All notices required or referred to under this Agreement shall be in writing and signed by the respective authorized signatories of the companies mentioned herein above, unless otherwise notified. Each such notice shall be deemed to have been duly given if delivered or served by hand/ registered mail/speed post of Department of Posts with an acknowledgement due to the other companies in terms of IMPLEMENTATION OF THE AGREEMENT at Article 9.0 above.

#### **11.0 EFFECTIVE DATE AND DURATION OF AGREEMENT**

The agreement shall come into effect for all purposes and intent from the date of signing of the Agreement subject to establishment and continuation of payment security as envisaged under article 6.2 "Establishment of Letter of Credit (LC) and Payment Security Mechanism". Agreement shall remain operative upto completion of twenty five (25) years from the date of Commercial operation of the last unit of the station unless it is specifically extended on mutually agreed terms.

#### **12.0 SUCCESSORS AND PERMITTED ASSIGNS**


12.1 In case the functions of CSPDCL are reorganized and/or this Agreement is assigned to other organization(s)/agency(ies), partly or wholly, the Agreement shall be binding *mutatis mutandis* upon the successor Distribution/Trading organization(s)/agency(ies)/entities and shall continue to remain valid with respect to the obligations of the successor organization(s)/agency(ies)/entities



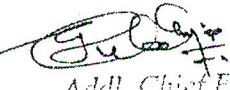
provided that the successor organization(s)/agency(ies) is/are owned or controlled by the Government of Chhattisgarh.

- 12.2 In the event the functions of CSPDCL are reorganized and/or privatized or this Agreement is assigned to Private organization(s)/agency(ies), partly or wholly, CSPDCL shall ensure that the agreements namely "ESTABLISHMENT OF LETTER OF CREDIT (LC) AND PAYMENT SECURITY MECHANISM" are signed by the assignee before assignment of this Agreement.
- 12.3 Only such of the successor entities who fulfill the above requirements and execute the requisite documents as above shall be termed as the Permanent Assigns.
- 12.4 In other cases CSPGCL shall have the right to terminate this Agreement. In the event of termination of this Agreement, CSPDCL shall be liable and continue to pay the Capacity Charges each month till firm arrangement for sale of CSPDCL'S share with alternate customers substituting the CSPDCL. is tied up.
- 13.0 This agreement supersedes the MoU signed on 15.10.2009 between CSPDCL & CSPGCL to the extent it relates to the Marwa TPS. .

IN WITNESS WHEREOF the companies have executed these presents through their Authorized Representatives on the date mentioned above.

  
Executive Director (Commercial)  
C.S.P.D.C.L. Raipur  
For and on behalf of  
Chhattisgarh State Power  
Distribution Company Ltd.

WITNESS

1.   
Addl. Chief Engineer  
O/o The E.D. (Commercial)  
C.S.P.D.C.L. Raipur

  
Executive Director (Comm. & CP)  
C.S.P.G.C.L. RAIPUR  
For and on behalf of  
Chhattisgarh State Power  
Generation Company Ltd.

WITNESS:

1.   
Executive Director (PRG-II)  
CSPGCL : Raipur



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### First Supplementary Power Purchase Agreement

THIS POWER PURCHASE AGREEMENT hereinafter called the "First Supplementary PPA" entered into at Raipur on the 17<sup>th</sup> day of December Two Thousand Twelve (17.12.2012) between the Chhattisgarh State Power Generation Company Limited, ( a Government of Chhattisgarh Undertaking, a successor company of Chhattisgarh State Electricity Board), incorporated under the Companies Act, 1956 having its registered office at Vidyut Sewa Bhawan, Dangniya, Raipur-492013 (hereinafter called "CSPGCL") which expression shall unless repugnant to the context or meaning thereof includes its successors and assigns of the first part ; and Chhattisgarh State Power Distribution Company Limited, ( a Government of Chhattisgarh Undertaking, a successor company of Chhattisgarh State Electricity Board) incorporated under the Companies Act, 1956 having its registered office at Vidyut Sewa Bhawan, Dangniya, Raipur-492013 (hereinafter called "CSPDCL") which expression shall unless repugnant to the context or meaning thereof shall included its successors and permitted assigns as the second part.

AND WHEREAS by a power purchase agreement dated 03.01.2011 (hereinafter referred to as the said PPA) made between the CSPGCL and the CSPDCL, the CSPDCL has agreed to purchase 1000 MW (2X500 MW) power of Marwa Thermal Power Station (hereinafter called "Station") at village Marwa-Tendubhata, Janjgir-Champa District of Chhattisgarh state for a period of 25 year from the effective date during the terms of said PPA on the terms & conditions therein contained.

And whereas, upon the request of the CSPGCL CSPDCL has agreed that the entire power so generated from the station stands for CSPDCL.

And whereas, it is now necessary to amend the said PPA for the purpose of incorporating the aforesaid change in allocation of capacity.

Now therefore, this PPA witnesses and it is hereby agreed that the said PPA shall be amended as follows:-

(1). The clause 2.2 regarding Allocation of capacity of said PPA shall be substituted by the following:-

### 2.2: Allocation of Capacity

**"The entire power so generated from the station stands for CSPDCL"**

Save as herein before modified the said PPA shall remain in & have full force and effect.

In witness whereof the parties hereto have signed this PPA on dates and year mentioned against their respective signatures.

For and on behalf of  
Chhattisgarh State Power  
**Executive Director (C&CP)**  
Generation Company Limited  
C.S.P.G.C.L., Durgamya, RAIPUR

For and on behalf of  
**Chief Engineer (Commercial)**  
Chhattisgarh State Power  
Distribution Company Limited

WITNESSES

1.....  
**S. E. (C&CP)**  
O/o E.D. (C&CP) C.S.P.G.C.L.  
RAIPUR

2.....  
**E. E. (C&CP)**  
O/o E.D. (C&CP) C.S.P.G.C.L.  
RAIPUR

WITNESSES

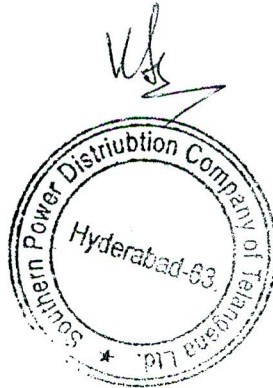
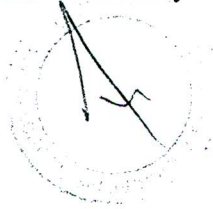
1.....  
**Addl. Chief Engineer**  
O/o The Chief Engineer (Commercial)  
C.S.P.D.C.L. Raipur

2.....  
**Superintending Engineer**  
O/o C.E. (Commercial)  
C.S.P.D.C.L., Raipur

### SCHEDULE 3: AVAILABILITY FACTORS

3.1 The following matters shall be determined as per the provisions of the Grid Code, Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 :

- a) Scheduling and Dispatch; and
- b) Other matters which may be related to Availability or Availability Factor.



## **SCHEDULE 4: TARIFF**

### **4.1 General**

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) For the purpose of payments, the Tariff will be as determined by the Chhattisgarh State Electricity Regulatory Commission (CSERC) for the applicable Contract Year.

### **4.2 Monthly Tariff Payment**

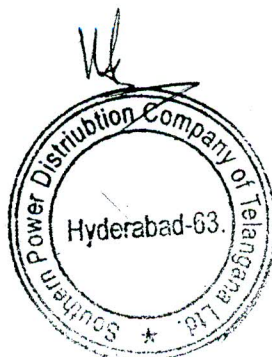
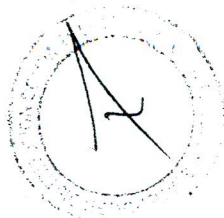
#### **4.2.1 Components of Monthly Tariff Payment**

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

- i) Monthly Capacity Charge payment:
  - (a) Return on equity
  - (b) Interest on loan capital
  - (c) Depreciation
  - (d) Interest on working capital
  - (e) Operation & Maintenance expenses.
- ii) Monthly Energy Charge for Scheduled Energy comprises of the following:
  - (a) Landed Fuel Cost of Coal;
  - (b) Cost of Secondary Fuel Oil Consumption.
- iii) Transmission/Wheeling Charges, Open Access charges (SLDC/RLDC Charges).

#### **4.3: Normative Availability:**

- 4.3.1: The PAFM and PAFY shall be computed in accordance with the formula prescribed by the CSERC in its regulations, and as may be amended from time to time.



**4.4: Computation and Payment of Capacity Charge**

4.4.1 The Capacity Charges payable under this Agreement to the Procurers shall be as per the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

**4.5: Computation and Payment of Energy Charge**

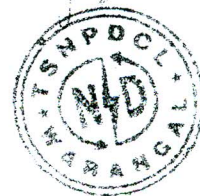
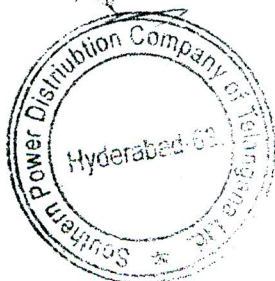
4.5.1 The Energy Charges payable under this Agreement to the Procurers shall be as per the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

**4.6: Penalty on NAPAF**

Any penalty, if applicable in relation to supply falling short of the NAPAF under this Agreement, shall be as per the provisions of the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012, or as amended from time to time.

**4.7 Contract Year Energy Incentive Payment**

**If plant Load factor exceeds Target Plant Load factor, an incentive shall be payable at the rate of 40% of fixed charge (in Rs/Kwh) for such contract year subject to a maximum of twenty five paise/Kwh, shall be allowed for ex bus sheduled energy corresponding to schedule generation in excess of ex-bus energy corresponding to target Plant Load Factor.**





**SCHEDULE 5: NAME & DETAILS OF THE PROCURERS**

Sl. No.	Name of Procurer(s)	Address of the Registered office of Procurer (s)	Law under which incorporated	% of Energy allotted	Contracted Capacity (MW)	Delivery Point
1	Telangana State Southern Power Distribution Company Limited (TSSPDCL): <b>Lead Procurer</b>	6-1-50 , Mint Compound, Hyderabad	The Company Act, 1956	70.55	1000 MW (Gross, as per definition)	Same as Inter connection Point as per Agreement
2	Telangana State Northern Power Distribution Company Limited (TSNPDCL)	H.No.2-5-3/2, Vidyut Bhavan, Nakkalagutta, Hanmakonda, Warangal	The Company Act, 1956	29.45		

