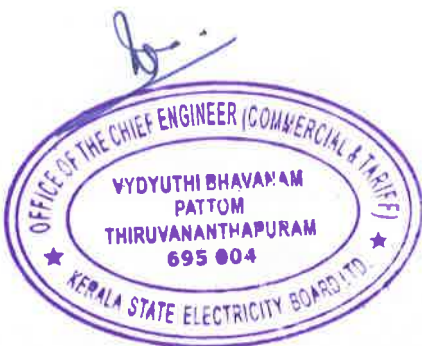


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# POWER PURCHASE AGREEMENT

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29<sup>th</sup> June, 2015



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# POWER PURCHASE AGREEMENT

BETWEEN

**MAITHON POWER LIMITED ("Seller")**

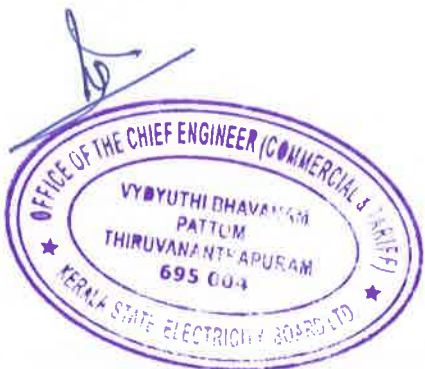
and

**KERALA STATE ELECTRICITY BOARD LIMITED  
("Buyer")**

**for the sale of 150 MW**

**from**

**1050 MW Maithon Right Bank Thermal Power Project  
District Dhanbad, Jharkhand**



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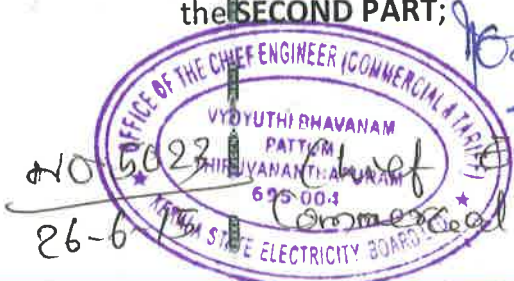
### POWER PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into on this 29<sup>th</sup> day of June, 2015, between:

**KERALA STATE ELECTRICITY BOARD LIMITED** means a company incorporated under the provisions of the Companies Act, 1956 (Central Act 1 of 1956) wholly owned by the Government of Kerala in which the Government has re-vested the functions, properties interests, rights, liabilities proceedings and personnel of the erstwhile Kerala State Electricity Board in accordance with sub section (2) of Section 131 and Section 133 of Electricity Act, 2003 and Kerala Electricity Second Transfer (Re-vesting) Scheme 2013 (hereinafter referred to as "**Buyer**"). The expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the **FIRST PART**.

AND

**MAITHON POWER LIMITED**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at "Jeevan Bharti, 10<sup>th</sup> Floor, Tower I, 124, Connaught Circus, New Delhi-110001", and corporate office at "Tata Power Corporate Centre, 34, Sant Tukaram Marg, Carnac Bunder, Mumbai 400009", (hereinafter referred to as "**Seller**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as party of the **SECOND PART**;



LAILA S.S.  
PATTOM VENDOR

("Seller" and "Buyer" as the context may require, are individually referred to as "Party" and collectively referred to as "Parties").

**WHEREAS**

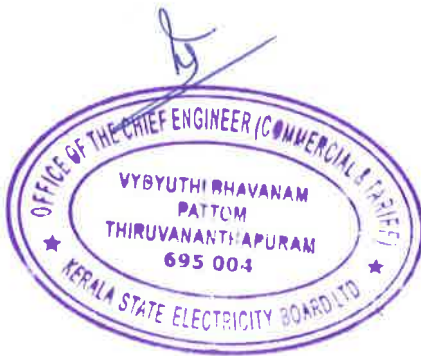
- (A) The Seller is 74: 26 % JV between The Tata Power Company Limited and Damodar Valley Corporation. The Tata Power Company Limited is a Company constituted under the Companies Act, 1913 and Damodar Valley Corporation is a Corporation constituted under the DVC Act, 1948.
- (B) The Seller has set up a 1050 MW (2 x 525 MW) thermal power station named as Maithon Right Bank Thermal Power Station, located at Maithon, District Dhanbad, Jharkhand, India, on a build, own and operate basis (hereinafter referred to as "the Station").
- (C) The Buyer is a Company fully owned by the State Government of Kerala and registered under the Companies Act, 1956, which is engaged in the business of supply and distribution of power in the State of Kerala.
- (D) The entire gross generation capacity of 1050 MW from the Station has been contracted with various procurers. 300 MW each is contracted with Damodar Valley Corporation ("DVC"), West Bengal State Electricity Distribution Company Limited ("WBSEDCL") and Tata Power Delhi Distribution Company Limited ("TPDDL") in terms of their respective duly executed Power Purchase Agreements, and the balance 150 MW gross capacity has been contracted with the Buyer through a power purchase agreement dated 30.12.2013.
- (E) DVC vide letter no. Com/MPL/2342/31.12.2014 has intimated its intention to surrender 50% of contracted power of 300 MW i.e. 150MW from the Station of the Seller and the Seller, vide its Letter No. MPL/CEO/Comml/FY 15-16/1506005 dated 25.6.2015, has agreed to relieve DVC from its obligations to the extent of 150 MW, subject to it bearing any consequential charges/ levies and provided further that this capacity is contracted to an alternate buyer and commencement of such alternate buyer's obligations to procure and pay for energy and capacity charges.
- (F) The Seller, vide its letter noMPL/CEO/A&G/FY 15-16/1506 02 dated 11/06/2015, has offered the Buyer this 150 MW capacity on round the clock basis for Term of this



Agreement at tariffs determined by the Central Electricity Regulatory Commission (CERC).

- (G) The Buyer, vide its letter dated CE(C&T)/MPL-additional 150MW-15-16/194 dated 19/06/15 has expressed its willingness to procure the offered 150 MW capacity and energy from the Station and execute a Long Term Power Purchase Agreement for this additional 150 MW capacity from the Station.
- (H) The Parties, based on mutual representations and understanding, have agreed to sign this power purchase agreement setting out the terms and conditions for sale of Contracted Capacity and supply of Energy Output by the Seller to the Buyer.
- (I) The Delivery Point for sale of Energy Output by Seller to the Buyer, under this Agreement shall be the Seller's switchyard outgoing terminal of the Power Station.
- (J) Government of India, Ministry of Power has included the Project in the list of approved projects under the Mega Power Policy, which provides for various benefits, and the Seller has developed the Project under the Mega Power Policy. The Seller Agrees that, in the event the benefits under Mega Power Policy are made available to the project, all benefits on account of Mega Power Policy shall be passed on to the Buyer in proportion to its Contracted Capacity.

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:



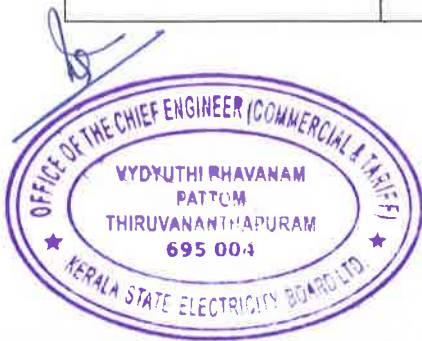
**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

**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, as also those issued/framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

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

"ABT Order"	means CERC's order on the Availability Based Tariff issued on the 4 <sup>th</sup> day of January, 2000;
"Agreement"	means this document including its recitals and Schedules;
"Affiliate"	of a Party means (i) in the case of any Party other than a natural person, any other Person that, either directly or indirectly through one or more intermediate Persons, Controls, is Controlled by or is under common Control with such Party; and (ii) in the case of any Party that is a natural person, any other Person who is a relative of such Party;
"Appropriate Commission"	means the Central Electricity Regulatory Commission or any State Electricity Regulatory Commission constituted under the Electricity Act, 2003 or such other succeeding authority or commission thereto as may be notified by Government of India from time to time;
"Applicable Law(s)"	in relation to this Agreement, means and includes (i) all laws in force in India and any statute, ordinance, regulation, notification, code and/or rules and/or (ii) any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and/or (iii) all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to the items as mentioned in (i) hereinabove, and includes all rules, regulations, decisions and orders of the Appropriate Commission;



"Auxiliary Energy Consumption" or "AUX"	in relation to a period means the quantum of energy consumed by auxiliary equipment of the Power Station and transformer losses within the Power Station and shall be expressed as a percentage of the sum of the gross energy generated at the generator terminals of all Units of the Power Station;
"Availability"	shall have the meaning ascribed thereto in the CERC Tariff Regulations, as amended from time to time ;
"Bill Dispute Notice"	means the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party and shall have the meaning ascribed thereto in Article 9.6.2;
"BTG Agreement"	shall collectively mean the BTG Package Supply Agreement and the BTG Services Agreement both dated October 23, 2007, entered into by the Seller with Bharat Heavy Electricals Limited for supply of boiler(s), turbine(s), generator(s) and provision of services to the Seller;
"Business Day"	means a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State(s) in which the Parties registered offices are located;
"Buyer's Banks"	shall mean all the banks with whom the Buyer is maintaining and operating bank accounts and/or enjoys working capital facilities ;
"Buyer's Designated Account"	shall have the meaning ascribed thereto in Article 9.3.3.;
"Buyer Event of Default"	shall have the meaning ascribed thereto in Article 13.2;
"Buyer's Letter of Credit"	Shall have meaning ascribed to in Article 9.4.1;
"Buyer Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13.3.1;

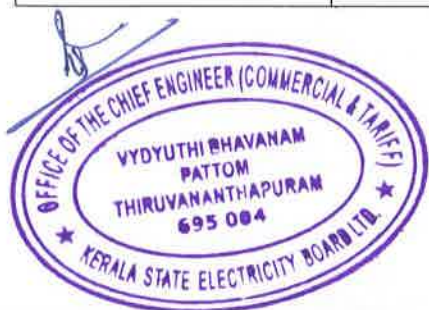




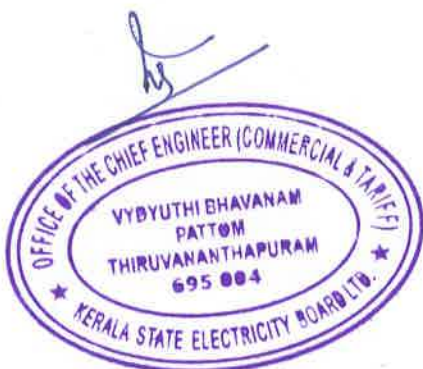
"Capacity Charge" or "Capacity Charges"	shall be as determined by the CERC from time to time as required, in accordance with the CERC Tariff Regulations, as amended from time to time;
"Capital Structure Schedule"	shall mean sources of finance used to finance the Project Cost as provided in the Financing Agreements;
"Capacity Test"	shall have the meaning ascribed thereto in paragraph 3.2 of Schedule E;
"Central Transmission Utility" or "CTU"	shall have the meaning ascribed thereto in the Electricity Act, 2003;
"CERC"	means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;
"CEA Regulations, 2006"	shall mean the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, containing the regulations for installation and operation of meters, as amended and notified from time to time;
"Change in Law"	shall have the meaning ascribed thereto in Article 11.1.1;
"Check Meter" or "Check Meters"	means the metering system identical to the Main Meters for verifying the performance of the Main Meters;
"Coal India Limited"	a company incorporated under the Companies Act, 1956, wholly owned by the Government of India and having its registered office at Coal Bhavan, 10 Netaji Subhas Road, Kolkata, West Bengal- 700001;
"Commercial Operation Date" or "COD" of a Unit/Power Station	in relation to a Unit means the date declared by the Seller after demonstrating the Maximum Continuous Rating ('MCR') or Installed Capacity ('IC') through a successful trial run after notice to the beneficiaries from 0000 hour of which scheduling process as per the Grid Code is fully implemented, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last Unit or block of the generating station;  The COD of Unit-I is 01/09/2011; the COD of the generating station is 24/07/2012



"Commissioned"	means, in relation to a Unit, that the Unit or in relation to the Power Station, all the Units of the Power Station have achieved the Reliability Operation and passed the Capacity Test, successfully;
"Commissioning"	shall have the meaning ascribed thereto in paragraph 1 of Schedule E;
"Competent Court"	means the Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project;
"Conditions Precedent"	means all the conditions as specified in Article 3.2 that are to be fulfilled or waived by the relevant Party;
"Consents"	shall mean the consents, approvals, permits and licenses for constructing and operating the Project;
"Consumers"	shall mean all the customers of the Buyer who are or who would be receiving electricity or energy or other related services from the Buyer and who are liable to make payments of any kind to the Buyer;
"Control"	means (a) possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any entity, whether as a general partner, managing member or similar capacity or through the ownership of voting securities, by contract or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such person, or (b) the possession, directly or indirectly, of a voting interest of more than 50% and a contractual shareholder or director with veto right in management matters;
"Construction Period"	means the period commencing from the date upon which the EPC Contractors are instructed or required to commence work under the EPC Contracts up to the Commercial Operation Date (i) of the Unit in relation to a Unit and (ii) of all the Units in relation to the Power Station;



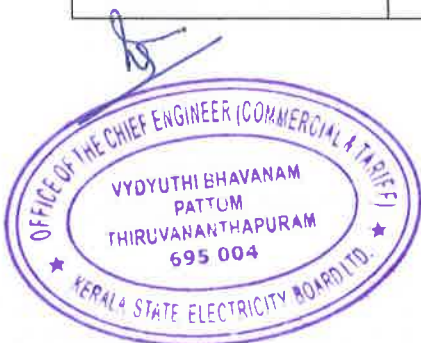
"Consultation Period"	means the period, commencing from the date of issue of a Seller Preliminary Default Notice or a Buyer Preliminary Default Notice as provided in Article 13, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contracted Capacity"	means in relation to the Power Station 150 MW from the Installed Capacity;
"Contract Year"	means a period beginning on the Start Date and ending on the immediately succeeding March 31 <sup>st</sup> and thereafter each period of twelve (12) months beginning on April 1 <sup>st</sup> and ending on March 31 <sup>st</sup> . Provided that:  (i) the last Contract Year of this Agreement shall end on the last day of the Term of the Agreement;  Provided that for the purpose of payment, the Tariff will be the Tariff for the applicable Contract Year, as determined by the Appropriate Commission;
"Declared Capacity"	means the capability of the Power Station to deliver ex-bus electricity in MW declared by such Power Station in relation to any time-block of the day or whole of the day, duly taking into account the availability of fuel and water; and subject to further qualification in the relevant regulation;
"Defaulted Payment"	has the meaning as set out in Article 9.5.1(ii);
"Delivery Point"	means the metering point at outgoing terminal of the Seller's switchyard of the Power Station;
"Dispute"	means any dispute or difference of any kind between the Parties, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 15.2.1;
"Disputed Bill"	shall have the meaning ascribed thereto in Article 9.6;



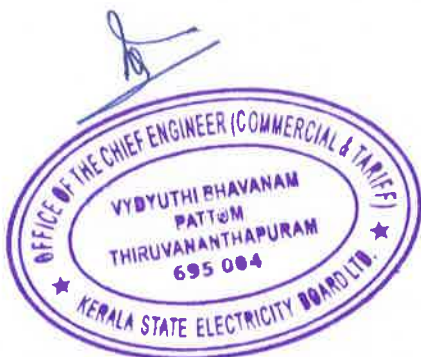
"Due Date"	shall have the meaning ascribed thereto in Article 9.2.3 and in case of a Supplementary Bill shall be construed as per the same Article;
"Effective Date"	means the date of signing of this Agreement by the Parties;
"Electricity Act, 2003"	means the Electricity Act 2003 or any amendments made to the same or any succeeding enactment thereof;
"Encumbrance(s)"	shall mean and include mortgages, charges, pledges, liens or any other encumbrances 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;
"Energy Charges"	shall be a variable charge worked out on the basis of ex-bus energy scheduled to be sent out from the Power Station and shall be determined as per the CERC Tariff Regulations, amended from time to time;
"Energy Output"	means the metered electrical energy, in kWh or multiples thereof, delivered by the Seller at the Delivery Point;
"EPC Contracts"	shall mean collectively the BTG Agreement and other agreements relating to general civil works, plant electrical system, plant water system, coal handling system, ash handling system, rail infrastructure, boundary wall roads, diversion of existing roads etc. that shall be entered into by the Seller (the scope of work under all of which shall cover design, engineering, construction, development, procurement, testing and Commissioning of the Project);
"EPC Contractors"	shall mean collectively Bharat Heavy Electricals Limited and such other person(s) with whom the Seller will enter into EPC Contracts;
"ERPC"	means Eastern Regional Power Committee;
"ERLDC"	means Eastern Region Load Despatch Centre;



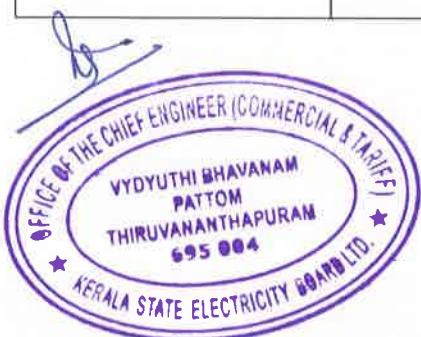
"Extended Force Majeure"	shall have the meaning ascribed thereto in Article 10.9;
"Financial Closure"	means the execution and delivery of all the Financing Agreements for the total debt amount required for the Project and fulfillment of conditions precedent and waiver, if any, of any of the conditions precedent for the initial drawdown of funds thereunder;
"Financing Agreements"	means all the loan agreements, notes, indentures, security agreements, letters of credit and other documents relating to the financing of the Project on or before the COD of the Power Station, as may be amended, modified, refinanced or replaced from time to time, but without in anyway increasing the liabilities of the Buyer therein;
"Force Majeure"	shall have the meaning ascribed thereto in Article 10.1.2;
"Forced Outage"	Shall mean an unplanned interruption of the generating capacity of either of the Units of the Power Station, or of the Project, including any other meaning ascribed thereto in Grid Code;
"Fuel"	means primary fuel used to generate electricity namely, coal;
"Fuel Supply Agreements"	shall mean the detailed agreement(s) for supply to the Seller of the Fuel requirement of the Power Station, entered into by the Seller with Coal India Limited or any subsidiary of Coal India Limited or with any other entity;
"Grid Code"	means the Indian Electricity Grid Code or any set of regulations or codes as amended and revised from time to time and legally binding on the Seller and Buyer, governing the operation of the Grid System;
"Grid System"	means the Interconnection and Transmission Facilities and any other transmission or distribution facilities through which the Buyer, supplies electricity to its customers or the transmission company transmits electricity to the Buyer;



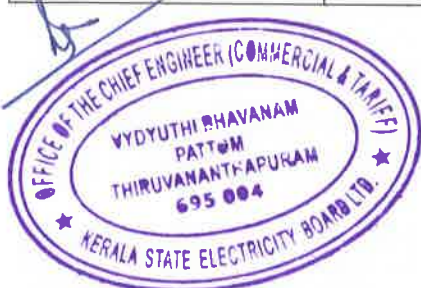
"IDC"	means interest during the Construction Period;
"IFSC"	means Indian Financial System Code, being the unique eleven digit code used in RTGS for identifying the remitting bank branch and also the beneficiary bank branch
"Indemnifiable Losses"	shall have the meaning ascribed thereto in Articles 12.1.1, 12.1.2;
"Indemnified Party"	shall have the meaning ascribed thereto in Article 12.2;
"Indian Governmental Instrumentality"	means the Government of India, Government of States where the Buyer, Seller and the Station are located and any ministry or department of or board, agency or other regulatory or quasi-judicial authority controlled by the Government of India or Government of States where the Buyer, Seller and Station are located and includes the Appropriate Commission;
"Installed Capacity"	means the summation of the name plate capacities of both the Units (2 x 525 MW gross capacity) of the Power Station or the capacity of the Power Station (reckoned at the generator terminals), as approved by the CERC from time to time;
"Interconnection and Transmission Facilities"	means the facilities on the Buyers' side of the Delivery Point for receiving and metering electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for the Project;
"Late Payment Surcharge"	means the surcharge payable by the Buyer for delay in payment of a Seller's Monthly Bill or a Supplementary Bill, as the case may be, beyond a period of Sixty (60) days from the receipt of such Seller's Monthly Bill or Supplementary Bill, as the case may, be and shall be calculated in accordance with the terms specified in Article 9.3.6 of this Agreement;



"Lenders"	<p>means the banks, other financial institutions, multilateral agencies, registered non banking financial companies, mutual funds and agents or trustees of debenture/bond holders, including their successors and assignees, who have agreed on or before COD of the Power Station to provide the Seller with the senior debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:</p> <p>Provided that, such assignment or transfer shall not relieve the Seller of its obligations to Buyer under this Agreement in any manner and shall also not lead to an increase in the liability of the Buyer;</p>
"Lenders' Representative"	shall have the meaning ascribed thereto in paragraph 3 of Schedule D;
"Main Meters"	means the meters installed at the Delivery Point for measurement and checking of import/export of energy on the outgoing feeders of the switchyard of the Power Station;
"Maximum Continuous Rating" or "MCR"	means in relation to a unit of a thermal power generating station, the maximum continuous output at the generator terminals, guaranteed by the manufacturer at rated parameters;
"Mega Power Policy"	means the policy guidelines, issued by the Ministry of Power, Government of India, for setting up of mega power projects of capacity 1000 MW or more supplying power to more than one State, as amended from time to time;
"Meter" or "Meters"	means Main Meters and Check Meters;
"Meters" or "Metering System"	means meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT Order, as amended from time to time;

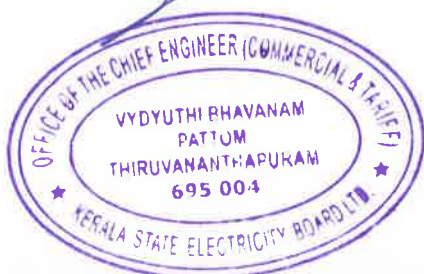


"Month"	means a period of thirty (30) days from (and excluding) the date of the event where applicable, else a calendar month;
"Monthly Bill"	means a monthly invoice comprising Capacity Charges and Energy Charges, including incentive and penalty;
"Monthly Tariff Payment"	shall consist of: (a) monthly Capacity Charges, (b) monthly Energy Charges, (c) and any other charges including, but not limited to, incentives, late payment surcharges, etc.  and the computation shall be as per the CERC Tariff Regulations, as amended from time to time;
"Normative Availability"	means equal to eighty five (85%) percent Availability at the Delivery Point on Contract Year basis and as amended by CERC from time to time;
"Notice to Proceed" or "NTP"	means the notice to proceed under the BTG Agreement
"Operating Period"	in relation to the Power Station, means the period commencing from the date by which all the Units achieve COD, until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Operator" or "Operators"	means one or more contractors appointed as operator of power generation facilities of the Power Station pursuant to an operation and maintenance contract, if any;
"Performance Guarantee Tests"	shall have the meaning ascribed thereto in paragraph 7 of Schedule E;
"Project Cost"	means the actual expenditure incurred by the generating company, as per the original scope of the Project up to the first financial year closing after one year of the date of commercial operation of the last Unit, and any additional Capitalization as admitted by the Appropriate Commission for determination of Tariff;

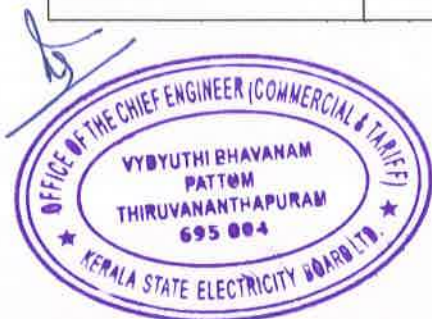




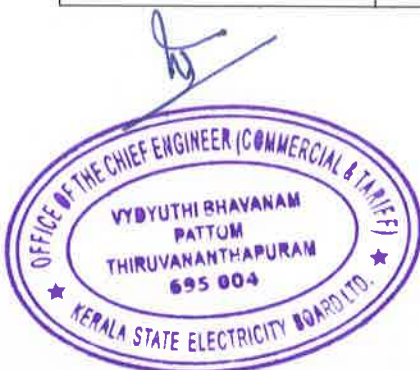
"Proposal"	shall have the meaning ascribed thereto in Clause 7.1 of Schedule D;
"Power Station"	means the coal fired thermal power plant of 1050 MW (2 units each of 525 MW gross capacity) comprising boilers, turbine generators, coal handling, ash handling, railway systems for transportation of coal from coal stock yard to the power plant, plant water system (water treatment/water desalination plant), effluent treatment plant and electrical system and equipment to be set up by the Seller at the Project Site;
"Project"	shall mean the designing, engineering, development, construction, financing, installation, testing and Commissioning of the Power Station and other associated facilities needed for the operation and maintenance;
"Project Documents"	means: (a) EPC Contracts; (b) Fuel Supply Agreements, including the Fuel transportation agreement, if any; (c) Operation and maintenance contract; and (d) Any other agreements designated in writing as such, from time to time, jointly by the Buyer and the Seller;
"Prudent Utility Practices"	means the practices, methods and standards that are generally accepted from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, Commissioning, operation and maintenance of power generation equipment of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of: <ul style="list-style-type: none"> <li>• operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project;</li> <li>• the requirements of Applicable Law; and</li> <li>• the physical conditions at the Site;</li> </ul>



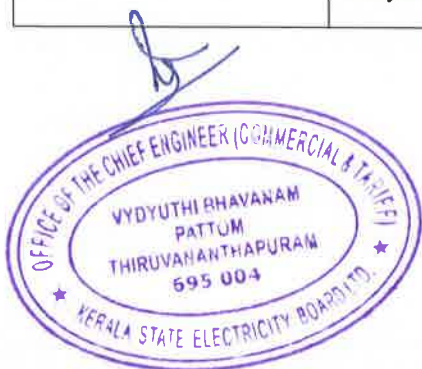
"Receivables"	means all of the present and future payments, obligations, monies, claims, bills and any other property whatsoever which may from time to time, accrue or be offered or fall due to the Buyer in respect of the sale by the Buyer to its Consumers, who are or who would be receiving electricity or energy or other related services from it and who are liable to make payments of any kind to the Buyer on that account or for any other reason whatsoever and all proceeds thereof;
"Regional Energy Accounts" or "REA"	means as defined in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Reliability Operation"	shall have the meaning ascribed thereto in paragraph 3.1 of Schedule E;
"Revised Installed Capacity"	shall be the capacity declared in terms of paragraph 6 of Schedule E;
"RLDC"	means the Regional Load Despatch Centre as defined in the Electricity Act, 2003, in the region in which the Project is located;
"RPC"	means the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"RTGS"	means Real Time Gross Settlement, a funds transfer mechanism where the transfer of money takes place from one bank to another on a "real time" (i.e. without any waiting period) and on a "gross" (i.e., the transaction is settled on a one-to-one basis without bunching with any other transaction) basis;
"Rupees" or "Rs."	means the lawful currency of India;
"Scheduled Energy" or "Scheduled Generation"	means scheduled generation as defined in the ABT Order;



"Scheduled Outage"	Shall mean a planned interruption of the generating capacity of either of the Units of the Power Station, or of the Project as agreed between the Parties;
"Selectee"	shall have the meaning ascribed thereto in Article 14.1.2;
"Seller's Designated Account"	shall have the meaning ascribed thereto in Article 9.3.3;
"Seller Event of Default"	shall have the meaning ascribed thereto in Article 13.1;
"Seller's Monthly Bill"	shall have the meaning ascribed thereto in Article 9.2.3;
"Seller Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13.4.1;
"Seller's Project Contracts"	means the contracts entered into by the Seller with its contractors having a contract value of more than Rs. fifty (50) Crore;
"Seller's Provisional Bill"	means the provisional bill raised in accordance with Article 9.1.3;
"Settlement Period"	means the time block for issue of daily generation and drawal schedules as provided in the ABT Order;
"SRPC"	means Southern Regional Power Committee;
"SRLDC"	means Southern Region Load Despatch Centre;
"CERC Sharing of Inter-State Transmission Charges & Losses Regulations, 2010"	means the CERC (Sharing of Inter-State Transmission Charges & Losses) Regulations 2010, and as amended from time to time;
"Site"	shall mean the land admeasuring about 1116.03 acres in aggregate situate at right bank of the river Barakar, Nirsacum Chirkunda block, District- Dhanbad, State of Jharkhand, on which the Project will be developed;



"SLDC"	means the relevant State Load Despatch Centre (as defined under Applicable Law) in the State where the Buyer's registered office is located;
"State Transmission Utility" or "STU"	shall have the meaning ascribed thereto in the Electricity Act 2003;
"Start Date"	Means the date for commencement of Supply from Seller to Buyer on the date from which Medium Term (MT)/Long Term (LT) Open Access (whichever is earlier) is granted by CTU;
"Supplementary Bill"	means a bill other than a Monthly Bill raised by any of the Parties;
"Supply Period"	means the period commencing from the Start Date and ending on the Expiry Date or earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Substitution Notice"	shall have the meaning ascribed thereto in Clause 3 of Schedule D;
"Tariff"	means the tariff as approved by the Appropriate Commission;
"Tariff Adjustment Payment"	means increase or decrease in the payment of the Seller's Monthly Bill;
"Tariff Regulations, 2009"	shall mean the CERC (Terms and Conditions of Tariff) Regulations, 2009, containing the terms and conditions for determination of Tariff, and any amendments thereof as may be notified from time to time;
"Technical Limits"	means the technical limits of the Project specified in Schedule B;
"Technical Specifications"	means the salient technical features in Schedule B and the elaboration of such technical features as may be provided in the EPC Contracts of the EPC Contractors, covering the design, construction, testing and Commissioning of the Project;

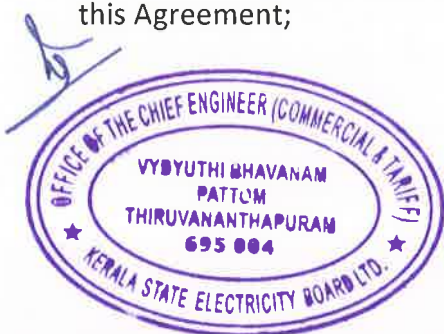


"Termination Notice"	shall have the meaning ascribed thereto in Clause 3 of Schedule D of this Agreement;
"Term of the Agreement"	shall have the meaning ascribed thereto in Article 2.1;
"Tested Capacity"	means, in relation to a Unit or the Project, the tested capacity as determined during the Reliability Operation;
"Transmission Charges"	means the charges paid or payable by the Buyer to the CTU or STU or any other agency for the transfer of power from the Delivery Point to the Buyers' periphery;
"Trial Operations"	shall have the meaning ascribed thereto in paragraph 2 of Schedule E;
"TSA"	means the Transmission Service Agreement required to be executed between the CTU and the designated ISTS Customers, as per the CERC Sharing of Inter-State Transmission Charges & Losses Regulations, 2010
"Unit"	means a unit with a gross capacity of 525 MW;
"Unscheduled Interchange" or "UI"	shall have the meaning ascribed thereto of the CERC (Terms and Conditions of Tariff) Regulations, as amended or revised from time to time;
"Water Supply Agreement"	shall mean the agreement(s) for supply of water to the Seller for meeting the requirements of the Power Station, entered into by the Seller with Damodar Valley Corporation;
"Week"	means a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

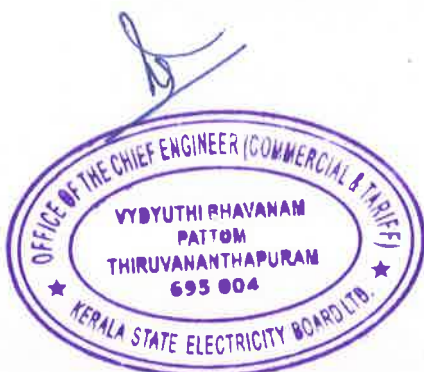
## 1.2 Interpretation

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

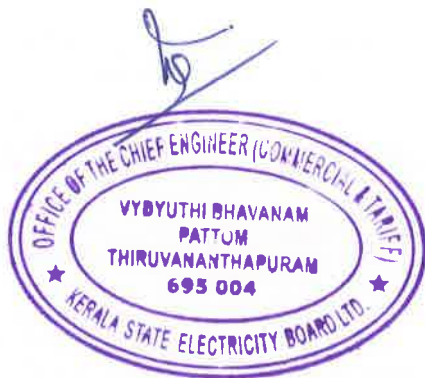
- 1.2.1 A "Recital", an "Article", a "Schedule" and a "Paragraph" shall be construed as a reference to a Recital, an Article, a Schedule and a Paragraph respectively of this Agreement;



- 1.2.2 "This Agreement" shall be construed as including a reference to its Schedules and Annexures;
- 1.2.3 "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;
- 1.2.4 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;
- 1.2.5 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 Applicable 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;
- 1.2.6 Words importing the singular shall include the plural and vice versa;
- 1.2.7 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;
- 1.2.8 An Applicable Law shall be construed as a reference to such Applicable Law including its amendments or re-enactments from time to time;
- 1.2.9 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;



- 1.2.10 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;
- 1.2.11 The table of contents and any headings or sub-headings in this Agreement has been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.12 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; and
- 1.2.13 Terms and conditions stated in this Agreement shall supersede the terms and conditions stated in all other agreements or memorandum of understandings entered in the past in relation to the Project. In case any of the terms and conditions in this Agreement is found to be in contradiction with any other agreement, the terms and conditions of this Agreement shall prevail.



**ARTICLE 2**  
**TERM OF THE AGREEMENT**

**2.1 Effective Date and Term of Agreement**

This Agreement shall come into effect from the Effective Date. This Agreement shall be valid for a term commencing from the Effective Date and ending on the date which is thirty (30) years from the COD of the Station ("**Expiry Date**") ("**Term of the Agreement**"). This Agreement shall automatically terminate, unless:

- (i) terminated earlier, pursuant to Article 2.2, or
- (ii) extended, pursuant to Article 2.3.

**2.2 Early Termination**

This Agreement shall terminate before the Expiry Date:

- (i) If either the Buyer, or the Seller exercises a right to terminate, pursuant to Articles 3.4.1 or 10.9 or 13 of this Agreement; or
- (ii) In such other circumstances as the Seller and the Buyer may agree, in writing.

**2.3 Extension of Term**

- (a) This Agreement shall stand extended by the period for which Seller is not able to generate electricity, partly or completely, due to any Force Majeure event.
- (b) Not less than three hundred and sixty five (365) days prior to the Expiry Date, either Party may notify the other Parties that it wishes to extend this Agreement for an additional period to be specified by the Party. Upon the receipt of such notice, the Parties shall meet and discuss an extension of this Agreement, which may be extended on such terms including the period of extension, tariff, capacity and operating characteristics, as the Parties may mutually agree in writing. Such extension shall commence upon the end of the last day of the Term of the Agreement. Subject to such approvals as may be necessary, the Term of the Agreement may be extended, upon such terms and conditions as may be mutually agreed upon by the Parties.





**2.4 Survival**

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival post its expiry or termination.



**ARTICLE 3**  
**CONDITIONS PRECEDENT**

- 3.1** The Conditions Precedent and obligations of the Parties with regard to this Agreement are as specified below. The Parties shall make reasonable endeavour to provide the required documents and take all actions to satisfy the Conditions Precedent within twelve (12) Months from the Effective Date or such extended period as may be mutually agreed by the Parties.
- 3.2** The following are the Conditions Precedent, which may be waived by mutual written consent of Seller and the Buyer:-
- (i) the Seller shall have received valid, enforceable, unencumbered and insurable title or leasehold right or right to use the Site and such other tangible and intangible property rights as may be required or necessary to construct, commission and operate the Project;
  - (ii) the Seller shall have received all the initial consents as required under Applicable Law, before the construction can start;
  - (iii) the Seller shall have executed Fuel Supply Agreements, and shall have duly provided copies of the same to the Buyer
  - (iv) the Seller shall have entered into the BTG Agreement and shall have given irrevocable Notice to Proceed;
  - (v) the Seller shall have achieved Financial Closure in relation to the Project;
  - (vi) The Seller shall have secured unencumbered generation capacity of at-least 150 MW.
  - (vii) the Buyer shall have obtained approval for long term open access for both CTU and STU, for evacuation of power generated from the Project, within twelve (12) Months from the Effective Date;
  - (viii) the Buyer shall have got this Agreement approved by the Kerala State Electricity Regulatory Commission ("KSERC"); and

The Party that is responsible for satisfying a particular Condition Precedent under this Article 3.2 may request waiver of such Condition Precedent by notifying the



other Party in writing of its intention to seek such waiver. If other Party provides its consent in writing that it no longer requires the satisfaction of such Condition Precedent, the performance of such Condition Precedent shall be waived.

### 3.3 Satisfaction of Conditions Precedent

Each Party, that is responsible for satisfying a particular Condition Precedent, shall keep the other Parties informed in writing of the progress being made in fulfilling such Condition Precedent, and also upon the fulfillment of waiver of such Condition Precedent, as the case may be.

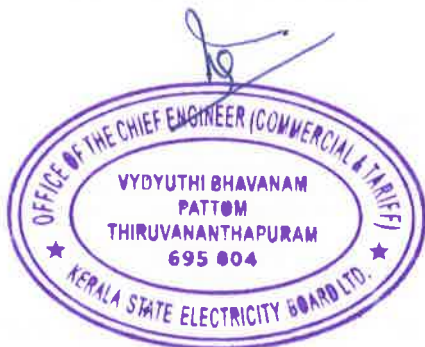
Each Party shall use reasonable endeavour to satisfy the Conditions Precedent which it is responsible for.

### 3.4 Right to Terminate

3.4.1 If the Conditions Precedent listed in Article 3.2 are not duly satisfied or waived by the Buyer or the Seller, as the case may be, within twelve (12) Months of the Effective Date, or such extended time as may be mutually agreed between the Parties in writing, the non-defaulting Party may terminate this Agreement by giving a written notice of termination to the other Party, not earlier than fourteen (14) Months from the Effective Date; and this Agreement shall stand terminated within seven (7) days from the date of such notice unless the Conditions Precedent outstanding are duly satisfied or waived.

3.4.2 Neither Party shall have any liability whatsoever to the other Parties as a result of the termination of this Agreement pursuant to this Article.

3.4.3 Notwithstanding anything to the contrary in this Agreement, with respect to the Condition Precedent listed in Article 3.2 (vi), in the event the Seller intimates the impossibility of its satisfaction within the allowed satisfaction period, this Agreement shall forthwith stand terminated. The Seller shall compensate the Buyer for any Open Access application and relinquishment charges for such capacity under this Agreement that may be levied on the Buyer.

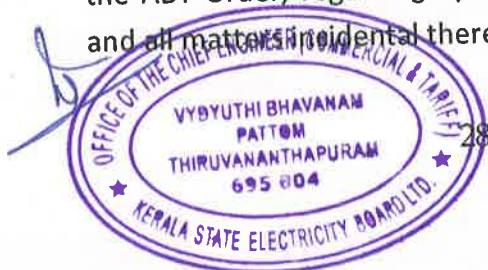


**ARTICLE 4**  
**PRINCIPAL OBLIGATIONS OF THE PARTIES**

**4.1 Seller's Obligations**

Subject to the terms and conditions of this Agreement, the Seller agrees and undertakes to be responsible for:

- (a) obtaining and maintaining in full force and effect all Consents (including initial consents) for developing, financing, constructing, operating and maintenance of the Project, required by it pursuant to this Agreement and/or as per Applicable Law, and for fulfilling all conditions specified therein;
- (b) executing the Project in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned no later than the Start Date;
- (c) ensuring that as much of the Contracted Capacity can be made available through the use of Prudent Utility Practices to meet the Buyer's scheduling and dispatch requirements throughout the Supply Period;
- (d) except if permitted under Article 14 (subject to the assignee undertaking the obligations of the Seller hereunder), owning the Project and/or having leasehold rights or right to use the Site throughout the Supply Period, free and clear of Encumbrances;
- (e) provide on a timely basis relevant information on Power Station specifications which may be required for interconnecting the Power Station with the transmission system;
- (f) procure and maintain adequate insurance to cover risks in respect of the Project until the Expiry Date;
- (g) deliver Energy Output to Buyer at the Delivery Point in accordance with this Agreement;
- (h) comply with (i) the provisions of Applicable Law including, the Grid Code and the ABT Order, regarding operation and maintenance of the Power Station and all matters incidental thereto; and (ii) the Prudent Utility Practices;

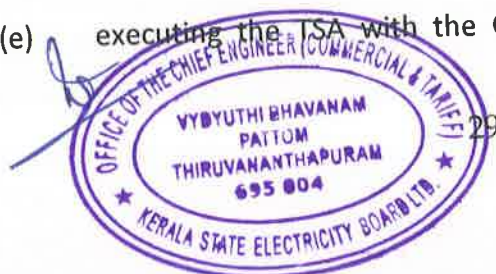


- (i) ensuring that any revenue arising out from sale of ash etc. be treated in accordance with the CERC regulations as applicable from time to time; and
- (j) fulfilling obligations undertaken by it under this Agreement.
- (k) Notwithstanding anything to the contrary stated in this Agreement, during the interim period from Effective Date to the Start Date, both Parties shall make best efforts to ensure availability of Short Term Open Access and power flow prior to the Start Date, which will be governed by tariff as determined by the CERC as applicable for the Station's Long Term beneficiaries. No other conditions of this Agreement other than relating to payment security shall be binding on both the Parties.

#### 4.2 Buyer's Obligations

Subject to the terms and conditions of this Agreement, the Buyer agrees and undertakes to:

- (a) off-take Energy Output and pay Seller's Monthly Bills, Provisional Bills, Supplementary Bills & any other under applicable charges included in CERC Tariff Regulations, as amended from time to time from the Start Date, together with any other charges and liabilities, in accordance with this Agreement;
- (b) open and maintain the Buyer's Letter of Credit and Bank Guarantee in accordance with provision of Article 9.4;
- (c) pay the transmission and any other charges in connection with this Agreement including but not restricted to RLDC/SLDC charges beyond the Delivery Point.
- (d) obtaining the requisite medium/long term open access and ensuring that the Interconnection and Transmission Facilities at Buyer's end are in place from the Start Date until the Expiry Date, to ensure evacuation of the Energy Output from the Delivery Point to Buyer's periphery.
- (e) executing the ISA with the CTU in terms of CERC Sharing of Inter-State



Transmission Charges & Losses Regulations, 2010.

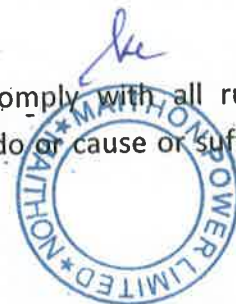
- (f) fulfilling obligations undertaken by it under this Agreement;
- (g) Notwithstanding anything to the contrary stated in this Agreement, during the interim period from Effective Date to the Start Date, both Parties shall make best efforts to ensure availability of Short Term Open Access and power flow from Seller's Station prior to the Start Date, which will be governed by tariff as determined by the CERC as applicable for LT beneficiaries, together with applicable transmission charges and losses. No other conditions of this Agreement other than relating to payment security shall be binding on both the Parties.

#### 4.3 Obligation of Buyer to pay Capacity Charges

- 4.3.1 If the Buyer does not avail/schedule power up to the net Declared Capacity provided by the Seller then the Seller shall be entitled to forthwith sell all or such part of the net Declared Capacity not availed/scheduled, to a third party/in general, to the Grid at best available prices, without losing the right to receive the Capacity Charges from the Buyer for such un-availed/unscheduled power from the Declared Capacity. In such a case, the sale realization in excess of the Energy Charges and any expense incurred by the Seller towards such short terms sale (such as Application Charges, Operating Charges, PoC Charges, Trading Margin in case sale is through Trader, etc.) shall first be adjusted to offset the Capacity Charges payable by the Buyer, and any residual sale realization thereafter shall be shared equally between the Buyer and the Seller.
- 4.3.2 The dispatch of power from Seller to the Buyer shall always be on merit order basis subject to provision of Article 6.1.3 below.
- 4.3.3 Notwithstanding anything contained in the arrangement between the Seller and the third party buyer, in the aforesaid Article 4.3.1, , the Seller shall re-commence supply of such capacity to the Buyer, within the minimum time stipulated by RLDC, on receipt of notice for recommencement of such re-scheduling.

#### 4.4 Payment of taxes

Each Party shall pay all taxes applicable to it, and comply with all rules and regulations as regards such taxes and not do or omit to do or cause or suffer to be



done anything which could reasonably be expected to adversely affect or prejudice the interests and rights of the other Parties in any manner whatsoever. However, the Parties agree that in the event of imposition, revision in duties or taxes, levies (by whatever name be called) on account of Change in Law, pursuant to Article 11, any change in applicable Tariff shall always be in accordance with such Article 11.



**ARTICLE 5**  
**COMMERCIAL OPERATION AND COMMISSIONING**

5.1.1 A Unit shall be declared Commissioned on the day when:

- (i) the Reliability Operation and the Capacity Test as per paragraph 3 of Schedule E has been successfully carried out by the Seller; and
- (ii) the results thereof show that the Unit's Tested Capacity is its Installed Capacity.

5.1.2 The right of the Buyer to witness the Reliability Operation, Capacity Test and Performance Guarantee Tests of the Unit shall be in accordance with the procedure specified in paragraph 5 and paragraph 7 of Schedule E.

5.1.3 If a Unit's Tested Capacity after carrying out the required tests as specified in Article 5.1.1 (a) is less than its Installed Capacity, the Unit shall be de-rated and the Seller shall be permitted to declare the Revised Installed Capacity, in accordance with paragraph 6 of Schedule E. In such case, the Revised Installed Capacity of the Project shall be allocated among the buyers in proportion to their contracted capacities as per their respective power purchase agreements for purchase of power from the Project.

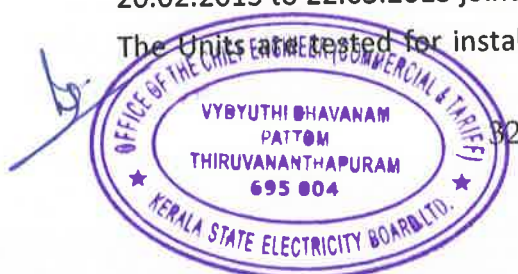
If the Tested Capacity of the Unit is less than its Installed Capacity, while allocating the capacity on a pro-rata basis to various power purchasers, the capital cost shall also be reduced on a pro-rata basis or in accordance with the CERC Tariff Regulations, as amended from time to time.

5.1.4 After the COD of the Project, the Seller shall have the right to carry out the Performance Guarantee Tests, in accordance with the procedure specified in paragraph 7 of Schedule E and other terms and conditions of the BTG Agreement.

5.1.5 The Unit 1 is in Commercial Operation since 10.09.2011 & Unit 2 and the Station is in Commercial Operation since 24.07.2012, in terms of the regulation 2 (12) of the CERC Tariff Regulation.

The Performance Guarantee Test of the BTG package on the Unit 1 was conducted from 02.03.2013 to 04.03.2013 jointly by the Seller and M/s BHEL. The Performance Guarantee Test on the Unit 2 was conducted from 20.02.2013 to 22.03.2013 jointly by the Seller and M/s BHEL.

The Units are tested for installed Capacity 525 MW each on Units 1 and 2.

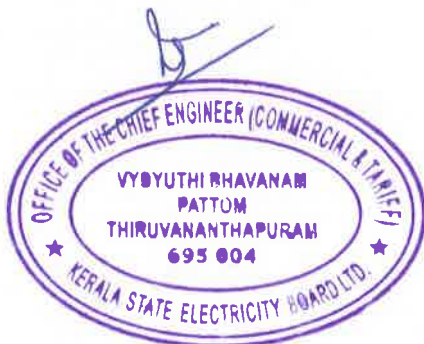




**ARTICLE 6**  
**POWER SUPPLY AND SCHEDULING OF POWER**

**6.1 Availability and Scheduling**

- 6.1.1 The Seller and Buyer shall comply with the provisions of the Applicable Law regarding Availability and scheduling/dispatch of power including, in particular, the provisions of the ABT Order, the Grid Code relating to intimation of Availability and any other regulations notified by any competent authority, constituted or established under the Electricity Act, 2003.
- 6.1.2 The quantum of supply of power shall be the Contracted Capacity, round the clock power on schedule basis. The Parties shall agree on the preventive maintenance schedule of each Unit at the beginning of each Contract Year.
- 6.1.3 In accepting the schedules in day ahead and in real time changes during the day:
- (a) The Buyer shall allow adequate schedule for running unit (s) not below the technical minimum limits of the station recommended by the manufacturer, upto pro-rata to his Contract Capacity vis-à-vis the Installed Capacity of the station, in terms of ERLDC procedure (clause 7.4 of the ERLDC Operating Procedure as amended from time to time),
- (b) the Buyer shall accept the nominal changes in the schedules suggested by the Seller, for the station not to exceed the recommended ramp up and ramp down rates (clause 6.5.14 & 6.4.16 of the IS Grid Code).



**ARTICLE 7**  
**METERING AND ENERGY ACCOUNTING**

**7.1 Metering**

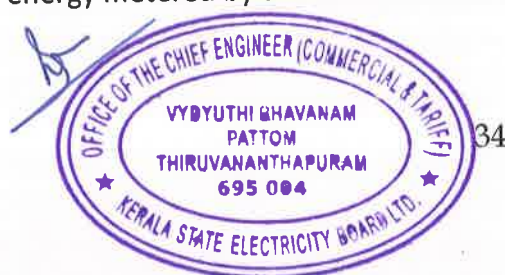
For installation of Main and Check Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Parties shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 ("CEA Regulations 2006"), the Grid Code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

Data shall be downloaded from the Meters at regular intervals as decided by ERPC/ERLDC for preparation of the REA/UI account.

If the Main Meter is found to be not working at the time of Meter reading or at any other time, the Seller shall inform the CTU/ERPC/ERLDC of the same and data for Check Meters shall be considered by ERPC/ERLDC for energy accounting for the period.

If both the Main and Check Meter(s) fail to record or if any of the PT fuses is blown out, then the energy accounting shall be done on a mutually agreeable basis between the Seller, the Buyer and ERLDC/ERPC for the period of defect. In case there is no mutual agreement, the decision of member secretary of the ERPC would be final and binding.

The Main and Check Meter shall be checked on a quarterly basis by comparison of the readings between these two meters and in case the readings of the two Meters differ by more than 0.4% both the Meters will be checked separately with respect to another reference meter and defective meter shall be replaced. The energy metered during the period of defect would be revised by applying a correction factor on the energy metered by the defective Meter.

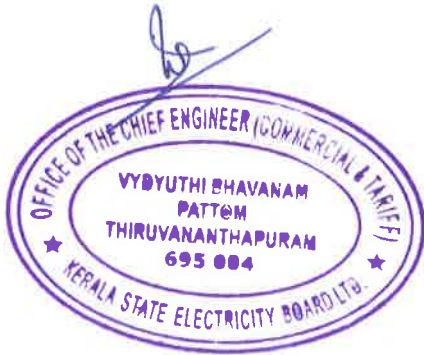


Once in every five (5) years, both Main and Check Meters shall be tested for accuracy by a standard reference meter either at the Power Station or at any approved testing laboratory as per the provisions of CEA Regulations 2006. During testing, in case the error is found to be more than the permissible limits, then the Meter shall be replaced by a correct Meter.

## 7.2 Energy Accounting

### 7.2.1 Regional Energy Account

REA shall be issued based on the data provided by the RLDC and output of the Main Meters and Check Meters delivered by the Seller and such REA shall be subject to subsequent corrections by the issuing agency. The REA shall be binding on the Parties.



**ARTICLE 8  
INSURANCES**

**8.1 Insurance**

The Seller shall effect and maintain or cause to be effected and maintained during the Construction Period and Operating Period, insurance against such risks, which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

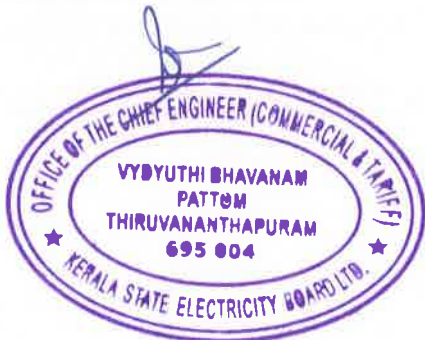
**8.2 Application of Insurance Proceeds**

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

**8.3 Effect on liability of Buyer**

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

Any under insurance or lack of insurance cover in relation to the perils, which are otherwise insurable shall be deemed to be self insured by the Seller and cost thereof, shall not be directly or indirectly passed on to the Buyer. It is specifically agreed that Buyer shall not be responsible for any liability due to any under insurance by the Seller.



**ARTICLE 9**  
**BILLING AND PAYMENT**

**9.1 General**

9.1.1 From the Start Date, the Buyer shall be obligated to pay the Seller the Monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined/approved by CERC. All Tariff payments shall be in Indian Rupees.

9.1.2 The scheduled energy sold in a month shall be the energy as indicated in the REA issued by ERPC, subject to adjustment towards applicable injection losses, in the event of the scheduled Energy as reported in the REA not being at Delivery Point.

9.1.3 The billing cycle will be monthly based on REA issued by RPC and accordingly a Seller's Monthly Bill will be raised by the Seller. In addition, the Seller shall raise a provisional bill on or after 25th of the Month but not later than the 28th of the Month based on the final implemented Scheduled Energy till that date and the estimated energy till the last day of that Month ("**Seller's Provisional Bill**").

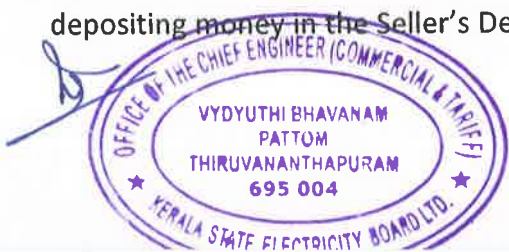
In the event the Seller's Availability towards Buyer's Contracted Capacity is not certified in the REA issued by the ERPC, the same shall be certified by the Kerala SLDC through a mutually agreed methodology for determining the Availability computations of Capacity Charges for Monthly Bills.

9.1.4 The bills may be delivered by email or fax to the Buyer's authorized representative listed in article 16.1, followed by the Original bill through courier/ speed post. The date of email or fax shall be treated as date of receipt of bill for determination of Due Date for payment, subject to the email or fax being delivered upto 11.00 am, failing which the next Business Day shall be considered as date of receipt of bill.

**9.2 Delivery, content of and rebate on Provisional and Monthly Bills**

9.2.1 The Seller's Provisional Bill shall contain the Seller's computation of various components of the Monthly Tariff Payments in accordance with the Tariff as approved/determined by the CERC.

9.2.2 The Buyer shall be entitled to deduct a rebate of two point two five percent (2.25 %) on the payment made towards Seller's Provisional Bill, in full or in part, by depositing money in the Seller's Designated Account, on first day of the next Month.



The rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the next Month. Notwithstanding the above, it is clarified that in case tax, duty, etc. payment is a reimbursement and not part of tariff determined by the CERC as per applicable Regulations from time to time, no rebate shall be allowed by the Seller on such tax reimbursement by the Buyer to the Seller.

9.2.3 The Seller shall issue to Buyer a signed Seller's Monthly Bill for the immediately preceding Month, on receipt of the REA issued by the RPC ("**Seller's Monthly Bill**"). The Buyer shall make payment against the Seller's Monthly Bill so raised, by 60th (sixtieth) day after such Seller's Monthly Bill has been duly received and acknowledged by the Buyer ("**Due Date**"). In case the Due Date of payment is a holiday, the next Business Day shall be treated as the Due Date.

9.2.4 (i) Buyer is entitled to deduct a rebate of two (2 %) percent on the balance payment made in full towards any Seller's Monthly Bill, within one (1) Business Day of its presentation for the Month for which the Seller's Provisional Bill was raised earlier. The Buyer shall be entitled to deduct a rebate of one (1%) per cent on balance payment made up to thirty (30) days of receipt of the Seller's Monthly Bill.

Applicable rate of rebate shall be based on the date on which payment has been actually credited to the Seller's Designated Account. Any delay in transfer of money to the Seller's Designated Account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Buyer.

(ii) The above rebates will be allowed if the Buyer credits the Seller's Designated Account with the net of amount raised on bill.

(iii) If the Seller's Provisional Bill has not been paid until the date of receipt of the Seller's Monthly Bill, then such Seller's Provisional Bill shall not be payable, provided in case the Seller's Provisional Bill has already been paid, then only the difference in the amounts between the Seller's Monthly Bill and Seller's Provisional Bill shall be payable by the Buyer.

9.2.5 Each Monthly Bill raised by the Seller shall include:

(i) Availability and energy account for the relevant Month as per REA for Monthly Bill;

(ii) the Seller's computation of various components of the Monthly Tariff Payment in accordance with the Tariff as approved/determined by the CERC;



- (iii) supporting data, documents and calculations in accordance with this Agreement.

### 9.3 Payment of Monthly Bills

9.3.1 Buyer shall pay the amount payable under Seller's Monthly Bill to Seller on or before the sixtieth (60<sup>th</sup>) day from the date of receipt of the Seller's Monthly Bill, to the Seller's Designated Account, in accordance with Article 9.2.4, by depositing money in such account.

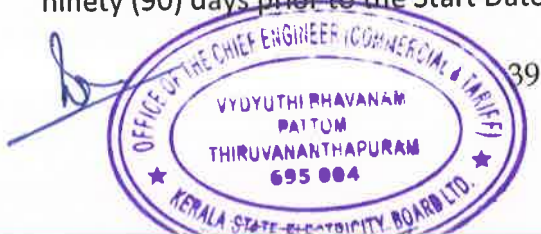
All payments made by the Buyer shall be appropriated by the Seller in the following order of priority:

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

9.3.2 All payments required to be made by Buyer to Seller under this Agreement may permit any deduction or set off for:

- (i) deductions required by Applicable Law;
- (ii) rebates under Article 9.2; and
- (iii) amounts claimed by the Buyer from the Seller, through a Supplementary Bill duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Supplementary Bill and such deduction or set-off shall be made to the extent of the amounts not disputed.

9.3.3 The Seller has opened a bank account (the "Seller's Designated Account") for receiving all Tariff Payments to be made by Buyer to the Seller at Mumbai, and shall notify the Buyer of the details of such account at least ninety (90) days prior to the Start Date. The Buyer shall instruct its bankers to make all payments under this Agreement to the Seller's Designated Account and shall notify the Seller of such instructions on the same day. Buyer shall also designate a bank account (the "Buyer's Designated Account") for payments to be made by the Seller (including Supplementary Bills) to Buyer and notify the Seller of the details of such account ninety (90) days prior to the Start Date.



9.3.4 Payment by any Party to the other may be made by RTGS.

9.3.5 The Seller's Monthly Bill(s) shall be paid in full after deducting any eligible rebate pursuant to Article 9.2 subject to the condition that—

- (i) there is no apparent arithmetical error in the Seller's Monthly Bill(s);
- (ii) Seller's Monthly Bill(s) is/are prepared in accordance with the Tariff determined by CERC;
- (iii) they are in accordance with the Regional Energy Accounts issued by the competent authority; and
- (iv) there is no Dispute.

Provided if there is any Dispute, then the provisions of Article 9.6 shall apply. Provided that non-acceptance of Tariff approved by CERC shall not be a valid ground for Dispute.

If the Buyer does not Dispute a Seller's Monthly Bill, Seller's Provisional Bill or a Supplementary Bill raised by the Seller within ninety (90) days of receiving it, such bill shall be taken as conclusive.

9.3.6 In the event of delay in payment of a Seller's Monthly Bill by the Buyer beyond the 60th (sixtieth) day from the date of receipt of such Monthly Bill, a late payment surcharge ("**Late Payment Surcharge**") shall be payable by the Buyer to the Seller, at the rate of one point twenty five (1.25%) percent per Month, on the amount of outstanding payment.

9.3.7 No rebate shall be payable on any bills raised on account of Change in Law relating to taxes, duties and cess;





#### 9.4 Payment Security Mechanism

The Buyer shall establish and operationalise the Payment Security Mechanism as detailed below within the stipulated time lines failing which supply to the Buyer may not be commenced from the Start Date unless the Seller extends the period for creation of Payment Security Mechanism. Notwithstanding the non-commencement of Supply due to delay in establishment of Payment Security Mechanism, the Buyer shall be obliged to pay the Capacity Charges from the Start Date.

##### 9.4.1 Letter of Credit and Bank Guarantee to be provided by Buyer to Seller

9.4.1.1 Buyer shall provide to the Seller, in respect of security for payment of Seller's Monthly Bill, an unconditional, revolving, irrevocable and non-recourse letter of credit ("**Buyer's Letter of Credit**") payable at Mumbai at Par, opened and maintained by the Buyer, which may be drawn upon by the Seller in accordance with Articles 9.4.1.5. The Buyer shall additionally provide a Bank Guarantee to cover a exposure of maximum one month's billing.

9.4.1.2 The Buyer shall provide the Seller the draft of the Buyer's Letter of Credit and the Bank Guarantee proposed to be provided to the Seller at least thirty (30) days before the Start Date. Further the Buyer's Letter of Credit and Bank Guarantee shall be provided from the Buyer's Banks.

9.4.1.3 Not later than fifteen (15) days prior to the Start Date, Buyer shall through a scheduled bank at Trivandrum open a Buyer's Letter of Credit and also provide a Bank Guarantee in favour of the Seller, to be made operative from a date prior to the Due Date of its first Seller's Monthly Bill under this Agreement. The Buyer's Letter of Credit and the Bank Guarantee shall individually have terms of twelve (12) Months each and shall be renewed annually for an amount equal to:

Buyer's Letter of Credit:

- (i) the value of the Buyer's Letter of Credit, for the first Contract Year, shall be one point zero five (1.05) times the estimated average 2 months monthly billings based on Normative Availability; and
- (ii) for each subsequent Contract Year, shall be one point zero five (1.05) times the average 2Months' Tariff Payments of the previous Contract Year (provided variations up to (+)/(-) two (2%) percent shall be ignored).

Bank Guarantee:



- (i) the value of the Bank Guarantee, for the first Contract Year, shall be one point zero five (1.05) times the estimated average 1 month's monthly billings based on Normative Availability; and
- (ii) for each subsequent Contract Year, shall be one point zero five (1.05) times the average 1 Months' Tariff Payments of the previous Contract Year (provided variations up to (+)/(-) two (2%) percent shall be ignored).

Provided that the values of the Buyer's Letter of Credit and Bank Guarantee shall be reviewed each half year commencing April and October in each Contract Year on the basis of the average of billing of previous twelve (12) months and the value of the Buyer's Letter of Credit and Bank Guarantee shall be enhanced/reduced accordingly.

Provided further that, the Seller shall not draw upon such Buyer's Letter of Credit or Bank Guarantee) prior to the Due Date of the relevant Seller's Monthly Bill, b) if the payment against the Seller's Monthly Bill has been made, and c) shall not make more than one drawal in a Month.

9.4.1.4 Buyer shall cause the scheduled bank(s) issuing the Buyer's Letter of Credit and the Bank Guarantee to intimate the Seller, in writing regarding establishing of such irrevocable Buyer's Letter of Credit and Bank Guarantee.

9.4.1.5 If the Buyer fails to pay a Seller's Monthly Bill or part thereof within and including the Due Date, the Seller may draw upon the Buyer's Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buyer, an amount equal to such Seller's Monthly Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 9.3.6, by presenting to the scheduled bank issuing the Buyer's Letter of Credit, the following documents:

- (i) a copy of the Seller's Monthly Bill which has remained unpaid by the Buyer;
- (ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- (iii) calculations of applicable Late Payment Surcharge, if any.

9.4.1.5A In the event the Buyer's Letter of Credit is insufficient to cover for the total amount outstanding on any Due Date, the Seller shall have the right to recover its balance outstanding dues by invoking the Bank Guarantee.



9.4.1.6 In the event of Buyer's Letter of Credit being drawn upon by the Seller due to non-payment of the Seller's Monthly Bill in full (unless disputed), then within a period of seven (7) days from the date such shortfall in the Buyer's Letter of Credit occurs, the Buyer's Letter of Credit shall be reinstated to the requisite amount specified in this Agreement.

9.4.1.6A In the event of Bank Guarantee being drawn upon by the Seller pursuant to Article 9.4.1.5A, then within a period of seven (7) days from the date such shortfall in the amount of Bank Guarantee occurs, the Bank Guarantee shall be reinstated to the requisite amount specified in this Agreement.

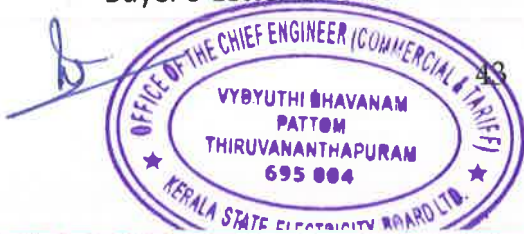
9.4.1.7 Buyers shall ensure that the Buyer's Letter of Credit and Bank Guarantee shall be renewed not later than five (5) days prior to their respective expiry.

9.4.1.8 All costs relating to opening and maintenance of the Buyer's Letter of Credit shall be borne by the Buyer. However, where there has been a wrongful drawal on the Buyer's Letter of Credit by the Seller, any charges and losses incurred by the Buyer in that connection shall be borne and paid by the Seller.

9.4.1.8A All costs relating to securing the Bank Guarantee shall be borne by the Seller.

## 9.5 Third Party Sale

9.5.1 (i) Notwithstanding anything to the contrary contained in this Agreement, where the Buyer has not made payment to the Seller within sixty (60) days of receipt of a Seller's Monthly Bill or has not replenished the Buyer's Letter of Credit or has not replenished the Bank Guarantee to the required amount within the period as provided in Article 9.4.1.6 and 9.4.1.6A respectively, the Seller shall be free to regulate and sell, without prior consent of the Buyer, power to third party buyers, from the Contracted Capacity that has not been dispatched to the Buyer, without losing the right to receive the Capacity Charges from the Buyer for such 3<sup>rd</sup> party sale of power from the Declared Capacity. In case of shortfall in amount of Buyer's Letter of Credit security and/or the Bank Guarantee, the right to regulate and the right to sell to third parties available to the Buyer hereunder shall be in the ratio of shortfall in Buyer's Letter of Credit maintained/available to the total amount of Buyer's



Letter of Credit required and / or Bank Guarantee maintained/available to the total amount of Bank Guarantee required.

Provided however that, in case the Buyer defaults three (3) or more times in a Contract Year, in timely payment of any amount under a Buyer's Monthly Bill or Supplementary Bill, then without prejudice to the Seller's right to terminate this Agreement under Article 13.2 (vi), the Seller shall have the right to regulate and sell the entire Contracted Capacity, and not merely that amount of power, proportionate to the shortfall in Buyer's Letter of Credit and/or Bank Guarantee maintained.

- (ii) However, if the Buyer makes the defaulted payment, along with the Late Payment Surcharge, and the other applicable charges, if any (collectively referred to as "**Defaulted Payment**"), within the period as mentioned in Article 13.2(i) as well as reinstates the Buyer's Letter of Credit and the Bank Guarantee to the amounts as per Article 9.4.1.3, the Contracted Capacity or such part thereof, as the case may be, sold by the Seller shall be restored to Buyer within a period of three (3) days from the date of the Defaulted Payment and reinstatement of Buyer's Letter of Credit and the Bank Guarantee, notwithstanding the fact that the Seller has exercised its right to regulate and sell power as set out in Article 9.5.1.

9.5.2 In case of third party sales as permitted by this Article 9.5, without prejudice to the Seller's rights, the adjustment of the revenue attributable to such electricity sold shall be adjusted as under:

- (i) The revenue realized after the adjustment of the Energy Charges and any costs including the transmission losses, charges (STOA application charges, operating charges, PoC Charges, and trading margin in case of sale through trader), incurred by the Seller towards third party sale, for the corresponding period shall be used towards the extinguishment of the subsisting outstanding payment liability of Buyer towards the Seller; and
- (ii) The surplus, if any after the above adjustments, would be shared between the Buyer & Seller.

9.5.3 The Buyer shall continue to be liable to pay the Capacity Charges to the extent of any balance Capacity Charges payable to the Seller after adjustment of the same under Article 9.5.2 (i).



## 9.6 Disputed Bills

9.6.1 If any Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the invoicing Party within ninety (90) days of receiving it, such bill shall be taken as conclusive.

9.6.2 If any Party disputes the amount payable under a Monthly Bill, provisional bill or a Supplementary Bill, as the case may be, that Party shall, within ninety (90) 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.

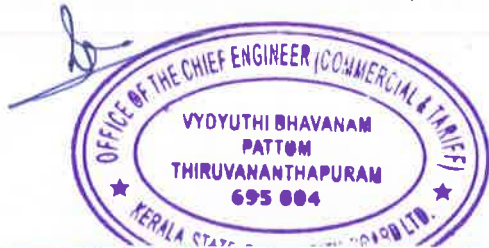
9.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.6.2, the invoicing Party shall revise such bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment, refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received.

9.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.6.2, it shall, within seven (7) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

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

9.6.5 Upon receipt of notice of disagreement to the Bill Dispute Notice under Article 9.6.4, authorized representative(s) or a director of the board of directors/member of board of each Party shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

9.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of



notice of disagreement to the Bill Dispute Notice pursuant to Article 9.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 15.

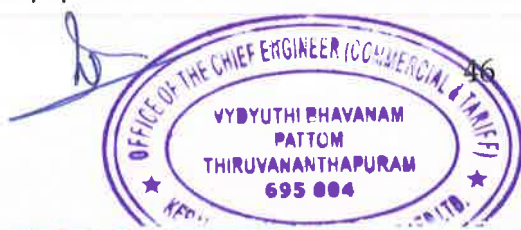
9.6.7 In case of Disputed Bills, it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 15.3.1 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.

9.6.8 If a Dispute regarding a Seller's Monthly Bill or Seller's Provisional Bill or a Supplementary Bill, as the case may be, is settled pursuant to Article 9.6 or by Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if 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 9.6.5 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.

9.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding a Seller's Monthly Bill or Supplementary Bill, the Buyer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months such Monthly Bills or Supplementary Bills, as the case may be, (being the undisputed portion of such three (3) Months Monthly Bills or Supplementary Bills, as the case may be) and (b) Monthly Bill or Supplementary Bill, as the case may be, which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

## 9.7 Quarterly and Annual Reconciliation

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



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

## 9.8 Tariff at Delivery Point

9.8.1 Subject to the provisions of this Agreement, Seller shall supply the Contracted Capacity (in terms of the Declared Capacity) and the Energy Output at the Delivery Point on scheduled basis and Buyer shall pay to Seller for the Scheduled Energy as per REA prepared by RPC subject to Article 9.1.2. Tariff for such sale of Energy Output to Buyer at the Delivery Point will be determined by CERC/Appropriate Commission from time to time in accordance with Tariff Regulations, as amended from time to time.

Buyer shall be liable to pay Capacity Charges in proportion to its Contracted Capacity to the Seller in terms of Declared Capacity as per the CERCTariff Regulations, as amended from time to time and as per Article 9.1.3. In the event of Medium Term Open Access, the Contracted Capacity shall be limited to the Access granted, duly grossed up for Auxiliary Energy Consumption as per prevalent and applicable CERCTariff Regulations.

9.8.2 Any charges, including the Transmission Charges and transmission losses for sale of the Contracted Capacity beyond the Delivery Point shall be on account of the Buyer, and shall be borne by Buyer.

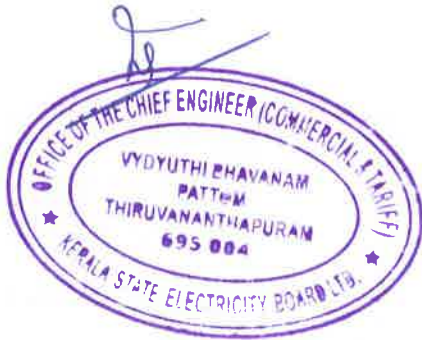
9.8.3 All applications for availing intra and/or inter-regional transmission system of CTU/STU to transfer the Contracted Capacity from Delivery Point to Buyer shall be made by the Buyer to respective RLDCs/RPCs and all the transmission related charges will be paid by Buyer.

9.8.4 Any levy such as sales tax, electricity duty, octroi, or otherwise by whatsoever name or names called or either described, by any Indian Governmental Instrumentality in respect of energy generated by Seller and/or purchased including Auxiliary Energy Consumption or any other type of consumption including water, environment protection, sale or on supply of power/electricity and/or in respect of any of its



installations associated with the Power Station payable by Buyer shall be paid by the Seller on account of the Buyer, and subsequently it shall be recovered from the Buyer in the immediate next Buyer's Monthly Bill raised by the Seller. Billing and recovery of income tax shall be as per regulations of CERC as applicable from time to time.

9.8.5 The Seller has developed the present Project under the Mega Power Policy of the Government of India which provides for various benefits as per the Policy there-in. Simultaneously the Mega Power Policy also assigns various duties and responsibilities on the Seller. The Parties hereby agree to comply with the terms and conditions of the Mega Power Policy. Further, the Seller agrees that all benefits allowed and realized for the Project on account of Mega Power Policy shall be passed on to the Buyer in proportion to its Contracted Capacity.





**ARTICLE 10**  
**FORCE MAJEURE**

**10.1 Definitions**

In this Article 10, the following terms shall have the following meanings:

**10.1.1 Affected Party**

means the Seller or Buyer whose performance has been affected by an event of Force Majeure.

**10.1.2 Force Majeure**

Means any event or circumstance or combination of events and circumstances 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:

- (i) any act of God, including lightning, drought, fire, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, thunderstorm, or exceptionally heavy rains which are in excess of the statistical measures for the last hundred (100) years; or
- (ii) any explosion, accident, breakage of facilities, structural collapse or a chemical contamination caused by a person not being the Affected Party and not being due to inherent defects in the Project; or
- (iii) any epidemic, plague or quarantine; or
- (iv) damage or loss caused by meteorite crash, air crash, damage caused by objects falling from aircraft, or other flying devices or vehicles, pressure waves caused by aircraft or aerial devices travelling at supersonic speed, shipwreck, train wrecks or failures that were not reasonably



foreseeable; or

- (v) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo (including, causing unavailability or shortage of fuel or materials), revolution, riot, insurrection, civil commotion, religious strife, communal violence, act of terrorism, extremist action or politically motivated sabotage or abduction; or
- (vi) radioactive contamination or ionizing radiation; or
- (vii) industry wide strikes, sabotage, go-slows or similar industrial disputes at the Station or at the plant manufacture works, or the Grid excluding such events which are site specific and/or attributable to the Seller or Buyer; or
- (viii) expropriation, requisition, confiscation, nationalization, export or import restrictions, provided that such did not result from the non-compliance with any Applicable Law by the Seller or an Affiliate, associate, contractor or any other person acting under the direction or control of the Seller; or
- (ix) archaeological findings that were not reasonably foreseeable; or
- (x) the revocation or cancellation or delay in renewing (other than for cause) of any Consent; or
- (xi) acts of Indian Government Instrumentality, or compliance with such acts, which directly affects such Party's ability to perform its obligations hereunder; or
- (xii) unavailability or operation of the Grid beyond the Technical Limits, or
- (xiii) any shut down or interruption of the Grid, whether for avoiding any immediate or serious risk of significant plant/equipment failure or otherwise;



- (xiv) any event or circumstance of a nature analogous to any of the foregoing and which could not be foreseen or controlled with due diligence.

## 10.2 Third Party Force Majeure

An event of force majeure affecting the CTU/STU shall be deemed to be an event of Force Majeure which materially and adversely affects the obligations of Buyer, subject to Buyer complying with the other requirements of this Article.

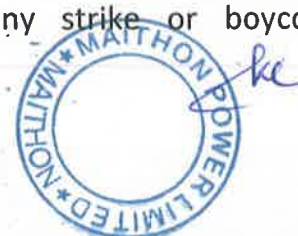
Any event of Force Majeure affecting the performance of the Seller's Contracts or Operator of the Seller shall be deemed to be an event of Force Majeure, subject to Seller complying with the other requirements of this Article.

In addition, the Parties agree that any event of force majeure pursuant to the Fuel Supply Agreement and the Water Supply Agreement shall be an event of Force Majeure affecting the obligations of the Seller under this Agreement.

## 10.3 Non Force Majeure events

None of the following conditions shall constitute an event of Force Majeure, unless the existence of such condition is the result of an event of Force Majeure affecting the Buyer, Seller, their respective contractors mentioned in Article 10.2 above and the supplier under the Fuel Supply Agreement:

- (i) late delivery of plant, machinery, equipment, material spare parts, fuel or consumables for the Station or Interconnection and Transmission Facilities; or
- (ii) strikes or boycotts interrupting supplies and services to the Station and involves the Seller, the Seller's contractors or their respective employees, agents or representatives or any strike or boycott



attributable to any unfair policy or practice of the aforementioned persons.

#### 10.4 Notification of Force Majeure Event

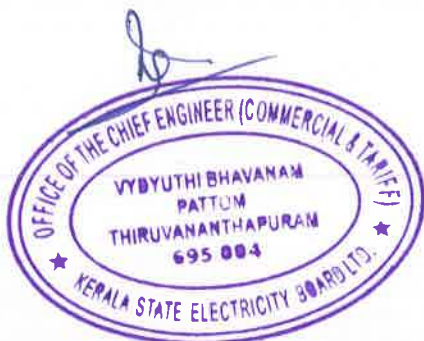
10.4.1 The Affected Party shall give notice to the other Parties of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of 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. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Parties regular reports on the progress of those remedial measures and such other information as the other Parties may reasonably request about the situation.

10.4.2 The Affected Party shall give notice to the other Parties 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.

#### 10.5 Duty to Mitigate

The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure, as soon as practicable.

Provided that no Party shall be required under this Article to settle any strike or labour dispute it considers to be unfavorable to it.



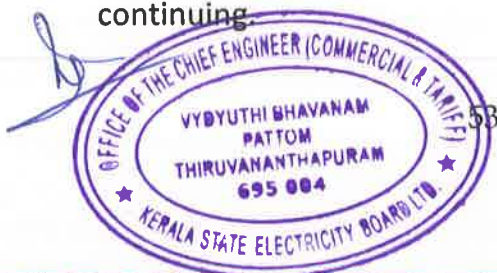
## 10.6 Failure or delay caused by Force Majeure

Neither Party shall be liable for any failure or delay in complying with its obligations pursuant to this Agreement to the extent that such failure or delay has been caused or contributed to by one or more events of Force Majeure or their effects or by any combination thereof. The period allowed for the performance by the Affected Party of its obligations hereunder shall be extended by one day for each day of continuation of an event or events of Force Majeure.

Provided that such extension may be for such additional duration as may be required to compensate for any delay or failure resulting from the time spent on demobilisation and remobilisation of personnel and restoration of the Unit or the Station, as the case may be, after cessation of an event or events of Force Majeure, to the pre-Force Majeure condition, assuming diligent compliance by such Party.

## 10.7 Available Relief for a Force Majeure Event

- (a) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Buyer for the part of Contracted Capacity affected by a Force Majeure event affecting the Seller, for the duration of such Force Majeure event. For the balance part of the Contracted Capacity, the Buyer shall pay the Tariff to the Seller, provided during such period of Force Majeure event, the balance part of the Power Station is declared to be available for scheduling and dispatch for supply of power by the Seller to the Buyer.
- (b) Notwithstanding the above, if the obligations of the Seller get affected due to any of the Force Majeure events, the Buyer will reimburse proportionate share of such costs as per provisions of the prevailing CERC regulations or any other Government Guidelines/ notifications (Standard Bidding Documents, etc.) issued by the Ministry of Power in this regards or any modifications thereof from time to time towards the Force Majeure Event till the time such Force Majeure Event is continuing.

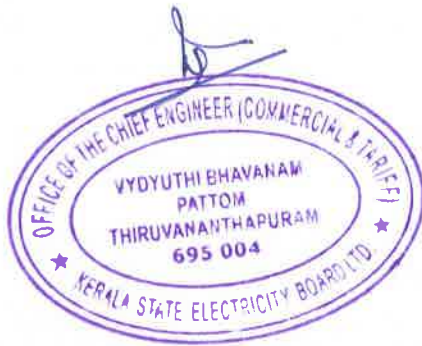


### 10.8 Extended Term of Agreement due to Force Majeure

This Agreement shall stand extended by the period for which Seller is not able to generate electricity, partly or completely, due to any Force Majeure.

### 10.9 Extended Force Majeure

The occurrence of an event of Force Majeure and its continuance for a period of twelve (12) consecutive months shall constitute Extended Force Majeure. In the event of occurrence of an Extended Force Majeure either Seller or Buyer may terminate the Agreement by giving the prior written notice seven (7) days notice to the other party. Upon expiry of the aforesaid notice period this Agreement shall stand terminated, and neither shall have any liability whatsoever to the other Party as result of the termination of this Agreement pursuant to this Article.



**ARTICLE 11**  
**CHANGE IN LAW**

**11.1 Definitions**

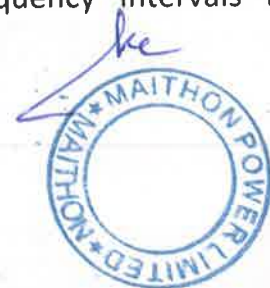
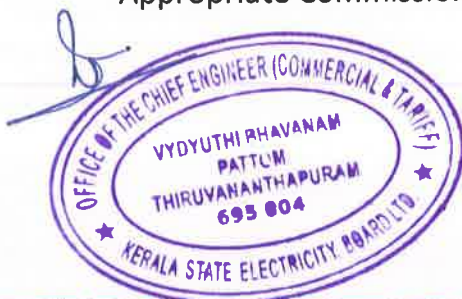
In this Article 11, the following terms shall have the following meanings:

11.1.1 "Change in Law" means the occurrence of any of the following events:

- (i) The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Applicable Law; or
- (ii) A change in interpretation of any Applicable Law by a Competent Court of law or Indian Governmental Instrumentality provided such Court of law or Indian Governmental Instrumentality is the final authority under law for such interpretation; or
- (iii) Change in any Consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Parties, which results in any change in any cost of or revenue from the business of selling electricity by the Seller to the Buyer under the terms of this Agreement, or
- (iv) Any change in the:
  - (a) declared price of land for the Project; or
  - (b) the cost of implementation of the resettlement and rehabilitation package of the land for the Project; or
  - (c) the cost of implementing environmental management plan for the Power Station.

11.1.2 But Change in Law shall not include:

- (i) Any change in any withholding tax on income or dividends distributed to the shareholders of the Seller; or
- (ii) Change in respect of UI Charges or frequency intervals by an Appropriate Commission.



11.1.3 Such Change in Law could be in respect of any of the following cases where it:

- a. Results in any change in respect of Tax, or
- b. Results in any change in the Seller's revenue or costs directly attributable to the Project, or
- c. Requires the Seller to vary the Project Cost for the Project in order to perform its obligations under this Agreement, or
- d. Materially affects the construction, Commissioning or operation of the Project.

## 11.2 Application and Principles for computing impact of Change in Law

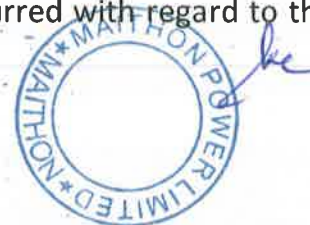
While determining the consequence of Change in Law under this Article 11, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 11, the affected Party to the same economic position as if such Change in Law has not occurred.

### 11.2.1 Additional Expenditure during Construction Period

Any expenditure incurred with regard to the Project, which is necessary to comply with any Change in Law coming into force prior to Commercial Operation Date of the Project shall be added to the Capital Cost, subject to approval of the CERC. Any revision in tariff on account of such increases under this Article 11.2.1 shall only be carried out after prior approval of the CERC.

### 11.2.2 Additional Expenditure during Operating Period

Where any Change in Law coming into force after Commercial Operation Date of the Project requires any expenditure to be incurred with regard to the Project, the Seller may incur such expenditure thereon as may be required to comply with such Change in Law and the amount of such expenditure shall be added to the Capital Cost, subject to approval of the CERC. Any revision in tariff on account of such increases under Article 11.2.2 shall only be carried out after prior approval of the CERC. The Seller shall provide the Buyer with as much prior notification of such expenditure to be incurred with regard to the





Project as is reasonably practicable.

11.2.3 In the event of a Change in Law under Article 11.1.1, the Parties shall take all steps that may be reasonable required to comply with such Change in Law, including without limitation, extension of time to compensate for any delay in the Commissioning of the Project due to such Change in Law.

### 11.3 Notification of Change in Law

11.3.1 If the Seller is affected by a Change in Law in accordance with Article 11.2 and wishes to claim a Change in Law under this Article, it shall give notice 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.

11.3.2 Notwithstanding Article 11.3.1, the Seller shall be obliged to serve a notice to the Buyer under this Article 11.3.2, if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Buyer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Buyer shall have the right to issue such notice to the Seller.

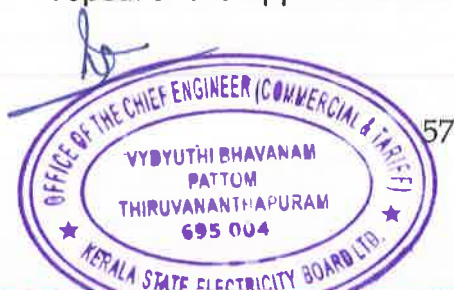
11.3.3 Any notice served pursuant to this Article 11.3.2 shall provide, amongst other things, precise details of:

- (a) The Change in Law; and
- (b) The effects on the Seller of the matters referred to in Article 11.2.

### 11.4 Tariff Adjustment Payment on account of Change in Law

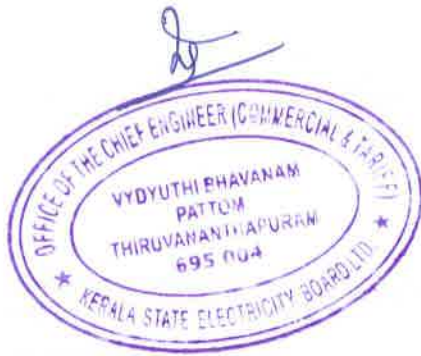
11.4.1 Subject to Article 11.2, the adjustment in Monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Applicable Law or Change in Law; or



- (ii) the date of order/judgment of the Competent Court or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Applicable Law.

11.4.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 9.7. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Bill, provisional bill or Supplementary Bill to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.



**ARTICLE 12**  
**LIABILITY AND INDEMNIFICATION**

**12.1 Indemnity**

12.1.1 The Seller shall indemnify, defend and hold the Buyer harmless against:

- (a) any and all third party claims, actions, suits or proceedings for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of 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 Buyer, as the case maybe, its contractors, servants or agents; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest suffered or incurred by Buyer, as the case may be, by reason of a breach by the Seller of any of its obligations under this Agreement (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement), except to the extent that any such 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 Buyer, as the case maybe, its contractors, servants or agents

The above losses at Article 12.1.1 (b) shall constitute "**Indemnifiable Losses**".

12.1.2 Buyer shall indemnify, defend and hold the Seller harmless against:

- (a) any and all third party claims, actions, suits or proceedings 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 Buyer of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and



- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest suffered or incurred by the Seller by reason of a breach by Buyer of any of its obligations under this Agreement (provided that this Article 12 shall not apply to such breaches by Buyer, for which specific remedies have been provided for under this Agreement), except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, as the case may be, its contractors, servants or agents.

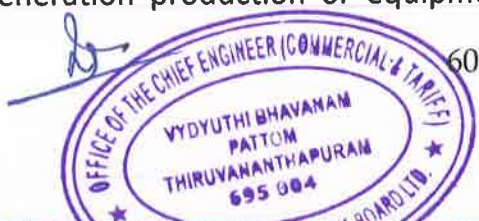
The above losses at Article 12.1.2 (b) shall constitute **Indemnifiable Losses**.

## 12.2 Limitation of liability

12.2.1 A Party ("**Indemnifying Party**") shall not be liable to indemnify the other Party ("**Indemnified Party**") under this Article 12 for any indemnity claims made in a Contract Year, until the aggregate of all indemnity claims of the Indemnified Party in a given Contract Year in which the indemnity claim is made, exceed Rs. 10,00,000 (Rupees Ten lac only) .

Provided that the liability of the Indemnifying Party to indemnify the Indemnified Party, in relation to the aggregate of all such indemnity claims in a given Contract Year in which such claim is made, shall not exceed Rs. 20,00,00,000 (Rupees Twenty Crore only).

12.2.2 Except as expressly provided in this Agreement, neither the Seller nor Buyer nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or 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 property due under this Agreement), any increased expense of, reduction in or loss of power generation production or equipment used thereof, irrespective of whether



such claims are based upon breach of warranty, tort (including negligence, whether of the Buyer, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise. Buyer shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders. The Seller shall have no recourse against any officer, director or shareholder of Buyer, or any Affiliate of Buyer or any of its officers, directors or shareholders.

### 12.3 Procedure for claiming indemnity

#### 12.3.1 Third party claims

(a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a), 12.1.2 (a), or 12.1.3 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 12.1.1(a), 12.1.2(a), or 12.1.3(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

(i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with paragraph (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 12.1.1(a), 12.1.2 (a), or 12.1.3 (a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party, if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost, that is reasonably satisfactory to the Indemnified Party.

### 12.3.2 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b), 12.1.2 (b), or 12.1.3 (b) the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses. The Indemnifiable Losses shall be paid by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party.



**ARTICLE 13**  
**EVENTS OF DEFAULT AND TERMINATION**

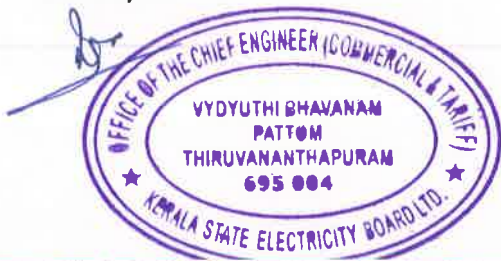
**13.1 Seller Event of Default**

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

- (i) any of the representations and warranties made by the Seller being found to be untrue or inaccurate, or
- (ii) after Start Date, the Seller fails to deliver sixty five (65%) percent of the Contracted Capacity for a period of twelve (12) consecutive Months, or
- (iii) the Seller is in material breach of this Agreement, or
- (iv) the Seller suspends payments of its debts or is unable to pay its debts, and such suspension or inability is not caused by a failure on the part of Buyer to pay the full amounts due under this Agreement, or
- (v) if (a) any winding up order is passed against the Seller or (b) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Applicable Law, except where such dissolution or liquidation of the Seller 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 creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them, or
- (vi) in the event of occurrence of an Extended Force Majeure.

**13.2 Buyer Event of Default**

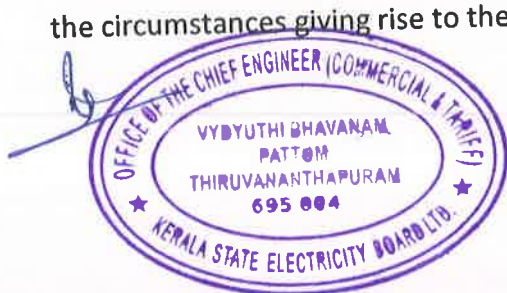
The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure event or a breach by the Seller of their obligations under this Agreement, shall constitute the Event of Default on the part of the Buyer:



- (i) Buyer fails to pay any Seller's Monthly Bill or Supplementary Bill raised by the Seller for a period of forty five (45) days after the Due Date, and the Seller is unable to recover the outstanding amount of such bills under the Buyer's Letter of Credit and the Bank Guarantee, or
- (ii) in case of a disputed Seller's Monthly Bill or Supplementary Bill raised by the Seller, the Buyer fails to make payment of the amount required to be paid as per Article 9.6.9 for a period of forty five (45) days after the Due Date; and the Seller is unable to recover the amount outstanding through the Buyer's Letter of Credit and the Bank Guarantee, or
- (iii) Buyer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from Seller in this regard, or
- (iv) if (a) any winding up order is passed against the Buyer or (b) the Buyer goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Applicable Law, except where such dissolution or liquidation of the Buyer 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 creditworthiness similar to the Buyer and expressly assumes all obligations of the Buyer under this Agreement and is in a position to perform them, or
- (v) if the Buyer commits three (3) or more defaults in a Contract Year in replenishing the Buyer's Letter of Credit or the Bank Guarantee, or
- (vi) occurrence of any other event which is a material breach or default of this Agreement by the Buyer, or
- (vii) in the event of occurrence of an Extended Force Majeure.

### 13.3 Termination and Procedure for cases of Seller's Event of Default

13.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 13.1, the Buyer shall have the right to deliver to the Seller, a preliminary default notice, ("**Buyer Preliminary Default Notice**"), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.





13.3.2 Following the issue of Buyer's Preliminary Default Notice, the Consultation Period of fifteen (15) days or such longer period as the Parties may agree, shall apply.

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

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, the Lenders may exercise their substitution rights as specified in Schedule D and other rights provided to them, if any, under Financing Agreements and the Buyer would have no objection to the Lenders exercising their rights.

#### 13.4 Termination and Procedure for Buyer's Events of Default

13.4.1 Upon the occurrence and continuation of any Buyer Event of Default pursuant to Article 13.2, Seller shall have the right to deliver to the Buyer, a preliminary default notice, ("**Seller's Preliminary Default Notice**"), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice and pursuant to issuance of such notice, the Buyer shall follow the procedure prescribed in 13.4.2, unless it can exercise the remedies provided under Article 9.5.1.

13.4.2 Following the issue of a Seller's Preliminary Default Notice, the Consultation Period of fifteen (15) days or such longer period as the Parties may agree, shall apply.

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

13.4.4.1 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 Buyer Event of Default giving rise to the Consultation Period shall have been remedied, Seller shall be simultaneously entitled to:

- (i) sell all of the Contracted Capacity to any third party (to the extent such Contracted Capacity or part thereof has not been dealt with under any other provision of this Agreement); and
- (ii) receive Capacity Charges based on Normative Availability for the Contracted Capacity, notwithstanding such sale set out in Article 13.4.4.1 (i), forthwith on the expiry of seven (7) days from the expiry of the Consultation Period.



13.4.4.2 Seller shall use its best efforts to sell the Contracted Capacity of the Buyer generated or capable of being generated to third parties at the most reasonable terms available in the market, without losing the right to receive the Capacity Charges from the Buyer for such 3<sup>rd</sup> party sale of power from the Declared Capacity:

(i) having due regard to the circumstances: and

(ii) the pricing of electricity in the market;

at the time of sale of such electricity.

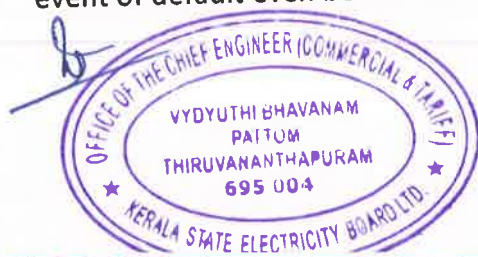
13.4.4.3 In case of sale of the Contracted Capacity of the Buyer, the sale realization in excess of the Energy Charges and other expenses including the transmission losses, charges (Application Charges, Operating Charges, PoC Charges and trading margin), incurred by the Seller towards third party sale, shall first be adjusted against the Capacity Charges payable by the Buyer and any residual sales realization after fully adjusting the Capacity Charges shall be retained by the Seller.

13.4.4.4 If in the circumstances set out in Article 13.4.4.3, Seller sells electricity to the shareholders of Seller or any direct or indirect Affiliate of the Seller, such sale shall not be at a price less than the Tariff, unless Seller has obtained the prior written consent of the Buyer.

13.4.4.5 Such request for consent set out in Article 13.4.4.4 would be responded to within a maximum period of three (3) days failing which it would be deemed that the Buyer has given its consent.

13.4.4.6 If upon the Buyer curing the event of default giving rise to such sale, Seller shall, notwithstanding anything contained in the arrangement between Seller and said third party, commence supply of the Contracted Capacity, to the Buyer, within a period of three (3) days from the date of the Buyer curing the event of default giving rise to such sale or the time for commencement of supply specified in a notice given by the Buyer.

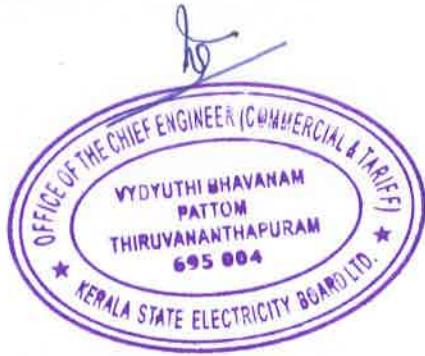
13.4.4.7 If the Buyer fails to cure the event of default in the manner provided in this Agreement, the Seller shall have the right to terminate this Agreement for such event of default even before the expiry of the Term of the Agreement, provided on



such termination, the liability of the Buyer for future Capacity Charges shall cease immediately.

### 13.5 Consequences of Termination

Upon the breach by any Party thereto of any covenant hereunder, the Party affected by any such default or breach may, at its option, in addition to exercising any other remedies provided under this Agreement, proceed and enforce its rights, including right to recover any damages to which it may be entitled under Applicable Law.



**ARTICLE 14**  
**ASSIGNMENTS AND CHARGES**

**14.1 Assignments**

14.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. Except in the circumstances provided in Article 16.3, this Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any Encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing.

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

- (a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Buyer; and
- (b) this Agreement shall continue to remain valid and binding on such successor.

14.1.2 Subject to the terms of this Agreement, upon occurrence of a Seller Event of Default under this Agreement, the Lenders shall, have the right to seek substitution of the Seller by a selectee ("Selectee") for the residual period of the Agreement, for the purposes of securing the payments of the total debt amount from the Seller under the Financing Agreements, and performing the obligations of the Seller, in accordance with the provisions of this Agreement.

**14.2 Permitted Charges**

14.2.1 Notwithstanding anything contained in Article 14.1, the Seller may create any Encumbrance over all or part of the receivables, payment mechanism or the other assets of the Project in favour of the Lenders or the Lender's Representative on their behalf, as security for:

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

14.2.2 Article 14.1 does not apply to:

- (a) liens arising by operation of Applicable Law (or by an agreement evidencing the same) in the ordinary course of the Seller carrying out the Project; or



- (b) pledges of goods, the related documents of title and/or other related documents, arising or created in the ordinary course of the Seller carrying out the Project; or
- (c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the Seller carrying out the Project.



**ARTICLE 15**  
**GOVERNING LAW AND DISPUTE RESOLUTION**

**15.1 Governing Law**

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

**15.2 Amicable Settlement**

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

15.2.2 The other Party in dispute shall, within thirty (30) days of receipt of dispute notice issued under Article 15.2.1, furnish:

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

15.2.3 Within fifteen (15) days of receipt of notice/reply issued by the Party pursuant to Article 15.2.1 or Article 15.2.2 respectively, both the Parties to the Dispute may meet to settle such Dispute amicably.

15.2.4 The Dispute shall be referred to Dispute Resolution in accordance with Article 15.3, in the following manner:

- (i) If the Parties have met to amicably resolve the Dispute, fifteen (15) days from the date of receipt of the notice referred to in Article 15.2.1 or Article 15.2.2 and have failed to resolve the Dispute, then on the date of notification of such failure by one Party to the other Parties; or



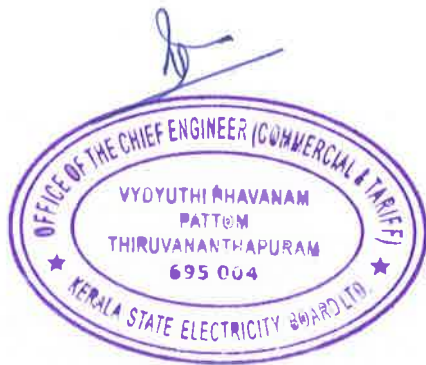
- (ii) If the Parties do not meet/wish to amicably resolve the Dispute, then, after the expiry of the period of thirty (30) days mentioned in Article 15.2.2.

### 15.3 Dispute Resolution

15.3.1 Where any Dispute arises from a claim made by any Party pursuant to this Agreement such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

### 15.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the arbitral tribunal as provided in Article 15.3 and save as the Appropriate Commission or the arbitral tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



**ARTICLE 16**  
**MISCELLANEOUS**

**16.1 Notice**

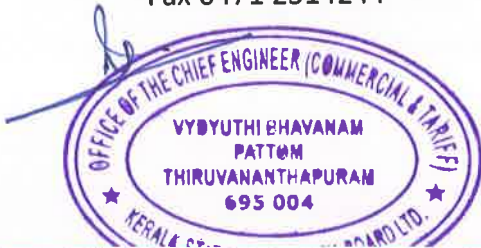
Any notice and other communication given or required to be given under this Agreement shall be in writing and shall be sent by recognised courier or by facsimile, provided that where such notice is sent by facsimile, a confirmation copy shall be sent by pre-paid registered post or by recognised courier within five days of the transmission by facsimile, only at the following address of the receiving Party, or at such other address as may be notified by the receiving Party to the other in writing, provided such change of address has been notified at least ten (10) days prior to the date on which such notice has been given under the terms of this Agreement.

The name of the addressees, present addresses and fax numbers of the Parties hereto are as follows, subject to any change effected by a written notice compliant with this Article:

The Chief Executive Officer  
**Maithon Power Limited**  
MA-5, Gogna Colony, Maithon Dam Post Office,  
District Maithon 828207 (Jharkhand)  
Fax: 008860004758  
Email: k.chandrashekhar@tatapower.com

The Chief Engineer (Commercial & Tariff)  
**Kerala State Electricity Board**  
Vydyuthi Bhavanam, Pattom,  
Thiruvananthapuram - 695004  
Fax: 0471- 2514405  
Email: cecomml@ksebnet.com/dcecomml@ksebnet.com/  
commlbills@ksebnet.com

The bills and invoices may also be sent to the following address  
The Financial Adviser,  
Kerala State Electricity Board,  
Vydyuthi Bhavanam, Pattom  
Fax 0471 2514244





Email: [fakseb@dataone.in](mailto:fakseb@dataone.in)

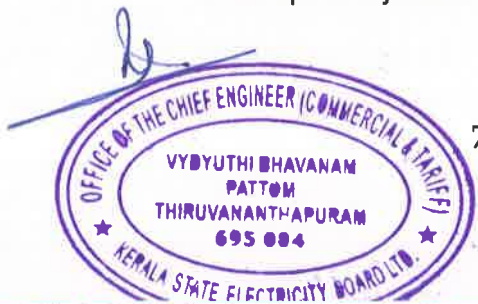
The Chief Engineer(Transmission and System Operation,  
Load Dispatch Centre, Kerala State Electricity Board,  
HMT Colony P O  
Kalamassery, Kerala. 683503  
Email: [cesoksy@gmail.com](mailto:cesoksy@gmail.com); [ceso@sldckerala.com](mailto:ceso@sldckerala.com)

Any notices and other communications shall be deemed to have been validly delivered if it is sent by recognised courier, five days after the date of posting, if transmitted by facsimile, then on the next Business Day after the date of transmission, and on same Business Day if sent by email before 11.00 am, else it shall be deemed to have been validly delivered on the next Business Day.

## 16.2 Representations and Warranties

Each Party generally warrants and represents to the other as follows:

- (a) Power: Such Party is a company duly organised and validly existing under their respective jurisdictions with full corporate power, authority and capability to do all acts contemplated herein and in the manner and on the terms and conditions stated, and such Party has obtained all necessary consents and approvals therefore.
- (b) No conflict: The execution, delivery, and performance of this Agreement and all acts necessary or incidental thereto, and the consummation of this Agreement does not and shall not constitute any of the following:
  - (i) Contravention of any provisions of any document relating to the incorporation or constitution of such Party;
  - (ii) Breach of or default under (or an event which with notice and/or lapse of time would constitute a breach of or default under), any contract or Applicable Law applicable to such Party; and
  - (iii) Violation of any Applicable Law, rule, or regulation applicable to such Party, or any order, decree or direction of any court, arbitral tribunal, or competent judicial authority by which such Party may be bound.



- (c) Reasonableness: The Parties agree that having regard to the facts and matters aforesaid, the covenants contained in this Agreement are reasonable and necessary for the protection of the Parties, and the Parties respectively hereby agree that having regard to such facts and matters, that such covenants do not work unfairly on either Party and the consideration for all matters has been agreed after taking all such restrictive covenants into account.

### 16.3 Successors and Assigns

In case the Buyer or Seller undergo any merger or amalgamation or a scheme of arrangement or such similar re-organisation and this Agreement is assigned to any entity (ies), partly or wholly, the Agreement shall be binding *mutatis mutandis* upon the successor entities and shall continue to remain valid with respect to the obligations of the successor entities.

### 16.4 Survival of Provisions

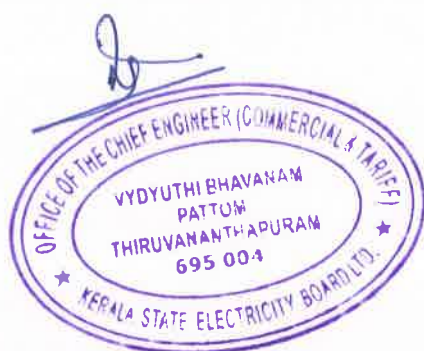
The terms and provisions of this Agreement which are, by their nature and content, intended to survive the performance hereof by any Party hereto shall so survive the expiry and/or termination of this Agreement.

### 16.5 Rights and Remedies

All rights and remedies conferred under this Agreement or by Applicable Law shall be cumulative and may be exercised singularly or concurrently.

### 16.6 Entire Agreement

This Agreement supersedes all prior agreements, negotiations, understandings, commitments, representations, (except fraudulent representations) and proposals (written and oral) between the Parties, and the rights and obligations of Buyer and Seller with respect to the subject matter of this Agreement shall henceforth be governed solely by the provisions of this Agreement, as may be amended from time to time by a written agreement signed by each Party.



## 16.7 Co-operation

The Parties shall provide each other with the fullest co-operation to best give effect to the provisions of this Agreement. No Party shall, either directly or indirectly, act or omit to act in a manner that would prevent or hinder giving effect to the provisions of this Agreement in any manner.

## 16.8 Amendment

No modifications or amendments of this Agreement and no waiver of any of the terms or conditions hereof, shall be valid or binding unless made in writing and duly executed by all the Parties.

The Parties agree that this Agreement shall be subject to the approval of Lenders and in case of any amendment sought therein by the Lenders, the Parties shall mutually discuss the same with the Lenders to resolve the same.

## 16.9 Waiver

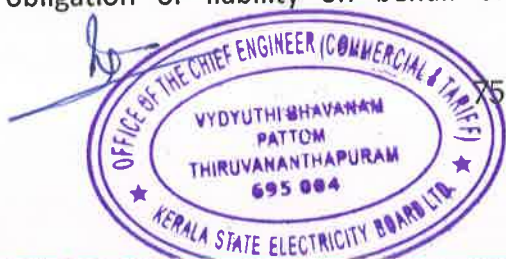
Any waiver of any of the provisions of this Agreement, or acquiescence of any breach, or any continuing or subsequent breach of any provision of this Agreement shall, in any instance shall only be effective if in writing and duly accepted by other Parties and shall not be deemed or construed to be a waiver of such provision or condition thereafter, or any continuing or subsequent breach thereof.

## 16.10 Forbearance

No forbearance, indulgence, relaxation or inaction by any Party at any time to require the performance of any provision of this Agreement shall in any way affect, diminish, or prejudice the right of such Party to require the performance of that or any other provision of this Agreement.

## 16.11 Relationship of the Parties

This Agreement shall in no way be construed to constitute or make the Parties partners, co-owners or joint venture partners of each other, or to make the agents, servants or employees of a Party into agents, servants or employees of the other Party, or gives either the right or power to any Party to create or assume any obligation or liability on behalf of the other. The Parties shall remain fully



independent entities, and neither shall have the authority to bind the other in any respect, or make any representation, statement or warranty by or on behalf of other without a prior written consent of the other.

#### **16.12 Severability**

It is intended that each Paragraph, Article, Sub-Article or Annexure of this Agreement shall be deemed severable and in the event of the unenforceability of any Paragraph, Article, Sub-Article or Annexure, the remaining part of the Paragraph, Article, Annexure and the rest of the Agreement shall continue to be in full force and effect.

#### **16.13 Rights and remedies under the Agreement only for the Parties**

This Agreement is not intended and shall not be construed to confer on any person other than the Parties hereto, any rights and/or remedies herein.

#### **16.14 Confidentiality**

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

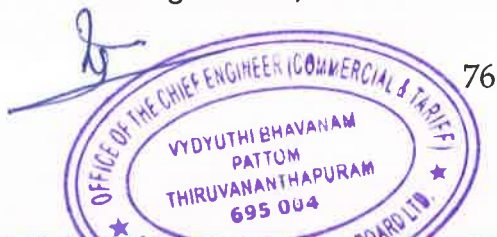
- (a) to their professional advisors;
- (b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (c) disclosures required under Applicable Law.

without the prior written consent of the other Parties.

#### **16.15 Affirmation**

16.15.1 The Seller and Buyer, each affirm that:

- (i) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- (ii) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Buyer hereby undertake not to engage in



any similar acts during the Term of the Agreement.

16.15.2 The Seller agrees that it shall not extend any preferential treatment from this project to other buyers of electricity;

Provided however, if any such treatment is extended to other buyers, the same shall also be extended to Buyer under this Agreement.

### 16.16 Counterparts

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


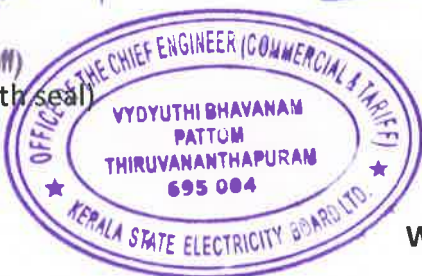
### 16.17 Language



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

IN WITNESS WHEREOF the Parties have executed these presents through their authorised representatives on [\*] at New Delhi.

For and on behalf of  
KERALA STATE ELECTRICITY BOARD LIMITED

For and on behalf of  
MAITHON POWER LIMITED

  
VENUGOPAL. N  
Chief Engineer  
(Commercial & Tariff)  
(Signature with seal)  


  
Chief Executive Officer  
Maithon Power Limited  
(Signature with seal)  


WITNESSES

WITNESSES

1. Sreedevi B  
Dy. Chief Commercial Engineer
2. MINI-TIN  
Exec. Engineer  
Commercial, KSEB

1. RABHICET  
Specialist - LTC  
Tata Power Trading Co. Ltd.
2. RAQHAVA LAJAN  
Lead Engg - Regulatory  
MPK

**SCHEDULE A**  
**SITE**

**LOCATION**

The Project Site is located in Maithon on the right bank of river Barakar in the Nirsa-cum-Chirkunda C.D. Block of Dhanbad district in the State of Jharkhand. The Site is at road distance of about 7.5 km north of G T Road – NH-2 and about 10 km north of Mugma railway station on the Howrah-Mughalsarai Grand Chord Line of the Eastern Railway. Other details of Site are as under:

Site Coordinates	: Latitude: 23° 49' 38" N
	: Longitude: 86° 45' 41" E
Site Elevation	: 156 m to 177 m above Mean Sea Level
Nearest Railway Station	: Mugma
Nearest Township	: Nirsa
Nearest Airport	: Kolkata
Nearest Sea Port	: Kolkata

**METEOROLOGICAL DATA**

**Dry Bulb Temperatures**

Annual Mean (Highest)	: 35.8 ° C
Annual Mean (Lowest)	: 16.3
Maximum (May)	: 46.4
Minimum (January)	: 4.5

**Relative Humidity**

Annual Mean @ 0830 hrs	: 71.3 %
Annual Mean @ 1730 hrs	: 64.8 %
Maximum (August @ 0830 hrs)	: 85.2 %
Minimum (March @ 1730 hrs)	: 35.5 %

**Rainfall**

Average Annual Rainfall	: 1328 mm
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**SCHEDULE B**  
**SALIENT FEATURES OF THE PROJECT**

**PROJECT FACILITY DESCRIPTION**

The 1050 MW capacity Maithon Right Bank Thermal Power Project consists of two (2) Units of 525 MW (2 x 525 MW) gross generating capacity each. The steam generators are of sub-critical design using pulverized coal as the main fuel. Light oil heavy fuel oil will be used for boiler light-up and initial load as well as for stabilizing of coal flame at lower boiler loads.

The pulverized steam generators will supply steam to respective Unit Steam Turbine Generators. The Steam Turbines are tandem compounded multi-cylinder reheat condensing extraction type machines and are coupled to synchronous 2-pole Generators (Alternators). High pressure steam from the Steam Generators enters the high pressure cylinder through HP Control and Stop Valves. The steam from HP cylinder exhaust goes to the boiler reheater for reheating and the reheated steam returns to the IP cylinder and passes through LP cylinders before rejecting its residual thermal energy to the condenser cooling water in the Condenser. During its expansion through the turbine, the steam is drawn at different stages for regenerative heating of feed water. The condensed steam from the condenser hotwell is pumped to deaerator through low pressure heaters. The hot water devoid of dissolve oxygen and air from the deaerator is sent to the steam generator for generation of steam through the boiler feed cycle thus completing the cycle.

The power generated at the Generator Terminal is stepped up to Grid voltage through Generator Transformers and sent to the Grid for onward transmission to the beneficiaries. The power required for running the Unit/ Station auxiliaries is drawn from the system before it is connected to the Grid. The export power at the Grid Interconnection Point is measured by Main and Check Meters. The power is evacuated at 220 kV and 440 kV voltage levels and transmitted to the beneficiaries through the relevant transmission systems.

The coal, the main fuel, arrives at site through the rail infrastructure created for the purpose. A dedicated system of rail infrastructure has been installed for the plant and is connected to the Eastern Railway system for transporting the coal from linked mines to the plant site. The coal received in BOBR wagons is unloaded in the track hopper and conveyed to Unit coal bunkers or to coal stockyard.

The make-up water for the plant is drawn from the Maithon Reservoir through its own intake system. The water is used for various services in the plant. The major portion is used for makeup for the Condenser Circulating Water System which a closed loop system with



Cooling Towers. Waste water is treated in the Effluent Treatment Plant and used for miscellaneous services like gardening etc., thereby resulting in Zero-Discharge system to obviate any water pollution in the area.

The ash generated as a result of firing coal in the boilers is disposed of in dry and wet form. The dry fly ash is given to its users such as cement and brick industry. The balance dry fly ash and also bottom ash from the settling ponds is planned to be dumped in the abandoned coal mines in an eco-friendly manner.

### SALENT FEATURES OF MAJOR EQUIPMENT/ SYSTEMS

S. No.	Equipment/ System	Details
1	<b>Steam Generator</b> Type Number off Maximum Continuous Rating (MCR) TMCR Pressure at SH outlet @TMCR Temperature at SH Outlet Reheater inlet pressure Reheater outlet temperature Reheater outlet pressure Feed water inlet temperature  No. of Coal Mills Mills in operation with average coal	Pulverised coal-fired, drum type with assisted circulation, single reheat type  Two (2) 1700 t/h  1571 t/h 177 kg/sq.cm(g) 540 ° C 43 kg/sq.cm(g) 540 ° C 41 kg/sq.cm(g) 301 ° C  8 6
2	<b>Steam Turbine Generator</b> Type of Steam Turbine  No. Off Output at Generator Terminals HP Inlet Steam Pressure HP Inlet Steam temperature Reheat Inlet Pressure	Tandem compounded, single reheat, extraction condensing type  Two (2) 525 MW (Gross) 170 kg/sq.cm(g) 537 ° C 40.5 kg/sq.cm(g)

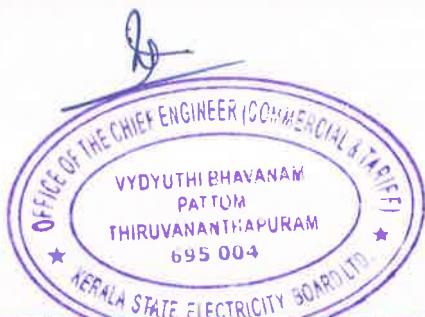




	Reheat Inlet temperature No. of Extractions Condensate Extraction Pumps Boiler Feed Pumps  Condenser Cooling Water	537 ° C 6 2x 100 % 3x 50%, Two Turbine driven & one motor driven At 34 ° C
3	<b>Generator</b> No. Off Maximum Continuous Rating Rated Power Factor Rated Terminal Voltage Excitation System Cooling <ul style="list-style-type: none"> <li>• Rotor</li> <li>• Stator</li> </ul>	Two (2) 525 MW, 617.6 MVA 0.85 (lag) 21 kV Brushless  Hydrogen cooled Stator Winding: Water cooled Stator Core: Hydrogen cooled
4	<b>Electrical System</b> Generator Transformers  Unit Auxiliary Transformers  Station Transformers  Switchyard	Two Nos.- one per Unit, Each 3x1ph, each 3 x 210 MVA, 21 / 400 kV Two (2) per Unit, Each 20 / 25 MVA, 21/6.9 kV Two (2), Common for both Units. 90/45 MVA, 220 kV/ 6.9 kV 400 kV / 220 kV
5	<b>Coal Handling System</b> Transport from coal mines  Unloading at site	Through Eastern Railway network and Plant's dedicated MGR system In Track-hopper from BOBR-wagons

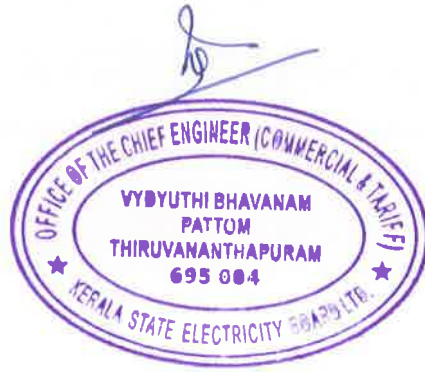


	System Capacity Stacker/ Reclaimer	Two streams of 1500 t/h capacity each 2 Nos. Each of capacity 1500 t/h
6	<b>Ash Handling System</b> Bottom Ash  Fly Ash	Ash collected in BAH pumped to Ash Slurry sumps using water jet pumps and then pumped to Ash pond for settlement and disposal  Fly ash collected in various hoppers is transported to silos by pressure pneumatic system from where it is disposed off suitably.
7	<b>Water System</b> Type of Water Source of Water Intake System  Type of Cooling Tower No. of CTs Condenser Circulating Water pumps CW System makeup Boiler Water makeup	Fresh water Maithon Reservoir Shore-based Caisson type intake system with 3x50 % capacity makeup water pumps  Induced Draft Cooling Towers One Cooling Tower per Unit Per Unit: 3 x 33.33 % pumps  Clarified Reservoir Water Demineralised Water
8	<b>Chimney</b> No. and type Chimney Height Construction	One, Twin-flue 275 m Single Concrete Shell with two metal flues



**SCHEDULE C  
TARIFF**

The Generation Tariff of MPL, which is payable by the Buyer, shall be as determined by the CERC, in accordance with the CERC Tariff Regulations, 2014 and amended from time to time.



**SCHEDULE D**  
**SUBSTITUTION RIGHTS OF THE LENDERS**

**1. Substitution of the Seller**

- a) Subject to the terms of this Agreement, upon occurrence of a Seller Event of Default under this Agreement, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of this Agreement, for the purposes of securing the payments of the total debt from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule;
- b) The Lenders may seek to exercise right of substitution by an amendment or novation of this Agreement and other Project Documents executed between the Parties in favour of the Selectee, the relevant Party and the Seller shall cooperate with the Lenders to carry out such substitution.

**2. Buyer's Notice of Default**

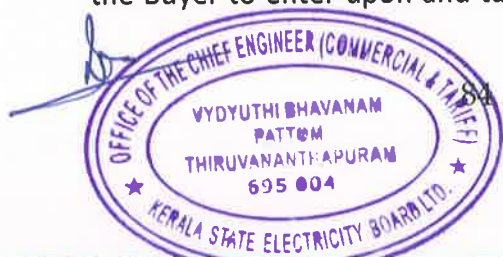
The Buyer (who serves the Buyer's Preliminary Default Notice on the Seller as per this Agreement) shall, simultaneously also issue a copy of the same to the Lenders.

**3. Substitution Notice**

In the event of failure of the Seller to rectify the event giving rise to Buyer's Preliminary Default Notice and on receipt by the Seller of a copy of the notice of termination ("**Termination Notice**") by the Buyer, the Lenders, either on their own or through their representative ("**the Lenders' Representative**") shall be entitled to notify the Buyer and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of this Agreement (the "**Substitution Notice**").

**4. Interim operation of Project**

- a) On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate this Agreement, except under and in accordance with the terms of this Schedule till the amendment or novation of this Agreement.
- b) On issue of a Substitution Notice, the Lenders shall have the right to request the Buyer to enter upon and takeover the Project for the interim and till the



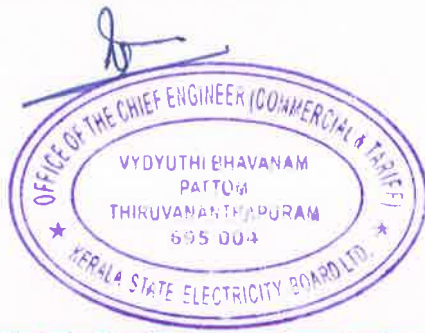
substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Project, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the amounts as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Project by the Buyer. If the Buyer, at its sole and exclusive discretion agrees to enter upon and takeover the Project, till substitution of the Selectee in accordance with this Agreement, such Buyer shall be compensated for rendering such services in accordance with Article 9.1.3 herein.

- c) If the Buyer refuses to takeover the Project on request by the Lenders in accordance with Article 4(b) above, the Seller shall have the duty and obligation to continue to operate the Project in accordance with this Agreement till such time as the Selectee is finally substituted under Article 7.8 hereof.
- d) The Lenders and the Buyer shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

## 5. Process of Substitution of Seller

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

The Lenders and the Seller shall ensure that, upon the Buyer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Project to such Selectee simultaneously with the amendment or novation of this Agreement and other Project Documents executed between the respective Parties in favour of the Selectee as mentioned in Clause 1 (b).



## 6. Modality for Substitution

### 6.1 Criteria for selection of the Selectee.

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

- (a) if the Seller is proposed to be substituted during the Construction Period, the Selectee shall possess the technical and financial capability to perform and discharge all the residual duties, obligations and liabilities of the Seller under this Agreement. If the Seller is proposed to be substituted during the Operation Period, these criteria shall not be applicable;
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Buyer under and in accordance with this Agreement and also payment of the amounts to the Lenders under the Financing Agreements upon terms and conditions as agreed to between the Selectee and the Lenders;
- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any bank or any Lender or between the Selectee and the Buyer, involving sums greater than Rupees [20 Crores] at any time in the last two [2] years as on the date of the substitution of the Seller; and
- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under this Agreement is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

## 7. Modalities

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

- 7.1 The Lenders' Representative shall on behalf of the Lenders propose to the Buyer (the "Proposal") pursuant to sub-clause 7.2 below, the name of the Selectee for acceptance, seeking:



- (a) grant of all the rights and obligations under this Agreement and the other Project Documents executed between the respective Parties, to the Selectee (as substitute for the Seller);
- (b) amendment of this Agreement and the other Project Documents executed between the respective Parties, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of this Agreement, as existed in respect of the Seller under the original power purchase agreement and the other Project Documents executed between the respective Parties; and/or
- (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of this Agreement on the same terms and conditions as are included in this Agreement.

7.1.1 The Proposal shall contain the particulars and information in respect of the Selectee, the data and information as the Buyer may reasonably require. The Buyer may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

7.1.2 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Buyer of the Proposal:

- (a) observe, comply, perform and fulfill the terms, conditions and covenants of this Agreement and all Project Documents executed between the respective Parties or a new power purchase agreement or respective Project Documents (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under this Agreement; or the respective Project Document; and
- (b) be liable for and shall assume, discharge and pay the then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Buyer as if such Selectee was the Seller originally named under such Financing Agreements.

7.2 At any time prior to taking a decision in respect of the Proposal received under



Clause 7.1, the Buyer may require the Lender/Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Buyer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

7.3 The Buyer shall convey its approval or disapproval of such Proposal, to the Selectee. Such decision shall be made by the Buyer at its reasonably exercised discretion, within twenty one (21) days of:

- (a) the date of receipt of the Proposal by the Buyer; or
- (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by the Buyer under Clause 7.2 above, is received.

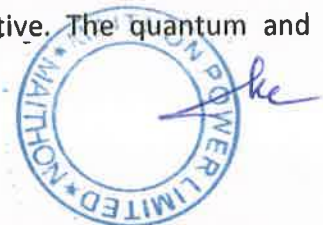
whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Buyer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 6.1.

7.4 Upon approval of the Proposal and the Selectee by the Buyer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

7.5 Following the rejection of a Proposal, the Lenders and/or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this Clause shall apply *mutatis mutandis* to such fresh Proposal.

7.6 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, the Buyer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders, the Buyer and upon transfer of ownership and complete possession of the Project by the Buyer or the Seller, as the case may be, to the Selectee. The Buyer shall novate all the Project Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and





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

7.7 Upon the substitution becoming effective pursuant to Clause 7.6, all the rights of the Seller under this Agreement shall cease to exist:

Provided that, nothing contained in this sub-clause shall prejudice any pending/ subsisting claims of the Seller against the Buyer or any claim of the Buyer against the erstwhile Seller or the Selectee.

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

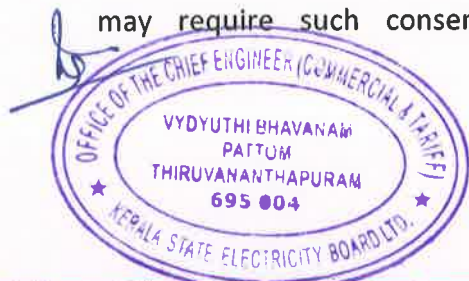
7.9 The decision of the Lenders and the Buyer in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee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

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

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

## 8. Seller's Waiver

8.1 The Seller irrevocably agrees and consents (to the extent to which Applicable Law may require such consent) to any actions of the Lenders, the Lender's



Representative and the Buyer or exercise of their rights under and in accordance with these terms.

- 8.2 The Seller irrevocably agrees and consents (to the extent to which Applicable Law may require such consents) that from the date specified in Clause 7.9, it shall cease to have any rights under this Agreement or the Financing Agreements other than those expressly stated therein.
- 8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Project, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Buyer. The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Project and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

## 9. Interim Protection of Service and Preservation of Security

### 9.1 Appointment of a Receiver

- 9.1.1 In every case of the Lenders issuing a Substitution Notice and the Buyer refusing to takeover the Project and the Seller failing to operate the Project in accordance with Clause 4(c) above and the Buyer not electing to act as Receiver as per sub-clause 9.1.1A hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 9.1.1A If the assets of the Project are, in the opinion of the Buyer, necessary and required for the operation and maintenance of the Project, the Buyer shall be entitled to elect to act as the Receiver for the purposes of this Clause and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Buyer so intimating the Seller and the Lender's representative its desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Buyer to facilitate the same.

9.1.2 Upon appointment of the court appointed Receiver or the Buyer acting as Receiver,



all the receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Buyer and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the lenders in accordance with the terms of its appointment.

9.1.3 When acting as a Receiver or operator in accordance with this Clause 9 or Clause 4(b), Buyer shall be entitled to be remunerated for such services as may be determined by CERC. Furthermore, when acting as a Receiver, the Buyer shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under this Agreement, damage or loss to the Power Station or for any other reason whatsoever, except for willful default of the Buyer.

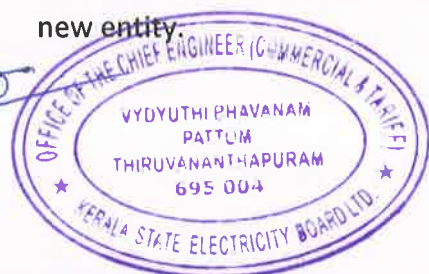
## 10. Substitution Consideration

10.1 The Lenders and the Buyer shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Buyer's respective dues, and balance, if any, shall be paid to the Seller.

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

## 11. Change in Buyer or Lenders

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



**SCHEDULE E**  
**COMMISSIONING AND COMMERCIAL OPERATION OF THE PROJECT**

**1.0 Commissioning**

Commissioning of a Unit/Project refers to the process of putting into service successfully all the auxiliary systems of the Unit/Project in the required sequence leading to its integrated operation and connection to the Grid. Each Unit shall be required to be commissioned by the Seller in accordance with manufacture's recommendations, requirements specified in EPC Contracts and as per the Prudent Utility Practices.

**2.0 Trial Operation**

Initial integrated operation of a Unit at varying loads to study and establish its behavior and to stabilize the operation of each equipment and system/sub-system is referred to as the trial operation (the "**Trial Operation**") of that Unit. The Unit shall then be operated at full rated capacity to establish satisfactory operational performance with satisfactory functioning of all controls and systems in a well coordinated manner. Trial Operation shall generally be for a period of thirty (30) days.

A minimum of following Unit characteristic tests may be carried out during Trial Operation:

- Turbine governor system response;
- Ramping rate tests by loading and unloading the Unit at specified rates in MW/minute;
- Load throw-off test (subject to Grid conditions permitting);
- Generator excitation system response time and AVR sensitivity; and
- Other tests in accordance with manufactures' recommendations and the requirements of BTG Agreement.

**3.0 Reliability Operation**

- 3.1 Continuous initial operation of a Unit at its MCR for a continuous period of at least seventy two (72) hours is referred to reliability operation of the Unit (the "**Reliability Operation**"). After successful Trial Operation at rated capacity, Reliability Operation will be carried out.



3.2 Successful completion of Reliability Operation will establish the capability of the Unit to run at its MCR without interruption and the Unit would be deemed to have passed the capacity test (the "Capacity Test").

#### 4.0 Commercial Operation of the Unit

On successful Reliability Operation of the Unit, commercial availability of the Unit will be declared by the Seller. The date of such declaration will be notified to the Buyer.

#### 5.0 Witnessing of Reliability Operation/Capacity Test by the Buyer

5.1 The Seller shall give fifteen (15) days notice to the Buyer notifying it of the scheduled/rescheduled date of conducting the Reliability Operation/Capacity Test of the Unit.

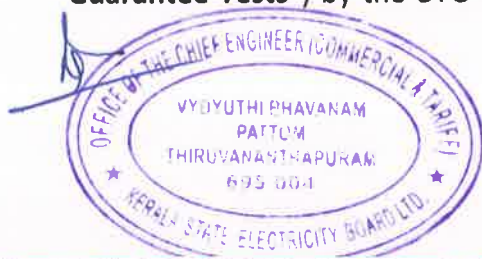
5.2 The Buyer may witness the Reliability Operation/Capacity Test of the Unit at his own cost. Failure on the part of the Buyer to witness the tests on the scheduled/rescheduled date shall not affect the declaration of Commercial Operation Date by Seller, and under any situation, the date so declared by the Seller shall be the date for start of receipt of power by the Buyer as per terms and conditions of this Agreement.

#### 6.0 Failure of a Unit to achieve Maximum Continuous Rating

In case the Unit fails to achieve its MCR during Trial Operations, the EPC Contractors shall rectify the faults and try to achieve the MCR capacity. In case the repeated trials fail to achieve the desired capacity, Reliability Operation will be carried out at the achievable capacity and COD of the Unit may be declared at the new capacity (the "Revised Installed Capacity") which is lower than the Installed Capacity and the Tariff shall be determined in accordance with Tariff Regulations, 2004. Acceptance of lower Revised Installed Capacity of the Unit shall be in accordance with the terms and conditions of the BTG Agreement.

#### 7.0 Performance Guarantee Tests

7.1 The tests to prove the guaranteed performance of the Units (the "Performance Guarantee Tests") by the BTG Contractor shall be conducted after COD of the Unit



after having attended to all the punch-list items and deficiencies of auxiliary equipment. The Performance Guarantee Tests shall be carried out strictly in accordance with the applicable and agreed ASME Power Test Codes. Due notice shall be given to the Buyer/RLDC of the planned tests along with schedule of testing to enable them to provide required shutdown of the Unit for installing test instruments and to provide required Grid conditions during the period of testing.

**8.0 Status of Compliance to requirements of Commissioning and Commercial Operation of the Project.**

The Unit 1 is declared in the Commercial Operation since 10.09.2011 & Unit 2 is declared in Commercial Operation since 24.07.2012, in terms of the regulation 2 (12) of the CERC Tariff Regulation.

The Performance Guarantee Test of the BTG package on the Unit 1 was conducted from 02 to 04.03.2013 jointly by the Seller and M/s BHEL. The Performance Guarantee Test on the Unit 2 was conducted from 20 to 22.03.2013 jointly by the Seller and M/s BHEL.

The Units are tested for installed Capacity 525 MW each on Units 1 and 2.

