Deendayal Port Authority

TENDER NO. EL/WK/2888

**Vol I**

**Request for Qualification (RFP)**

for

**Tariff Based Bidding Process for Procurement of Power on Long Term Basis by Setting up of the 1000 MWp Solar Power Plant at the coastal land parcel (which is inter-tidal, marshy, partially CRZ free & partially CRZ) of DPA between Chirai & Jangi.**

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

**Long Term Procurement (at least 25 years)**

**Standard Bid Documents Issued by**

**The Executive Engineer (Electrical),**

**Deendayal Port Authority, Ground Floor,**

**Nirman Building, New Kandla, Kachchh,**

**Gujarat – 370 210.**

**Deendayal Port Authority (DPA)**

Request for Qualification (RFQ) for supply of power to Deendayal Port Authority, Kachchh, Gujarat, India.

This RFQ document along with Annexures as per Index is issued to -

M/s. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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NOTES:

1. This document is not transferable.

2. Though enough care has been taken while issuing the RFQ documents, the Bidder should satisfy himself that documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately within seven (07). If no intimation is received by this office from any Bidder within seven (07) days from the date of issue of bid documents to him, then this office shall construe that the bid documents complete in all respects have been received by the Bidder.

**Executive Engineer (Electrical), Deendayal Port Authority,**

Place : New Kandla

Date : 10/09/2025

**REQUEST FOR QUALIFICATION NOTIFICATION**

Deendayal Port Authority

An invitation for supply of power on long-term basis.

Deendayal Port Authority invites the proposals from Developers to install in the land (which is inter-tidal, marshy, partially CRZ free & partially CRZ and is having very less soil bearing capacity will require filling & development) parcel of DPA the ground mounted 1000 MWp Solar PV Plant & supply and maximum 1750 MUs/Annum of power at the DPA’s bus at its. Bidder should have adequate financial capability with a Free Cash Flow from Business Operation of Rs. 700 Crore.

**Technology :** The Bidder is free to choose any technology approved by SECI.

**Commencement of supply :** The Bidder shall have to commence supply within 10 months from the signing of the PPA, with a notice period of 3 months. However, within the stipulated time frame, no additional weightage shall be given for early commencement.

**Clearances, consents and permits :** The Bidder shall be responsible for obtaining all the necessary clearances, consents and permits required for completion and operation of the project over the tenure of PPA.

**Purchase of power :** DPA would retain dispatch rights over the contracted capacity of the generating Plant, which has been allocated to it during the term of the PPA. The term of the PPA shall be of 25 years.

**Tariff :**The tariff shall be payable in Indian Rupees. Bidders shall quote the tariff as per the structure, which will be mentioned at RFP.

**RFQ document : the i**nterested parties can collect the RFQ document containing the Model PPA proposed to be entered into with the successful Bidder, along with the detail information required to be submitted by the Bidder, in person against a non-refundable payment of Rs. 10000/- (excluding GST) in the form of Demand draft in favor of “Deendayal Port Authority”. The draft should be submitted in the (address) and the RFQ document could be collected accordingly. The bid documents will be available for sale on all working days between 10.00 Hrs. and 16.30 Hrs. during the following dates. Any correspondence/query should be forwarded to the above address. The timetable for the bid process is as follows:-

**Date Event**

T0 Commencement of Sale of RFQ documents

T0 +15 days Last date of Sale of RFQ documents

T0 + 30 days Technical and Price Bid Submission

T0 + 60days issue of LOI

T0 + 75 days Signing of Agreement

If any of the dates mentioned above is declared a public holiday, the deadline will be the next working day.

The RFQ documents are not transferable.

Mobile No. : 9825227048 mail address : [deepak.hazra@deendayalport.gov.in/](mailto:deepak.hazra@deendayalport.gov.in/)

xenedpa@gmail.com

1) The installed capacity should be 1000 MWp.

2) Free Cash Flow from Business Operation is calculated by subtracting from the average Cash flow of last three years, one eighth (1/8th) of the outstanding debt (as mentioned in the last Financial Statement)

3) The responsibility of clearances for transmission network and evacuation of power shall be with the Bidder.

4) The PPA Term will be twenty-five (25) years.

Contractor with Seal & Signature Executive Engineer (Elect.)

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**1. Introduction**

1.1.1.1 Executive Engineer (Electrical), Deendayal Port Authority, (hereinafter referred to as Procurer)*,* wishes to invite bids for purchase of solar power on a long-term basis.

1.1.1.2 The intent of this bid document is to identify developers for installation of 1000 MWp of solar power for a period of 25 years starting from the Commercial Date of operation (CoD).

The successful Bidders shall enter into a Power Purchase Agreement (PPA) as detailed out in the Draft Power Purchase Agreement forming the part of this document.

1.1.1.3 Accordingly, Procurer seeks to select competent, experienced and capable party (hereinafter referred to as "Bidder") who have the necessary financial strength for supply of power on a long-term basis. Procurer invites bids from companies as sole Bidder for supply of power after installation the 1000 MWp capacity solar PV Plant in the land (which is inter-tidal, marshy, partially CRZ free & partially CRZ) of DPA situated between Jangi & Chirai.

1.1.1.4 The Bidders may submit the bids for supply of power at Procurer’s switchyard bus with contracted capacity being not less than 1750 MUs/Annum.

1.1.1.5 All Bidders are required to submit information in accordance with the guidelines set forth in this bid document. Bidders should provide information sought herein in order to satisfactorily establish their competence and suitability for executing the project.

1.1.1.6 The contracted power shall be sold only to the Procurer as per the terms and conditions of the Power Purchase Agreement (PPA). The Draft PPA is attached in Annexure 3. Procurer would retain dispatch rights over the capacity of the generating Plant, during the term of the PPA and Scheduled Commercial Operation Date of the plant; and twenty-five (25) years.

1.1.1.7 Bidder shall supply 1750 MUs/Annum at the delivery point with installed capacity of 1000 MWp in the land of DPA.

1.1.1.8 Procurer and Bidder reserve the right to extend the term of the agreement after mutual discussions.

1.1.1.9 The Bid offer should be valid not less than six (6) months from the last date of submission.

**2. Information and Instruction to Bidders**

**2.1Qualifying Criteria**

2.1.1.1 The terms used in this document have the same meaning as defined in the Power Purchase Agreement (PPA) provided in Annexure 3.

2.1.1.2 Bidders should have adequate financial capability.

2.1.1.3 The Bidding Company must have a minimum Free Cash Flow from Business Operation of Rs. 700 Crore. The Free Cash Flow from Business Operation should be calculated by subtracting from the average Cash flow of last three years, one eighth of the outstanding debt (as mentioned in the last Financial Statement).

2.1.1.4 The Bidder shall have the experience of installation one Solar PV Power Plant of 800 MWp or two Solar PV Power Plants each of 500 MWp or three Solar PV Power Plants each of 400 MWp capacity.

2.1.1.5 In addition to the above, the best eligible bidder, who will be selected as the L-1 bidder to enter in to the PPA with DPA, who will offer highest yearly units of energy generation with lowest unit rate.

**2.2 Purchase of power by Procurer**

2.2.1.1 Procurer plans to procure power to the extent of 1750 MUs/Annum. The power can be delivered at the DPA’s bus at its switchyard.

The Solar System Availability for generation on an annual basis shall be 98%.

**2.3 Collection of RFQ document**

2.3.1.1 The Bidders can collect the RFQ document in person against non-refundable payment of Rs. 10000/- in the form of a Demand draft in favor of “Deendayal Port Authority”.

2.3.1.2 The Demand Draft shall be submitted in the office of the Executive Engineer (Electrical), Ground Floor, Nirman Building, New Kandla, Kachchh, Gujarat – 370 210 and collect the RFQ document. The RFQ document will be available for sale on all working days from Monday to Friday between 10.30 Hrs. and 16.30 Hrs.

**2.4 Information Required**

2.4.1.1 The information against this RFQ will be submitted by the Bidder as per the annexures, attached in this document. The information to be submitted is specified in Chapter 4 (Formats of Application) of this document.

2.4.1.2 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures/pamphlets. Non-adherence to formats and/or submission of incomplete information may be grounds for declaring the bid non-responsive. Each format has to be duly signed and sealed by the Bidder.

2.4.1.3 The Bidder should note that :-

a) If they deliberately give wrong information in its response, to create circumstances for the acceptance of its bid, Procurer reserves the right to reject such bid and/or cancel the award, if made.

b) Responses submitted by the Bidder shall become the property of Procurer and Procurer shall have no obligation to return the same to the Bidder.

**2.5 Submission of proposal by the Developer :-**

2.5.1.1 Consortium not applicable.

2.5.1.2 In case of bids submitted by a Bidding company

a) The Bidding company should designate one person to represent them in its dealings with Procurer. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries etc.

b) Bidding Company should provide for the Board Resolution committing at least Rs. 700 Crore of equity. Any request for change in the promoters of the Bidding company or in responsibilities or in equity commitments of any promoters is allowed; however, such change must be communicated to Procurer in writing for its approval. Procurer reserves the right to cancel the Award of project to the Bidding company, which in its opinion, adversely affects the Bidding company strength and doesn’t meet the qualification criteria as mentioned in this document. Accordingly, the Bank Guarantee shall be forfeited in such cases.

**2.6 Due dates**

2.6.1.1 The Bidder should submit the response so as to reach the following address by 12.30 Hrs. on

**Address of the Office**

2.6.1.2 Important deadlines are mentioned below :-

**Date Event**

T0 Commencement of Sale of RFQ documents

T0 +15 days Last date of Sale of RFQ documents

T0 +30 days clarifications of Pre-Bid quarries

T0 + 45 days Technical and Price Bid Submission

T0 + 75 days issue of LOI

T0 + 90 days Signing of Agreement

**2.7 Method of submission**

2.7.1.1 The BIDs are to be submitted in an envelope which should be transcripted in the following way;

Envelope superscript - “Bid for supply of power to Procurer”

“Name of the Office”

“Name of the Bidder \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

2.7.1.2 This envelope should also contain a covering letter (format as per Annexure - 2).

2.7.1.3 The Bidder has the option of sending his response by registered post or submitting the bid in person so as to reach Procurer at the designated address by the time and date stipulated by Procurer. Responses submitted by fax/email shall not be considered under any circumstances. Procurer shall not be responsible for any delay in receipt of the bids. Any response received by Procurer after the deadline for submission of the bids stipulated by Procurer shall not be opened.

2.7.1.4 All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder.

2.7.1.5 The bids shall be submitted in original plus two copies (placed in one envelope). No change or supplemental information to a proposal will be accepted after its submission. Procurer reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the proposal.

2.7.1.6 If the envelope is not sealed and not marked as per the requirement, Procurer will assume no responsibility for the bid's misplacement or premature opening.

**2.8 Preparation cost**

2.8.1.1 The Bidder shall be responsible for all the costs associated with the preparation of the response and participation in discussions. Procurer shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

2.8.1.2 **Bidders may note that**

• All the information should be submitted in English Language only.

• Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.

• Bids that are incomplete, which do not substantially meet the requirements prescribed in this RFQ document, will be rejected by Procurer.

• Bids containing incomplete information in the specified formats would be liable for rejection.

• All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder.

• Bidders delaying in submission of additional information or clarifications sought, may be liable for rejection.

• If the Bidder makes any claim, which does not reflect the truth or is material misrepresentation of facts, then the bid would be liable for rejection.

• Procurer reserves the right to reject all or any of the bids without assigning any reasons whatsoever.

**2.9 Enquiries**

Clarifications may be sought from:-

Address of the Office of :

Mail Address :

**3. Evaluation Criteria**

3.1.1.1 The bid evaluation process comprises of the following two steps :-

1. Step I – Responsiveness check

2. Step II – Bidder evaluation

**3.2 Step I - Responsiveness check**

3.2.1.1 The Bids submitted by Bidders/Bidding Consortia shall be initially scrutinized to establish the “Responsiveness”. The following conditions shall cause the bid to be deemed “Non-responsive”:

􀂃 Responses not received within the due date

􀂃 Sufficient information not submitted for the bid to be evaluated and/or information not submitted in specified formats.

􀂃 Bid not signed by authorised signatory and/or sealed in the manner and to the extent indicated in this Invitation for Bids.

􀂃 Bid not including the covering letter as per format in Annexure 2.

􀂃 Bid submitted by a Bidding Company not including the Board Resolution

􀂃 A firm shall submit only one bid in the same Bidding process, individually as a Bidder.

No firm can be a subcontractor while submitting the bid in the Bidding process.

**3.3Step II - Bidder evaluation**

3.3.1.1 Step II (Bidder evaluation) will be carried out considering the information furnished by Bidders as prescribed under Chapter 4 - Format of Application. This step would involve financial evaluation of the Bidding Company.

**3.3.2 Step-3 - Financial Capability**

3.3.2.1 The Bidding Company must have a minimum Free Cash Flow from Business Operation of Rs. 700 Crore. The Free Cash Flow from Business Operation should be calculated by subtracting from the average Cash flow of last three years, one eighth (1/8th) of the outstanding debt (as mentioned in the last Financial Statement).

3.3.2.2 If the bid is submitted by a Bidding Company, then only the Financial Parameters of Bidding Company shall be considered.

**4. Format of Application :-**

4.1.1.1 This chapter prescribes formats for submission of information to ensure that information and data collected from each Bidder would be interpreted in a consistent manner. Hence, it is required that all Bidders should submit information as per the formats indicated below.

**4.2 Bidder Information**

**A. Definitions**

i) Bidding company :- If the bid for the proposed project has been made by a single company, it has been referred to as a Bidding company.

4.2.1.1 The reference to formats under Bidder information the formats attached under Annexure 1. The Bidders are required to provide following information :-

**4.2.2 Information about the company**

4.2.2.1 For a Bidding Company

1. Last three year’s Annual Accounts for the calculation of Free Cash Flow from Business Operations (consisting of unabridged Balance Sheet, P & L account, Profit appropriation, Auditors report with UDIN No. & CA Certification etc.).

2. The Board Resolution of the Bidding Company committing investment of at least Rs.700 Crore.

a) Last three year’s Annual Accounts for the calculation of Free Cash Flow from Business Operations (consisting of unabridged Balance Sheet, P & L account, profit appropriation, Auditors report, all these shall be certified by a CA etc.).

**Checklist for Bidders**

The Bidder may use the checklist below to ensure that the bid submitted is complete in all respects.

• Covering Letter

• Board Resolution

• Initialing of all pages of bid by authorized signatory

• Executive Summary

• Last three year’s Annual Accounts of Bidding Company

Please note that the information requirement prescribed above is the minimum information required from the Bidders. The Bidder may provide additional information to support and supplement the above.

**Annexure - 1**

Executive Summary

**Format - 1: Executive Summary**

1.1.a Name of the Bidding Company

S. No. Name of the Company Role Envisaged

1.3 Details of the contact person

Name

Designation

Company

Address

Phone/Mobile Nos.

E-mail address

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address

**Annexure - 2**

Draft Format of Covering Letter :-

Bidder's Name :-

Full Address :-

Telephone/Mobile No. :-

E-mail address :-

Fax / No. :-

To

Address of the Office

Sub:- Supply of power on long term basis at the DPA’s receiving point.

Ref:- Bid Specification No. CP/ Long Term Power Purchase/ T-1

Dear Sir,

We, the undersigned Bidder having read and examined in detail the RFQ documents for supply of power to the DPA’s receiving point, hereby submit our bid.

**Contact Person**

Details of contact person as specified in Format 1 are furnished as under:-

Name :

Designation :

Company :

Address :

Phone/Mobile Nos. :

E-mail address :

We are enclosing herewith duly signed formats, in 1 original + 2 copies as desired by you in your bid document for your consideration.

Dated the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ of 2025

Thanking you,

Yours faithfully,

(Signature, Name, Designation and Company's Seal)

Business Address :

**Annexure - 3**

Draft Power Purchase Agreement

Draft Power Purchase Agreement for Tariff Based Bidding Process for Procurement of Power on Long Term Basis by Setting up Solar Power Plant at the DPA’s land (which is inter-tidal, marshy, partially CRZ free & partially CRZ for which Environment Clearance to be obtained) situated between Jangi & Chirai

between

Deendayal Port Authority

(“Procurer”)

and

[Insert Name of the Developer]

(“Developer”)

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

Long Term PPA (25 years)

Standard Bid Documents

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This Agreement is made the [ ] day of [ ] 2025

Between

(1) **Deendayal Port Authority,** (the “Procurer”)

(2) **[Insert Name of the Generating Company],** (the “Developer”)

(The “Procurer” and “Developer” are individually referred to as “Party” and collectively to as the “Parties”)

Whereas :-

**A.** The Procurer initiated a competitive bidding process for procurement of Energy from developer and supply of electricity for captive consumption.

**B.** The Developer has been one of the bidders who participated in the competitive bidding process and has offered the installed capacity of 1000 MWp and sale of electricity in bulk there from to the Procurer;

**C.** Based on the most competitive tariff, terms and conditions offered by the Developer the Procurer have selected the Developer to sell the energy to the Procurer to the extent of 1000 MWp installed capacity of Solar Plant in the DPA’s land on the terms & conditions contained in the bidding documents;

**D.** As envisaged in the bidding conditions the parties have to sign this Power Purchase Agreement setting out the terms & conditions of the sale of energy with installed capacity of 1000 MWp by the Developer to the Procurer.

**1 Article 1: Definitions and Interpretation**

**1.1 Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under as amended or re-enacted from time to time :-

“Act” or “Electricity Act 2003” Electricity Act 2003 or any further amendments made subsequent to the same;

“Agreed Form” means, in relation to any document, the form of the said document most recently agreed to by the Parties and initialled by them for identification;

"Agreement" or "Power Purchase Agreement" or "PPA" means this document including its Schedules containing the terms & conditions for purchase of power by Procurer;

"Appropriate Commission" means the Central Electricity Regulatory Commission or a State Electricity Regulatory Commission, as the case may be exercising the function to regulate sale of electricity by a generating company and the power purchase and procurement process of the Procurer under the Electricity Act, 2003;

“Availability Factor” or “Availability” shall have the meaning ascribed thereto in Article 1.5 of Schedule 5 of this Agreement; “Available Capacity” shall have the meaning ascribed thereto in Article 1.4 of Schedule 5 of this Agreement;

“Bid” means the RFP (Request for Proposal) as issued by the Procurer;

“Bid Deadline” means the date of submission of proposal in response to the RFP issued by the Procurer;

"Bill Dispute Notice" means the notice issued by a Party raising a dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;

“Business Day” means a day other than Sunday or a statutory holiday, on which the banks remain open for business in;

“Capacity Notice” means a notice given pursuant to Article 1.2 of Schedule 5 of this Agreement;

"Central Transmission Utility" or "CTU" means the utility as defined in the Electricity Act, 2003;

"CERC" means the Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003, or its successors;

“CERC/GERC Norms” means the tariff fixation and other relevant regulations as announced by CERC/GERC from time to time;

"Change in Law" has the meaning specified in Article 13.1.1;

“Characteristics Tests” means the tests of a Power Plant’s ability to operate consistently with its Contracted Operating Characteristics carried out in accordance with Article 1.3 of Schedule 4 of this Agreement;

"Check Meters" or “Check Meter” shall have the meaning ascribed thereto in Schedule 9 and “Check Meter” shall mean a reference to any one of them;

"Commercial Operation Date" or "COD" means, in relation to the date on which the plant is Commissioned and put into the Commissioning Tests for commercial operation;

"Commissioning Tests" or “Commissioning Test” “Commissioning Tests” means (a) the Performance Test; and (b) the Characteristics Tests; and “Commissioning Test” means any one of them;

“Construction Period” means the period from (and including) the date upon which the Construction is required to commence work for design, engineering, construct and Commission the Project up to (but not including) the Commercial Operations Date;

"Consultation Period" means the period, commencing from the date of PPA but less than 24 months with Preliminary Termination Notice or a Procurer Preliminary Termination Notice, for consultation between the Parties to:

(i) mitigate the consequence of the relevant event having regard to all the circumstances; and (ii) prevent termination of this Agreement;

“Contract Year” means a) the period beginning on the date of this Agreement and each succeeding twelve (12) month period thereafter provided that b) the Contract Year shall begin once again from the Required Commercial Operation Date of the first Unit and shall thereafter be for each succeeding twelve (12) month period and provided further that c) the last Contract Year of this Agreement shall end on the last day of the term of this Agreement;

"Installed Capacity" means the maximum & minimum capacities as may be determined in accordance with the Article 6.3.4 or Article 8.2 of this Agreement;

"Contracted Operating Characteristics" means the performance levels of the Project, specified in Article 1.3 of Schedule 3;

“Control Centre” or “Nodal Agency” or “SLDC” means the State Load Dispatch Centre located in Gujarat or such other load control centre designated by the Procurer from time to time from which the Procurer shall issue Dispatch Instructions to the Power Plant;

“Coordinating Committee” shall have the meaning ascribed thereto in Article 7.7 of this Agreement;

"Declared Capacity" means the net capacity of the Power Plant at the relevant time (expressed in MUs) as declared by the Developer in a Capacity Notice;

"Delivery Point" means the points of delivery at the DPA’s Bus at its Switchyard, detailed in Schedule 7 for fulfilling the obligation of the Developer to deliver the electrical energy;

“Dispute” means any dispute or difference of any kind between the Procurer inter se, or between a Procurer and the Developer or between the Procurer and the Developer in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement;

"Dispatch Instruction" means any instruction issued by the Procurer to the Developer in accordance with applicable Grid Code and this agreement;

"Due Date" means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received by Procurer (or, if such day is not a Business Day, the immediately succeeding day) by which date such bill is payable by Procurer;

“Electricity Laws” means the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments and replacements thereof in whole or in part and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;

"Energy Output" means the net electrical output of the Power Plant at the DPA’s Network at 66 KV or above, as expressed in kWh;

“Emergency” means a condition or situation that, in the opinion of the Procurer or the agency tasked with operating and maintaining the Interconnection & Transmission Facilities or the transmission company, as the case may be, poses a significant threat to the Procurer’s or the said agency’s or transmission company’s ability to maintain safe, adequate and continuous electrical service or seriously endangers the security of persons, plant or equipment;

"Expiry Date" means the 24th anniversary or any extension of the Commercial Operation Date of the last of the Project or any extension on mutually agreed terms & conditions;

“Final Test Certificate” a) a certificate of the Independent Engineer certifying the results of a Commissioning Test in accordance with or Article 6.3.1 of this Agreement; or b) a certificate of the Monitoring Engineer certifying the result of a Repeat Performance Test in accordance with Article 8.2.1 of this project, 25 years or any extension given on mutually agreed terms & conditions from the Schedule Commercial Operation Date.

Agreement;

"Financial Closure" means the execution and delivery of all the Financing Agreements, for the initial draw down of funds thereunder;

"Financing Agreements" means all the loan agreements, notes, indentures, security agreements, letters of credit, share subscription agreements and other documents relating to the financing or re-financing of the Project at the Financial Closure, as may be amended, modified or replaced from time to time;

"Force Majeure" means an event defined in Article 12.3;

"Forced Outage" means an interruption or reduction of the generating capability of the Power Plant that is not the result of :- a) a request by a Procurer in accordance with this Agreement; or b) a Scheduled Outage or a Maintenance Outage;

"Functional Specifications" means the technical requirements and parameters described in Schedule 3 of this Agreement relating to the operation, maintenance and dispatch of any Unit and the Power Plant, as they may be modified by the Developer from time to time with the prior written consent of the Procurer;

"Grid Code" means any set of regulations or codes legally binding on the Developer and Procurer’ governing the operation of the Grid System;

“Grid System” means the Interconnection & Transmission Facilities and any other transmission or distribution facilities through which the Procurer supply electricity for captive use or the transmission company transmits electricity to the Procurer;

“Independent Engineer” means an independent consulting engineering firm or group selected jointly by the Procurer from a list of three (3) such consulting engineering firms or groups which shall be selected by the Developer;

“Indian Governmental Instrumentality” means the GOI, State Government and any ministry, department, board, agency or other authority of GOI or State Government;

“Initial Performance Retest Period” shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement;

"Interconnection Facilities" means the facilities on the Procurer' side of the Interconnection Point for receiving and metering Electrical Output in accordance with this Agreement and which shall include, without limitation, all other transmission and distribution lines and associated equipment, transformers and associated equipment, relay and switching equipment and protective devices, safety equipment and, subject to Article 9, the metering system required for the Project;

“Interconnection Points” means being the points at which Electrical Output is delivered to the Procurer;

“Invoice” means either a Monthly Tariff Invoice, a Supplementary Invoice or a Procurer Invoice;

"Law" means, in relation to this Agreement, all laws and Electricity Laws in force in India and would include any statute, ordinance, regulation, notice, circular, code, rule or direction, or any interpretation of any of them by a Governmental Instrumentality and also includes all applicable rules, regulations, orders, directions, notifications by a Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions directions and orders of the Appropriate Commission;

“Lenders” means the banks, other financial institutions, RBI registered non-banking financial companies, mutual funds and agents or trustees of debenture/bond holders, including their successors and assignees, who have agreed as at Financial Close to provide the Developer with the debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the **Financing Agreements** may be transferred or assigned **:-**

Provided that, such assignment or transfer shall not relieve the Developer of its obligations to the Procurer under this Agreement in any manner and shall also does not lead to an increase in the liability of Procurer; “Main Meters” means :-

a) the Developer Meter,

b) the Interconnection Meter, and

c) the Import Meter,

each of such meters having the meanings ascribed thereto in Schedule 9.

"Maintenance Outage" means an interruption or reduction of the generating capacity of the Power Plant that:

a) is not a Scheduled Outage;

b) has been scheduled in accordance with Article 7.6 of this Agreement; and

c) is for the purpose of performing work on specific components, which work could be postponed by at least two (2) days but should not, in the reasonable opinion of the Developer, be postponed until the next Scheduled Outage;

"MCR" means gross Power Plant maximum continuous rating;

"Metering System" shall have the meaning ascribed thereto in Schedule 9 of this Agreement;

“Minimum Off-take Guarantee” means the minimum off-take mentioned by the Procurer in the RFP/RFQ and which is mentioned hereby :-

Minimum off-take at ( )% of contracted capacity;

“Monitoring Engineer” means an independent engineering consulting firm or group appointed by the Procurer pursuant to Article 8.1 of this Agreement;

“Monitoring Notice” means a notice issued by Procurer to the Developer pursuant to Article 1.3.3 of Schedule 5 of this Agreement;

"Month" means a calendar month;

“Normative Availability” means equal to Minimum Off-take Guarantee on annual basis& should be 14 % of the installed capacity.

"Operation Period" in relation to the Power Plant means the period from its Commissioned Date until the expiry or earlier termination of this Agreement in accordance with Article 2 of this Agreement;

"Operating Procedures" shall have the meaning ascribed thereto in Article 7.1 of this Agreement;

"Operator" means one or more person appointed as operator of power generation facilities of the Project pursuant to an O&M Contract, if any;

"Party" and "Parties" has the meaning specified in the recital to this Agreement;

"Performance Test" means the test of the plant at the rated capacity after its commissioning, as a whole carried out in accordance with Article 1.2 of Schedule 4 of this Agreement;

“Preliminary Termination Notice” shall have the meaning ascribed thereto in Article 14 of this Agreement;

“Project” means the ownership, design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance of the Power Plant undertaken by the Developer in accordance with the terms and conditions of this Agreement;

“Project Documents” means Construction Contract and any other agreements designated at such, from time to time by the Procurer and the Developer;

Regulatory Commission (CERC/GERC) prevailing at the time of the bid process;

"Prudent Utility Practices" means the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of :- a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Plant; b) the requirements of Indian law; and c) the physical conditions at the Site;

"Repeat Performance Test" shall have the meaning ascribed thereto in Article 8.1 of this Agreement;

"REB" means the relevant Regional Electricity Board or its successor entities as

defined in the Electricity Laws;

"Regional Energy Accounts" or "REA" means the accounts of power and energy delivered by the Developer and drawn by the Procurer, as issued by the relevant REB secretariat or other appropriate agency for each Week and for each Month, including the revisions and amendments thereof;

"RLDC" means the relevant Regional Load Dispatch Centre as defined in the Electricity Laws, in the region in which the Project is located;

“Revised Capacity Notice” shall have the meaning ascribed thereto in Article 1.2.3 of Schedule 5 of this Agreement;

“RFP” means the Request for Proposal document issued by Procurer on [insert date] for the selection of the Investors responsible for implementing the Project;

"Rupees" or "Rs." means the lawful currency of India;

“SBIPLR” means the prime lending rate per annum for loans with one (1) year

maturity as fixed from time to time by the State Bank of India and in the absence of such rate, the average of the prime lending rates for loans with one (1) year maturity fixed by any Nationalised Bank in India and failing that any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;

“Scheduled CoD” or “Schedules Commercial Operation Date” means (i) for the entire Unit, the date falling ten (10) months after signing the PPA; or as the same may be extended from time to time in accordance with the provisions herein;

“Scheduled Connection Date” shall mean the date falling 120 days before the Scheduled Synchronisation Date;

“Scheduled Energy” means the quantum of energy delivered by the generating plant at the delivery point as scheduled by the Nodal Agency;

"Scheduled Outage" means a planned interruption or reduction of the generating capability of the Power Plant that :- a) is not a Maintenance Outage; b) has been scheduled and allowed by the Procurer in accordance with Article 7.5 of this Agreement; and c) is for inspection, testing, preventative maintenance, corrective maintenance, repairs, replacement or improvement;

"Scheduled Synchronisation Date" means the date which falls 30 days before the Scheduled CoD of the first unit of the project;

“Security Deposit” means the Bank Guarantee as submitted by the Developer at the Request for Proposal (RFP) stage;

"Settlement Period" means the time block for issue of daily generation and drawl schedules as may be defined by IEGC [presently fifteen (15) minute block];

“State Transmission Utility” or “STU” means the Utility as defined in Electricity Act 2003;

"Supplementary Bill" means a bill other than a Monthly Bill raised by either Party in accordance with Article 11.8;

"Tariff Payment" means the payments under Monthly Bills in Schedule 6 and the relevant Supplementary Bills;

"Tariff" means the tariff payable in accordance with Schedule 6;

"Technical Specifications" means the technical requirements and parameters prescribed in relation to the Project, forming a part of the Construction Contract. Provided these shall always comply with the requirements of Article 1.1 to 1.4 of Schedule 3 of this Agreement;

“Tested Capacity” in relation to a Commissioned Unit, or the Power Plant as a whole (if the Power Plant has been commissioned) means the results of the most recent Performance Test or Repeat Performance Test carried out in relation to the Power Plant in accordance with Article 8.1 of this Agreement;

“Termination Notice” shall have the meaning ascribed thereto in Article 14 of this Agreement;

"Term of Agreement" has the meaning specified in Article 2.1;

“Technical Limits” means the limits of Grid conditions specified in Article 1.1 of Schedule 3;

“Total Debt Amount” means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the date of notification of Force Majeure Event) :- (a) the principal amount of the debt incurred by the Developer (as per the terms of the Financing Agreements) to finance the Project according to the Capital Structure Schedule which remains outstanding on the date of notification of Force Majeure Event after taking account of any debt repayments which could have been made out of the Monthly Tariff Payments received by the Developer on or before the date of notification of Force Majeure Event as per the terms provided in the Financing Agreements; and (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in Article (a) above since the Fixed Charge Payment immediately preceding the date of notification of Force Majeure Event or, if Fixed Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised and (c) if this Agreement is terminated during the Construction Period, any amounts owning to the Construction work performed but not paid for under the Construction (other than amounts falling due by reason of the Developer’s default or this Agreement being terminated);

"Undeclared Capacity Failure" means the failure by the Developer to make available the Declared Capacity pursuant to a Dispatch Instruction, when no Monitoring Notice has been issued;

“Unit” means the Solar Plant;

“Unscheduled Interchange” means as defined in section 24 of the CERC (Terms and Conditions of tariff) Regulations 2004;

"Week" means a calendar week commencing from 00:00 Hours of Monday and ending at 24:00 Hours of the following Sunday;

"Wheeling" or “Transmission” are the charges paid by the Developer to the CTU or STU or any other agency for the transfer of power up to the Procurer’s network.

**1.2 Interpretation**

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

1.2.1 A "Recital", an "Article", a "Schedule” and a “Article" shall be construed as a reference to a Recital, an Article, a Schedule and a paragraph respectively of this Agreement.

1.2.2 An **“affiliate”** of any person shall be construed as a reference to a subsidiary or holding company, or a subsidiary of a holding company, of such person

1.2.3 **“this Agreement”** shall be construed as including a reference to its Schedules and Annexes;

1.2.4 A **“Crore”** means a reference to ten million (10,000,000) and a “**Lakh**” means a reference to one tenth of a million (1,00,000);

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

1.2.6 **“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;

1.2.7 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.

1.2.8 A “subsidiary” of a company or corporation shall be construed as a reference to any company or corporation :- a) which is controlled, directly or indirectly, by the first-mentioned company or corporation; or b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or c) which is a subsidiary of another subsidiary of the first-mentioned company or corporation and for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;

1.2.9 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors.

1.2.10 Words importing the singular shall include the plural and vice versa.

1.2.11 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.

1.2.12 A Law shall be construed as a reference to such Law including its amendments or reenactments from time to time.

1.2.13 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.

1.2.14 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.

1.2.15 The table of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.

1.2.16 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.

**2 Article 2 Term of Agreement**

**2.1 Effective Date and Term of Agreement**

The Agreement shall have a term from such date of execution by the Parties until the Expiry Date ("Term of Agreement"), when it 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 Procurer or Developer exercises a right to terminate, pursuant to Article 14 or Article 3.3 or ii) in such other circumstances as the Developer and Procurer may subsequently agree, in writing.

**2.3 Extension of Term**

2.3.1 Prior to at least one hundred and eighty (180) days before the Expiry Date, Procurer may give a written notice to the Developer that it wishes to extend this Agreement for an additional period to be specified by that Procurer.

2.3.2 If such written notice is delivered to the Developer by both the Procurer, this Agreement can be extended to such date. 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 Agreement.

2.3.3 If the written notice referred to in Article 2.3.1 is delivered to the Developer by only one Procurer (**“Extending Procurer”**), this Agreement shall expire and stand terminated in respect of the Procurer who has not delivered such written notice (**“Exiting Procurer”**) and no rights and obligations shall be owed by the Exiting Procurer to the Developer or vice versa. The Extending Procurer shall have the choice to elect for extension of the Term of this Agreement in respect of the Available Capacity and corresponding dispatched Electrical Output of the entire Power Plant, which portion of the Available Capacity and corresponding dispatched Electrical Output shall be delivered to the Extending Procurer or at his choice, to his designated nominee or to both of them, in such proportions as may be notified by the Extending Procurer to the Developer. 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 Agreement.

2.3.4 On Expiry of any extension of the Term under Article 2.3.2 or 2.3.3, the provisions of this Agreement, including this Article 2.3 itself shall apply mutatis mutandis in relation to the Procurer’ or Procurer’s right or an Extending Procurer’s nominee’s right for further extension.

**2.4 Consequences of Procurer not extending**

2.4.1 In the event that the Procurer choose not to automatically extend the PPA under Article 2.3, the PPA shall expire and no rights & obligations by Procurer to the Developer shall be owed by any party to another.

**2.5 Survival**

2.5.1 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 of, post its expiry or termination.

**3 Article 3 :- Conditions Subsequent to be Satisfied by the Developer**

**3.1 Satisfaction of conditions subsequent by the Developer**

3.1.1 Simultaneously with the execution of this Agreement the Developer shall have provided the Security Deposit, in the form of an irrevocable unconditional Bank Guarantees, of an aggregate amount calculated at Rs. 7.5 lakhs per each MW of the total contracted capacity and such bank guarantees to be provided separately to each of the Procurer in the ratio of Allocated Capacities.

3.1.2 Notwithstanding anything to the contrary specified in this Agreement and unless specifically waived in writing by the Procurer jointly , the Developer agrees and undertakes to duly perform and complete the following within ten (10) months from the date of execution of this Agreement :- i) the Developer shall have received the Initial Consents as mentioned in Schedule 1, either unconditionally or subject to conditions which do not materially prejudice its rights or the performance of its obligations under this Agreement; ii) the Developer shall have appointed the Construction Contractors, if Developer itself is not the Construction Contractor, for the design, engineering, procurement, construction and Commissioning of the Project and shall have submitted a documentary proof along with the copy of the contract to the Procurer; iii) the Developer shall have achieved Financial Closure in relation to the Project; iv) the Developer shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required; v) the Developer shall have finalised the specific delivery point for supply of power in consultation with the Procurer; vi) the Developer shall have got vacant possession of the Sites and shall have obtained valid, enforceable, unencumbered and insurable leasehold title thereto and such other real property rights including wayleaves as may be required for the Project or the performance of its obligations under this Agreement.

**3.2 Reports**

The Developer shall notify the Procurer in writing at least once a month on the progress made in satisfying the conditions of the relevant Article.

**3.3 Consequences of Non-fulfillment of Conditions under Article 3.1**

3.3.1 If the Developer fails to furnish the valid and enforceable security deposit as provided in Article 3.1.1 at the time of the execution of this Agreement the same shall be a breach of on the part of the Developer of not duly fulfilling the terms of the bid and consequently this agreement will not become effective and the Procurer shall be entitled to encash and appropriate the earnest money deposit given by the Developer at the time of the Bid.

3.3.2 If any of the conditions specified in Article 3.1.2 is not duly and fully satisfied within the time specified under Article 3.1 the Procurer shall have the right to encash and appropriate in their favour as liquidated damages an amount equivalent to Rs. 1000/- per day per MWp from the Developer under Article 3.1.1 for delay of each month or part thereof, as the case may be.

3.3.3 If any of the conditions specified in Article 3.1.2 is delayed beyond a period of five (5) months then the Procurer has right to terminate the agreement and in this case Developer has to pay a liquidated damage equivalent to one month of billing, calculated on the basis of quoted tariff and the energy corresponding to the Contracted Capacity. These liquidated damages will be adjusted against the security deposit as provided in Article 3.1.1 and the remaining amount needs to be paid by the Developer to the Procurer within 10 days from the end of five (5) months period from the due date of completion of conditions subsequent.

3.3.4 In case of Force Majeure affecting the Developer the time period of twelve (12) months for Condition Subsequent, shall be extended for the purpose of termination and penalties as per Article 3.3.

**3.4 Security Deposit to be furnished on the fulfillment of the conditions under Article 3.1.2**

3.4.1 On the due fulfillment by the Developer of all the conditions specified under Article 3.1.2 the Developer shall furnish to the Procurer a security deposit in the form of a irrevocable and unconditional Bank guarantee from a bank acceptable to the Procurer , for an aggregate sum calculated at an amount Rs. 7.5 lakhs per each MWp of the total contracted capacity.

3.4.2 This security deposit shall be in substitution of the earlier security deposit furnished under Article 3.1.1 and accordingly a) If the Security Deposit furnished by the Developer under Article 3.1.1 remains valid for an amount in excess of Rs. 7.5 lakhs per MWp the Developer shall be entitled to reduce to the amount calculated at Rs. 7.5 lakhs per MWp and maintain the same as security deposit under this Article 3.4; b) If the Security Deposit furnished by the Developer under Article 3.1.1 remains valid for an amount less than Rs. 7.5 lakhs per MWp the Developer shall increase the amount of security deposit so as to make it equivalent to Rs. 7.5 lakhs per MWp and maintain the same as security deposit under this Article 3.4 ; c) If the Security Deposit furnished by the Developer under Article 3.1.1 has been fully appropriated under Article 3.3 the Developer shall furnish a valid security deposit in the form an irrevocable and unconditional guarantee of an amount calculated at Rs. 7.5 lakhs per MWp and maintain the same as security deposit under this Article 3.4;

3.4.3 The security deposit furnished under Article 3.4.1 shall be for the due and timely completion of the project and commencement of commercial operation within the time specified in this Agreement.

3.4.4 The failure on the part of the Developer to furnish and maintain the security deposit as mentioned above shall be a material breach of the term of this Agreement on the part of the Developer.

3.4.5 If the Developer fails to complete the project and commence commercial operation of the units on the respective dates specified in this Agreement, subject to conditions mentioned is Article 4.5.1, the Procurer shall have the right to encash and appropriate in their favour as liquidated damages an amount equivalent to Rs. 1000/- per MWp from the Developer under Article 3.4 for delay of each month or part thereof, as the case may be, without prejudice to the other rights of the Procurer including but not limited to the right to specifically enforce this Agreement and require the Developer to fulfil the conditions and implement the project and for delay beyond five months claim liquidated damages as set out in Articles 4.6.

**3.5 Return of Security Deposit**

3.5.1 The Security Deposit as submitted by Developer in accordance with Article 3.4., shall be released by the Procurer within 15 days from the Schedule Commercial Operation Date of the Plant, if the Developer meets the Schedule Commercial Operation Date and satisfactorily fulfills the obligations of commencement of Commercial Operation and in the event of delay the security deposit amount, if any, which remain unadjusted under Article 3.4 shall be released to the Developer after the satisfactory completion of the obligations of commencement of commercial operation

3.5.2 The release of the security deposit shall be without prejudice to other rights of the Procurer under this Agreement.

**4 Article 4 Development of the Project**

**4.1 The Developer’s obligation to build, own and operate the Power Plant**

4.1.1 Subject to the terms and conditions of this Agreement, the Developer undertakes to be responsible at Developer’s costs and risks for :- a) obtaining & maintaining in full force & effect any Consents required by it pursuant to this Agreement and Indian law; b) executing the Project in a timely manner so as to enable each of the Units and the Power Plant as a whole to be Commissioned no later than its Scheduled Commercial Operations Date and such that the full Contracted Capacity can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer’ scheduling and dispatch requirements throughout the Operating Period of the Power Plant; c) owning the Power Plant throughout the term of this Agreement free and clear of encumbrances except those expressly permitted by Article 18; d) procure the requirements of electricity at the Power Plant (including land development, construction, commissioning and start-up power) to meet in a timely manner all formalities for getting such a supply of electricity; and e) fulfilling all other obligations including clearances from all authorities undertaken by him under this Agreement.

**4.2 Procurer’ obligation**

Subject to the terms and conditions of this Agreement, the Procurer :- a) shall be responsible for procuring the Interconnection and Transmission Facilities to enable the Power Plant to be connected to the Grid System not later than the Scheduled Connection Date; b) endeavour its best (without any legal obligation) to assist the Developer in procuring the electricity required as per Article 4.1 (d) and c) using all reasonable endeavours to facilitate the commissioning and testing of the Units and after commissioning of the Power Plant, of the Power Plant as a whole that are within their power to do.

**4.3 Purchase and sale of Available Capacity and Electrical Output**

4.3.1 Subject to the terms and conditions of this Agreement, the Developer undertakes to sell to the Procurer, and Procurer undertake to pay the Tariff for all of the Available Capacity and Electrical Output of the Power Plant throughout its Operating Periods.

4.3.2 The Developer shall sell all the Available Capacity, unless otherwise instructed, of the Power Plant to each Procurer in proportion of each Procurer allocated Capacity pursuant to Dispatch Instructions given by each of such Procurer.

**4.4 Right to Electrical Output**

4.4.1 Subject to the provisions of Article 11.5, the entire capacity of the project and all units in the project shall at all times be for the exclusive benefit of the Procurer and the Developer shall not grant to any third party or allow any third party to obtain any entitlement to the Available Capacity and Electrical Output.

4.4.2 Notwithstanding the foregoing, the Developer shall be permitted to sell power amounting to a part of the Available Capacity of the Power Plant to third parties if :- (a) there is a part of Available Capacity which is not Dispatched by the Procurer, ordinarily entitled to receive such part and (b) there is prior written consent by the Procurer ordinarily entitled to receive such part and (c) such part has first been offered to the other Procurer who was not ordinarily entitled to receive such part and he has chosen to waive or not exercise his first right to receive such part of the Available Capacity or his first right to nominate a third Party to receive such Available Capacity, within one (1) day of being so offered the opportunity to receive such part.

4.4.3 If the Procurer do not avail generation up to the declared capacity by the Developer, as mentioned in Article 4.4.2, the same energy can be sold to the third party by the Developer and the sale realization, shall be equally shared with the Procurer. During this period the Developer will also continue to receive the capacity charges from the Procurer. The sale under Unscheduled Interchange shall not be considered as sale to third party.

4.4.4 The Developer shall not itself use any of the electricity generated by the Power Plant during the term of this Agreement except for the purpose of meeting the Power Plant’s auxiliary load requirements as per the norms laid down by the CERC.

**4.5 Extensions of time**

4.5.1 In the event that :- (a) the Developer is prevented from performing its obligations under Article 4.1(b) by the required date because of any material default of one or both Procurer or (b) a Unit, or the Power Plant cannot be Commissioned by its Scheduled Commercial Operations Date because of Force Majeure Event; the Scheduled Commercial Operations Date, the Scheduled Connection Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period to permit the Developer through the use of due diligence, to overcome the effects of the Force Majeure Event or in the case of the Procurer’s or Procurer’ material default till such time the material default is rectified by the Procurer.

4.5.2 If the Parties have not agreed, within thirty (30) days after the affected Party’s performance has ceased to be affected by the relevant circumstance on how long the Scheduled Commercial Operations Date, the Scheduled Connection Date or the Expiry Date should be deferred by, any Party may raise the Dispute in accordance with Article 17.

4.5.3 The Scheduled Commercial Operations Date of any Unit or the Scheduled Commercial Operations Date of the Power Plant as a whole, may not be extended by more than a total of ten (10) months from the Scheduled Commercial Operations Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events, and the new date shall be deemed the Scheduled Commercial Operations Date for the purposes of this Agreement. If the original Scheduled Commercial Operations Date is delayed beyond ten (10) months, this Agreement shall terminate as detailed in Article 14. The Developer shall be required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to DPA for inspection and verification of the works being carried out by the Developer at the site of the Power Project. The DPA/third party may verify the construction works/operation of the Power Project being carried out by the Developer and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from the Developer or require the works to be stopped or to comply with the instructions of such third party. The DPA/third party may carry out checks for testing the CUF of the Power Project. During a Contract Year, if the CUF of the Power Project is found to be below 30 MW for a consecutive period of six (6) months during a Contract Year on account of reasons solely attributable to the Developer, the Developer shall be liable for non-fulfillment of its obligation. The liability shall be equal to 1.5 times the amount for non-supply of power to DPA which in turn shall have the right to assign such liability to the Developer under this Agreement.

**4.6 Liquidated damages for delay in providing Contracted Capacity**

4.6.1 If the Power Plant as a whole is not Commissioned by its Scheduled Commercial Operation Date other than for the reason specified in Article 4.5.1, the Developer shall pay to the Procurer liquidated damages for the delay in making the Unit or the Power Plant’s Contracted Capacity available for dispatch. The amount payable to Procurer shall be the encashment and appropriation of the security deposit in the manner set out in Article 3.4.3 up to five (5) months of delay and thereafter for any further delay the amount calculated by DPA, which is binding upon.

**5 Article 5 : Construction**

**5.1** **The Developer’s Construction Responsibilities**

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

a) applicable law;

b) the Grid Code;

c) the terms and conditions of this Agreement;

d) the Functional Specifications;

e) the Technical Specifications; and

f) Prudent Utility Practices.

**5.2** **The Site**

The Developer acknowledges that, before entering into this Agreement it has had sufficient opportunity to investigate the Site and accepts full responsibility as between the Parties for its condition (including but not limited to its geological condition, any toxic contamination or archaeological remains on the Site, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water) and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason. The site visit is compulsory and the evidence towards site visit shall be submitted with the bid documents as per the format attached with the bid signed by an authorized representative of the prospective bidder.

**5.3 Information Regarding Interconnection Facilities**

The Procurer shall jointly provide the Developer, on a timely basis, all information with regard to the Interconnection and Transmission Facilities as is reasonably necessary to enable the Developer to design, install and operate all interconnection plant and apparatus on the Developer’s side at the Pooling Sub-Station.

**5.4 Quality of Workmanship**

The Developer shall ensure that the Power Plant is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international –utility grade quality such that, the useful life of the Power Plant will not be less than twenty five (25) years before any significant refurbishment is required.

**5.5 Consents**

The Developer shall be responsible for obtaining all Consents and keeping in effect all such Consents in order to carry out its obligations under this Agreement in general and this Article 5 in particular and shall supply the Procurer promptly with copies of each application that it submits, correspondence in respect of such applications and a copy of each Consent which it obtains.

**5.6 Construction Documents**

5.6.1 The Developer shall retain at the Site and make available for inspection to the Procurer at all reasonable times the following documents :- (a) as-built drawings for the Power Plant and / or the Project, including, but not limited to the civil and architectural works; (b) copies of the specifications, operating manuals and manufacturer’s warranties for all major items of plant and / or equipment incorporated into the Power Plant or used for the purposes of the Project; (c) copies of the results of all tests performed on major items of plant incorporated into the Power Plant and (d) such other technical documents relating to the design, procurement, engineering and construction of the Power Plant as the Procurer may reasonably request from time to time.

**5.7 Co-ordination of Construction Activities**

5.7.1 Before the tenth (10th) day of each month during the Construction Period : (a) the Developer shall prepare and submit to the Procurer a monthly progress report, in the Agreed Form, which reviews the progress of the design, engineering, procurement, construction, completion, testing and commissioning of the Power Plant and (b) The Procurer shall prepare and submit to the Developer a monthly progress report, in the Agreed Form, which reviews the progress of the design, engineering, procurement, construction and installation of the Interconnection and Transmission Facilities.

5.7.2 Each Party shall designate from time to time, in a written notice to the other Party up to five (5) of its employees who shall be responsible for coordinating all construction activities relating to the Project and who shall have access at all reasonable times to the other Party’s land for the purpose of inspecting the progress of the work being carried on there, subject to their giving reasonable notice of the inspection and subject to their complying with all reasonable safety procedures.

**6 Article 6 : Synchronisation, Commissioning and Commercial Operation**

**6.1 Synchronization**

6.1.1 The Developer shall give the Procurer at least sixty (60) days advance written notice of the date on which it intends to synchronise a Unit to the Grid System.

6.1.2 Subject to Article 6.1, a Unit may be synchronised to the Grid System when :- (a) it has been completed in accordance with the Technical Specification and the Functional Specification; (b) it meets all connection conditions prescribed in any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronisation to the Grid System and (c) is capable of being operated safely.

6.1.3 The Developer shall notify the Procurer as soon as it believes a Unit has been completed, satisfies that conditions listed in Article 6.1.2 and is ready to be synchronised to the Grid System in accordance with this Agreement.

6.1.4 The Procurer shall inspect any Unit, which the Developer intends to synchronise to the Grid System within five (5) days after being notified in writing by the Developer pursuant to Article 6.1.3 to determine whether the requirements of Article 6.1.2 have been met. The Developer shall provide to the Procurer’ employees, in accordance with Article 5.7.2 with such access to the Site as it reasonably requires to make such determination.

6.1.5 If the Procurer are satisfied that the Unit is ready to be synchronised in accordance with Article 6.1.2, they shall promptly notify the Developer to that effect and provide the Developer with all reasonable assistance in synchronising the Unit as soon as reasonably practicable.

6.1.6 If the Procurer or a Procurer does not inspect the Unit when required pursuant to Article 6.1.4, or having inspected the Unit, both or one Procurer determines that the requirements of Article 6.1.2 are not met, the Developer shall nevertheless be entitled to synchronise the Unit to the Grid System, and the Procurer shall provide the Developer with all reasonable assistance in synchronising the Unit as soon as practicable, if the Independent Engineer :- (a) certifies to the Procurer in writing that, in its opinion, the Unit has been completed in accordance with Article 6.1.2 and (b) gives in writing the reasons why, in its opinion, any objections raised by the Procurer or Procurer are not well founded.

**6.2 Commissioning**

6.2.1 The Developer shall be responsible for ensuring that the Power Plant is commissioned in accordance with Schedule 4 at its own cost, risk and expense.

6.2.2 The Procurer shall use all reasonable endeavours to accept into the Grid System, Electrical Output generated by a Unit, Electrical Output generated by the Power Plant while it is undergoing commissioning and testing.

6.2.3 The Developer shall give the Procurer and the Independent Engineer not less than ten (10) days prior written notice of each Commissioning Test.

6.2.4 A Procurer or the Procurer may for reasonable cause defer any Commissioning Test for up to fifteen (15) days from the date originally notified by the Developer pursuant to Article 6.2.3 if the Procurer or the Procurer notify the Developer in writing at least twenty four (24) hours before the Commissioning Test starts of the reason for the deferral and when the test is to be rescheduled :- Provided that, such deferment at the request of a Procurer shall be permitted only once.

6.2.5 The Developer, the Procurer and the Independent Engineer shall each designate qualified and authorised representatives to monitor each Commissioning Test.

6.2.6 Testing and measuring procedures applied during each Commissioning Test shall be in accordance with the codes, practices and procedures mentioned in Schedule 4 of this Agreement.

6.2.7 Within five (5) days of a Commissioning Test, the Developer shall provide the Procurer and the Independent Engineer each with copies of the detailed test results.

**6.3 Commercial Operation**

6.3.1 The Unit or the Power Plant shall be Commissioned on the day after the date when the Procurer receives a Final Test Certificate of the Independent Engineer stating that :- a) the Commissioning Tests have been carried out in accordance with Schedule 4; b) the results of the Performance Test show that the Unit’s Tested Capacity, or in the case the Power Plant has been Commissioned, the Power Plant’s Tested Capacity is not less than ninety five (95) percent of its Contracted Capacity; c) the results of the Characteristics Test show that the Unit or in the case the Power Plant has been Commissioned, the Power Plant is capable of operating in accordance with its Contracted Operating Characteristics; d) the Independent Engineer certifies that the Developer has complied with the requirements of Articles 5.1

6.3.2 If a Unit (or the Power Plant, as relevant) fails a Commissioning Test, the Developer may retake the relevant test within three (3) days after the end of the previous test with one (1) days notice.

6.3.3 The Developer may retake the Performance Test, up to five (5) times, during a period of ninety days (“Initial Performance Retest Period”) from a Unit’s or if the Power Plant has been commissioned, the Power Plant’s Commissioning Date in order to demonstrate a Tested Capacity.

6.3.4 (i) If a Unit’s (or the Power Plant’s, as relevant) Tested Capacity at the end of the Initial Performance Retest Period is less than its Contracted Capacity, the Unit (or the Power Plant’s, as relevant) shall be derated with the following consequences :- a) the Unit’s (or the Power Plant’s, as relevant) Contracted Capacity shall be reduced to its Tested Capacity, as existing at the end of the Initial Performance Retest Period; b) the Capacity Charge shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Plant as a result of that derating (taking into account the Contracted Capacity of the Unit); c) the Developer shall not be permitted to declare the Available Capacity of the Unit or if the Power Plant has been commissioned, the Power Plant at a level greater than its Tested Capacity and d) the Availability Factor of the derated Unit and the Power Plant shall be calculated by reference to the reduced Contracted Capacity;

(i) in each case with effect from the Unit’s (or the Power Plant’s, as relevant) Commissioned Date and the Procurer shall have the right to claim from the Developer any excess Tariff Payments that they may have made to the Developer. (ii) The consequences mentioned in sub-Article (i) above shall apply for a period of one (1) year from the date of the Unit’s or Power Plant’s Commissioned Date, as the case may be. If at the end of such one (1) year period, the Tested Capacity is less than the

Contracted Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 shall apply but this time with respect to the Tested Capacity existing at the end of such one-year period.

6.3.5 If a Unit’s or Power Plant’s Tested Capacity at the end of the Initial Performance Retest Period is found to be more than it’s Contracted Capacity, the Contracted Capacity shall be deemed to be the Unit’s or the Power Plant’s Tested Capacity for all purposes. Provided further that the Tested Capacity in excess of the Contracted Capacity, shall be ignored for all purposes of this Agreement.

**6.4 Costs Incurred**

the developer expressly agrees that all costs incurred by him in synchronising, connecting, commissioning and/or testing or retesting a unit or the power plant as a whole shall be solely and completely to his account and the procurer’s or Procurer’ liability shall not exceed the variable charges for such power output, as set out in schedule 6.

**7 Article 7 : Operation and Maintenance**

**7.1 Operating Procedures**

7.1.1 Not later than one hundred and twenty (120) days before the Scheduled Synchronization Date of the Project, the Procurer shall provide the Developer with a draft Operating Procedure dealing with all operation interfaces between Procurer and the Developer including, but not limited to,

a) the method of day-to-day communication between the Procurer and the Developer;

b) safety co-ordination;

c) clearances and switching practices;

d) scheduling and dispatch;

e) capacity and energy reporting;

f) operating log;

g) incident reporting;

h) testing of the Interconnection and Transmission Facilities;

i) testing (including Performance Tests) and monitoring of the Units;

j) Reactive Power support;

7.1.2 The Operating Procedures shall be consistent with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with ‘applicable law’ being the first :-

(a) Applicable law;

(b) the Grid Code;

(c) the terms and conditions of this Agreement;

(d) the Functional Specifications;

(e) the Technical Specifications; and

(f) Prudent Utility Practices.

7.1.3 Within sixty (60) days after receiving the letter, the Developer shall notify the Procurer in writing of its objections, if any, to the letter received and the deletions, amendments or additions that it requires and both the Parties shall discuss on the draft Operating Procedures and will reach the agreement on the Operating Procedures and suggested deletions, amendments & additions. If the Parties have failed to reach agreement within twenty (20) days after the Procurer’ receipt of the Developer’s notice/letter pursuant to this Article, the matter shall be resolved in accordance with Article 17.

7.1.4 Any Party may from time to time propose amendments to the Operating Procedures in any manner consistent with Article 7.1.2 by giving written notice to the other Party stating the reasons for the proposed amendment. The process in Article 7.1.3 shall apply if one Party objects within sixty (60) days to any proposed amendment.

7.1.5 The Operating Procedures shall take effect on the date agreed by the Parties or, if there is no objection to the proposed Operating Procedures, the expiry of the sixty (60) day objection period or such later date as shall be set out in the draft Operating Procedures which have been circulated.

7.1.6 The Parties shall comply with the Operating Procedures.

**7.2 Operation and Maintenance of the Power Plant**

7.2.1 The Developer shall be responsible at its own expense for ensuring that the Power Plant is operated & maintained in accordance with all the legal requirements, including the terms of all Consents and Prudent Utility Practices so as to meet its obligations under this Agreement, including without limitation its obligations under Article 4.1, and so as not to have an adverse effect on the Grid System.

7.2.2 The Developer shall be responsible at its own expense for obtaining and keeping in force all Consents required for the operation of a Unit, the Power Plant and the Project in accordance with this Agreement throughout its Operating Period.

7.2.3 The Developer shall ensure that sufficiently competent and qualified personnel are always on hand at the Power Plant to enable the Unit to be operated twenty four (24) Hours a day, seven (7) days a week throughout the year, it being understood that this shall not create an obligation on the Procurer to absorb all the Electrical Output that is capable of being generated if the Units are run in such manner and shall also not affect the ability of the Procurer to Dispatch the Power Plant. In relation to employing personnel the Developer shall meet any applicable laws, rules, regulations and requirements in force from time to time in India.

**7.3 Inspections**

7.3.1 The Procurer shall have the right to designate, from time to time in a written notice to the Developer, up to five (5) of their representatives who shall be responsible for inspecting the Power Plant for the purpose of verifying the Developer’s compliance with this Article 7 and who shall have access to the Power Plant, in the case of each Procurer :- a) on no more than two (2) occasions in a Contract Year, upon giving not less than twenty four (24) hours notice of the inspection to the Developer; b) on occasions when the Developer has reported partial or full outage, to verify the other conditions reported by the Developer which in the reasonable opinion of the Procurer may affect the output of the Unit /Power Plant in the next twenty four (24) Hours, by giving one (1) Hour notice and c) at any other time for good cause, upon giving such notice as maybe reasonable in the circumstances; subject, in all cases, to their complying with all reasonable safety precautions and standards.

7.3.2 In the exercise of any of its right under Article 7.3.1, the Procurer shall ensure that their representatives do not knowingly interfere with the proper operation or maintenance of the Power Plant.

**7.4 Dispatch Procedures**

7.4.1 The Parties shall comply with the Dispatch Procedures, which should be mutually agreed among parties no later than 60 days before the Scheduled Commercial Operation Date of the unit. The Dispatch Procedures to be agreed to shall at all times be consistent with the Applicable Laws including Grid Code.

7.4.2 The Developer may at any time and each Procurer may, in respect of the Dispatch Procedures in so far as relevant to them, at any time, after the Commercial Operations Date propose revisions to the Dispatch Procedures by giving the relevant Procurer or Developer, as the case may be, written notice of the proposed changes and the reasons for the proposed changes.

7.4.3 Within thirty (30) days of receiving any proposed change to the Dispatch Procedures pursuant to Article 7.4.2, the Party receiving the notice shall have thirty (30) days within which to notify the Party suggesting such changes whether or not it agrees to the proposed changes in which event :- (a) if the change is agreed, the revised Dispatch Procedures shall become the Dispatch Procedures as between those the relevant Procurer and Developer for the purposes of this Agreement upon the date specified in the proposal or if no date is so specified upon the expiry of the thirty (30) day notice period; (b) if the change is not agreed, the Party receiving the notice shall provide a written list of its objections to such revised Dispatch Procedures and Article 7.4.4 shall apply and (c) if the Party receiving the notice fails to respond within such thirty (30) day period it will be deemed to have agreed to the prop.

7.4.4 If a Party objects to any revised Dispatch Procedures proposed under Article 7.4.2, both the receiving Party and the issuing Party shall consider the objections in good faith with a view to reaching agreement on how to revise the Dispatch Procedures.

7.4.5 If the relevant Procurer and the Developer reach agreement on the revised Dispatch Procedures within twenty (20) days after the list of objections was provided pursuant to Article 7.4.3, they shall become the Dispatch Procedures for the purposes of this Agreement with effect from the date specified in the agreement. If they fail to reach agreement within that period the matter shall be resolved in accordance with Article 17.

7.4.6 Notwithstanding the foregoing provisions of this Article 7.4, no change shall be made to the Dispatch Procedures if the revised Dispatch Procedures would be inconsistent or incompatible with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with ‘applicable law’ being the first :-

a) Applicable law;

b) the Grid Code;

c) the terms and conditions of this Agreement;

d) the Functional Specifications;

e) the Technical Specifications and

f) Prudent Utility Practices.

**7.5 Scheduled Outages**

7.5.1 Not later than November 30 in each year (or by such other date as the Procurer may jointly from time to time prescribe for the submission of outage plans from generating companies connected to the Grid System), the Developer shall submit to the Procurer in writing its firm proposals for the Scheduled Outages to be taken in the next Contract Year and its provisional proposals for Scheduled Outages in each of the next two (2) succeeding Contract Years.

7.5.2 Unless otherwise requested to do so by the Procurer, the Developer shall always plan to take Scheduled Outages only during the months of monsoon. Further, without the prior consent of the Procurer, the Developer shall not take Scheduled Outages for both the Units of the Power Plant, at the same time:

Provided that, after giving a notice of not less than two (2) years, the Procurer shall have the right to jointly replace the above monsoon season with any other months.

7.5.3 Within two (2) months after receiving the Developer’s proposals, the Procurer shall notify the Developer in writing whether its proposed Scheduled Outages for the forthcoming one (1) Contract Year are acceptable and, if not, and after discussing the matter with the Developer, they shall indicate the periods that would be acceptable, which shall be :- (a) of the same duration as the periods requested by the Developer; (b) within the time limits required by any legal requirement relating to routine maintenance; (c) within the time limits required or recommended by the manufacturer or supplier of the plant which is to undergo maintenance and (d) at the same point in time.

7.5.4 The Developer may only object to a Scheduled Outage proposed by the Procurer on the grounds that it would be inconsistent with the requirements of Article 7.5.3. Unless the Developer objects in writing within twenty (20) days after receiving the proposal, it shall be deemed to have a proposed Scheduled Outage within that period and the Parties cannot reach agreement within ten (10) days after the Developer’s objection was sent to the Procurer, the matter shall be resolved in accordance with Article 17.

7.5.5 The Scheduled Outages accepted by the Procurer or agreed to by the Developer pursuant to Article 7.5.4 shall be confirmed to the extent that they relate to the next Contract Year and shall be provisional to the extent that they relate to subsequent Contract Years. Provisionally confirmed Scheduled Outages, may be changed, by any Party for good cause.

7.5.6 In an Emergency, a Procurer may require the Developer to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time and shall compensate the Developer for all additional costs which it reasonably incurs in rescheduling the Scheduled Outage, including damages payable or liability incurred in respect of the emergency rescheduling of a confirmed Scheduled Outage.

7.5.7 The Procurer shall also jointly give notice to the Developer of their maintenance program for the Interconnection and Transmission Facilities and shall use their reasonable endeavours to coordinate such maintenance with the Scheduled Outages approved pursuant to this Article 7.5 so as to minimise any disruption to the operation of the Project.

7.5.8 The Developer shall not declare the Unit available in any Settlement Period when it was scheduled to be undergoing a Scheduled Outage except to the extent that the availability of the Interconnection and Transmission Facilities is sufficient to allow the Procurer to utilise the full amount of the Power Plant’s Declared Capacity and the Procurer, in their sole discretion, choose to accept the Electrical Output made available during such Settlement Period.

**7.6 Maintenance Outages**

7.6.1 Whenever the Developer needs a Maintenance Outage it shall advise the Procurer in accordance with the Operating Procedures of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the Developer’s opinion the work should begin consistent with Prudent Utility Practices (which shall not be earlier than forty eight (48) Hours after the time when the Developer advised the Procurer of the need for the Maintenance Outage).

7.6.2 After discussing the matter with the Developer, the Procurer shall advise the Developer regarding when the requested Maintenance Outage is scheduled to begin (which shall be not later than the latest time indicated by the Developer). The Developer shall use its reasonable endeavours consistent with Prudent Utilities Practices to take the relevant Unit out of service at the scheduled time.

7.6.3 The Procurer may require the Developer to schedule a Maintenance Outage in accordance with Articles 7.6.1 and 7.6.2 to remedy any impairment of a Unit’s ability to meet its Contracted Operating Characteristics.

**7.7 Coordinating Committee**

7.7.1 No later than one hundred and twenty days (120) days prior to the Scheduled Synchronisation Date of the Unit, the Parties shall establish a committee (the “Co-ordinating Committee”) which shall be responsible for the co-ordination of the commissioning and operation of the Interconnection and Transmission Facilities & the Power Plant and their coordination with the Grid System. The Co-ordinating Committee shall comprise four (4) members of which two (2) shall be appointed by the Developer (one or more of which shall be the employee of the Operator), two (2) of which shall be appointed by the Procurer.

Without limitation to the generality of Article 7.7.1, the powers and duties of the representatives of the Coordinating Committee shall include : a) the coordination of the respective programmes of the Parties for the construction & commissioning of the Interconnection & Transmission Facilities and each of the Units & agreement where necessary upon the respective commissioning procedures; b) discussion of the steps to be taken on the occurrence of a Force Majeure Event or a shutdown or reduction in capacity for any other reason, either of the Interconnection and Transmission Facilities or the Power Plant; c) the coordination of the maintenance programme of the Interconnection & Transmission Facilities and the Power Plant whether scheduled or otherwise; d) the coordination of forecasts or requirements from the Power Plant; e) consultation on the insurance programme to be undertaken by the Developer for the purposes of this Agreement including in respect of the Insurances; f) the development of any revisions to the Dispatch Procedures; g) the development of the Operating Procedures; h) safety matters affecting the Parties or their contractors; i) clarification of plans for an Emergency developed by the Procurer including for recovery from a local or widespread electrical blackout or voltage reduction in order to effect load curtailment; j) the review and revision of protection schemes and devices and k) any other mutually agreed matters affecting the operation of the Interconnection and Transmission Facilities or the Power Plant.

7.7.2 The Coordinating Committee may agree upon procedures for the holding of meetings, the recording of meetings and the appointment of sub-committees:

7.7.3 Provided that, Procurer shall nominate the Chairman of the Coordinating Committee on an annual basis and the quorum for each meeting shall include at least one (1) person appointed by each Party. All decisions at any meeting of the Coordinating Committee shall be made with the unanimous agreement of all persons present at such Meeting;

7.7.4 Provided that, the Coordinating Committee or any Party may refer the decision to the chief executives of the Parties for further consideration & resolution. Any matters not resolved by such unanimous agreement or resolution between each Party’s chief executive shall be determined in accordance with Article 17.

7.7.5 The Coordinating Committee shall have the option, by mutual agreement between the members of the Co-ordinating Committee, to co-opt any other member(s) from relevant bodies such as Lenders (or any agent, trustee or representative acting on their behalf).

7.7.6 Except to the extent that any decision is inconsistent with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with ‘applicable law’ being the first:

(a) applicable law;

(b) the Grid Code;

(c) the terms and conditions of this Agreement;

(d) the Functional Specifications;

(e) the Technical Specifications; and

(f) Prudent Utility Practices.

The Parties shall comply with the unanimous decisions of the Coordinating Committee in relation to matters within its competence or those that may referred to it.

**7.8 Maintenance of Records**

7.8.1 Each Party shall keep complete and accurate records and all data required by each of them for the purposes of proper administration of this Agreement including, without limitation, an accurate and up to date operating log at the Power Plant with records of :- (a) meter records and other records needed to reflect real & reactive power production for each Settlement Period and Electrical Output of the Power Plant on a continuous real time basis; (b) records of Available Capacity and Declared Capacity; (c) the results of any tests; (d) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages (and any other restrictions or limitations affecting Available Capacity); (e) any unusual conditions found during inspections and (f) records or primary and secondary fuel receipts, consumption and stocks.

7.8.2 All records maintained pursuant to this Article 7.8.1 shall be maintained for minimum of sixty (60) months after the creation of such records or data. Provided that, the Parties shall not dispose of or destroy any such records after such sixty (60) month period without thirty (30) days’ prior written notice to the ther parties or at any time during the continuation of any dispute in respect of any matter to which such records relate.

7.8.3 Every Party shall have the right, upon reasonable prior notice, to examine the records & data of the other Parties relating to this Agreement or the operation and maintenance of the Power Plant at any time during normal office hours.

**8 Article 8: Capacity, Availability and Dispatch**

**8.1 Repeat Performance Tests**

8.1.1 The Procurer may from time to time during the Operating Period, but at least once every Year, require the Developer to demonstrate the Power Plant’s Tested Capacity by carrying out a further Performance Test (a “Repeat Performance Test”) in accordance with this Article 8.1. A Repeat Performance Test shall be carried out in accordance with Article 1.2 of Schedule 4, save that the test shall last twenty-four (24) Hours instead of seventy two (72) Hours.

8.1.2 The Procurer shall give the Developer not less than seven (7) days’ advance joint written notice of the time when a Repeat Performance Test on the Power Plant (if the Power Plant has been commissioned) is to begin. A Repeat Performance Test may not be scheduled for any period when the Plant to be tested is due to undergo a Scheduled Outage.

8.1.3 The Procurer shall jointly appoint an engineer (the **“Monitoring Engineer”**) to monitor the Repeat Performance Test and to certify the results in accordance with Article 8.2. The Monitoring Engineer shall be the Independent Engineer.

8.1.4 If the Developer wishes to take the Power Plant (if the Power Plant has been commissioned), out of service for repair before it undertakes a Repeat Performance Test, it shall inform the Procurer in writing before its scheduled start of the repairs to be carried out on the Power Plant and the estimated time required to complete them. The Procurer shall then schedule a Maintenance Outage in accordance with Article 7.6 to enable the Developer to carry out those repairs and the Procurer requiring the Repeat Performance Test shall defer the Repeat Performance Test until the Power Plant as a whole (if the Power Plant has been commissioned), is returned to service following that Maintenance Outage.

8.1.5 The Procurer requiring the Repeat Performance Test, may, for reasonable cause, defer any Repeat Performance Test for up to fifteen (15) days from the date originally notified to the Developer in accordance with Article 8.1.2 if the Procurer notify the Developer in writing at least one (1) day before the Repeat Performance Test starts of the reason for the deferral and when the test is to be rescheduled. Provided that, such deferment, at the request of the Procurer, shall be permitted only once in respect of each of the Repeat Performance Tests.

8.1.6 The Developer, the Procurer and the Monitoring Engineer shall each have the right to designate qualified and authorised representatives to monitor the Repeat Performance Test.

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

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

**8.2 Derating**

8.2.1 A Repeat Performance Test shall be concluded when the Procurer receive the Final Test Certificate of the Monitoring Engineer stating that the Repeat Performance Test has been carried out in accordance with Schedule 4 and certified (if the Power Plant has been commissioned), the Power Plant’s current Tested Capacity as demonstrated by the results of the Repeat Performance Test.

8.2.2 (i) If a Unit’s or (if the Power Plant has been commissioned), the Power Plant’s, current Tested Capacity as established by the Repeat Performance test and the Final Test Certificate issued by the Monitoring Engineer, is less than its Contracted Capacity, the Developer shall not be permitted to declare the Available Capacity of (if the Power Plant has been commissioned) the Power Plant at a level greater than its Tested Capacity and any of the Procurer may elect to require the Power Plant (if the Power Plant has been commissioned) to be derated for a minimum period of one (1) year or till such time as a Performance Test shows an increase in Tested Capacity, whichever is later, in which case :- (a) the (if the Power Plant has been commissioned) Power Plant’s Contracted Capacity shall be reduced to its Tested Capacity; (b) the Capital Charge shall be reduced in proportion to the reduction in the Contacted Capacity of the Power Plant as a result of that derating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned) and (c) the Availability Factor of the derated Unit and the Power Plant shall be calculated by reference to the reduced Contracted Capacity; in each case with effect from date on which the Procurer first notified the Developer of their intention to carry out a Repeat Performance Test on (if the Power Plant has been commissioned) the Power Plant.

(ii) The consequences mentioned in sub-Article (i) above shall apply for a period of one (1) year from the date on which the (if the Power Plant has been commissioned) Power Plant’s Tested Capacity is determined to be less than its Contracted Capacity. If at the end of such one (1) year period, the Tested Capacity is less than the Contracted Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 (i) shall apply but this time with respect to the Tested Capacity existing at the end of such one-year period.

8.2.3 If the Monitoring Engineer certifies that it is unable to give a Final Test Certificate because events or circumstances beyond the Developer’s reasonable control prevented the Repeat Performance Test from being carried out in accordance with Schedule 4, the Procurer shall reschedule a Repeat Performance Test as soon as reasonably practicable.

8.2.4 If the (if the Power Plant has been commissioned) Power Plant’s, Tested Capacity is found to be more than it’s Contracted Capacity, the Contract Capacity shall be deemed to be the Tested Capacity. Further, the excess Tested Capacity shall be ignored for all purposes of this Agreement.

**8.3 Availability**

8.3.1 The Developer shall at all times keep the Procurer informed of the Available Capacity of the (if the Power Plant has been commissioned) Power Plant as a whole and any impairment of its Contracted Operating Characteristics in accordance with Schedule 5.

8.3.2 The Developer shall calculate the Availability Factor the (if the Power Plant has been commissioned) Power Plant as a whole, in each Settlement Period Category monthly in accordance with Schedule 5 and shall notify the Procurer in writing of the results as soon as practicable but in any event within three (3) business days after the end of the relevant month.

8.3.3 The Developer shall calculate monthly Availability Factors using the available written data at the time the calculations are finalised, notwithstanding that some of the data may be provisional (because of outstanding disputes, pending Interim or Post Event Notices or otherwise). The calculations shall be updated up to the latest date by which the Procurer may notify the Developer of any errors in the Monthly Tariff Invoice for the relevant month. Implications of the provisional data, once finalised and any subsequent changes in data shall be settled by the subsequent Monthly Invoice or through a Supplementary Invoice which is calculated pursuant to Schedule 6.

**8.4 Dispatch**

The Developer shall comply with the Procurer Dispatch Instructions that are issued in accordance with the Dispatch Procedure agreed, as mentioned in Article 7.4. The Dispatch Instruction shall be in accordance with the relevant Grid Code and are as per the applicable law, including the Electricity Law. Provided such dispatch instructions, risk seriously damaging any Unit or other plant or equipment at the Power Plant or would pose a serious danger to the Developer’s staff. Provided Dispatch Instructions issued by the Procurer shall not exceed the corresponding allocated capacity of the Procurer.

**9 Article 9 : Metering and Energy Accounting**

**9.1 Installation of Meters**

9.1.1 The Developer shall procure and install the Metering System in accordance with this Article 9 and Schedule 9 :- Provided that, the Check Meters shall be installed wherever required as per rule/norm.

9.1.2 Following installation, the Metering System shall be the property of the Procurer and the Procurer shall be responsible for the cost of its maintenance, replacement and calibration.

9.1.3 The Developer shall not commence testing or commissioning the Unit before the Interconnection Meter, the Import Meter and the associated Developer Meter & Check Meters have been installed.

**9.2 Inspection and Testing of Meters**

9.2.1 The Procurer shall inspect and if necessary, recalibrate the Metering System on a regular basis and but in any event, at least once every three (3) months.

9.2.2 Each meter comprising the Metering System shall be sealed and shall not be opened, tested or calibrated except in the presence of representatives of both the Parties.

**9.3 Developer Capacity, Electrical Output and Imported Energy**

9.3.1 The Developer Capacity generated by the Unit shall, subject to Articles 9.4 and 9.5, be measured on the basis of meter readings from its Developer Meter.

9.3.2 The Electrical Output generated by the Power Plant and delivered by the Developer to the Procurer at the Interconnection Point shall, subject to Articles 9.4 and 9.5, be measured on the basis of meter readings from the Interconnection Meter.

**9.4 Inaccuracy of Meters**

9.4.1 In the event that any Main Meter fails to register or upon being tested, is found not to be accurate within ± 0.2%, the Developer Capacity, Electrical Output or imported energy, as the case may be, shall for the period referred to in Article 9.4.3, be measured on the basis of the value registered by the corresponding Check Meter.

9.4.2 In the event that both a Main Meter and the corresponding Check Meter both fail to register or upon being tested, be found not to be accurate within ± 0.2%, Developer Capacity, Electrical Output or imported energy, as the case may be, shall for the period referred to in Article 9.4.3, be adjusted by immediately restoring & recalibrating the Main Meter and the corresponding Check Meter & the correction applied to the consumption registered by the Main Meter.

9.4.3 The period referred to in Articles 9.4. 1 and 9.4.2 above is the actual period during which inaccurate measurements were made if such period can be determined or, if not readily determinable, the shorter of :- (a) the period since the immediately preceding test of the relevant Main Meter or (b) one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

**9.5 Meter Reading**

**9.5.1 Daily Meter Output**

Meter output of the Main Meters and Check Meters installed at the Delivery Point (i.e. at the DPA’s Bus at its Switchyard) shall be taken as at 24:00 Hours on each day and the data (along with soft copy thereof by courier and / or electronic mail) on total Energy Output from 00:00 Hours to 24:00 Hours of the relevant day, shall be furnished by the Developer to Procurer by fax or any other communication mode mutually decided, by 12:00 Hours on the following day.

**9.5.2 Weekly Meter Output**

Weekly Meter output of the Main Meters and Check Meters installed at the Delivery Point shall be taken by the Developer at 24:00 Hours on each Sunday, which may be witnessed by CTU/STU, if applicable and the Procurer and such Meter output shall be delivered by the Developer to Procurer on the immediately following Monday, accompanied by the data (along with soft copy thereof by electronic mail). Provided that such Meter output and other data shall be subject to change in accordance with the Regional Energy Account.

**9.5.3 Weekly Meter Output and other Data**

On the Monday of each Week, along with the Weekly Meter output pursuant to Article 9.5.2, the Developer shall furnish the following data to Procurer for the previous Week:

a. the total Energy Output

1. during the relevant Week and

2. up to the last day of the relevant Week commencing from the first (1st ) day of the Contract Year,

b. the details of the capacity reduction attributable to :-

1. Undeclared Capacity Failure and the Settlement Periods in which such Undeclared Capacity Failure has occurred;

2. Monitored Capacity failure and the Settlement Period in which such Monitored Capacity Failure occurred and c. supporting calculation for items (b) above.

**9.5.4 Data for Monthly Billing by the Developer**

On or before the second (2nd) day of each Month, the Developer shall furnish to Procurer, the following data (along with soft copy thereof by courier and/or electronic mail) along with the Monthly Bill for Power Output and the Energy Output delivered by the Developer at the Delivery Point during the previous Month : - i) the total Energy Output during the relevant Month, and up to the last day of the relevant Month, commencing from the first (1st) day of the Contract Year in the format as will be mutually agreed; ii) details of the capacity reduction attributable to :- a) Monitored Capacity Failure and the Settlement Period in which such Monitored Capacity Failure has occurred during the relevant month; iii) the Developer shall submit relevant documents and detailed calculation in support of the claim of

a) Energy output;

b) capacity reduction for Monitored Capacity Failure and

c) Calculation of Available Capacity Hours, Excess Energy Output and Energy output less than the Normative Availability.

9.5.4.1 The Developer and Procurer shall each maintain, in respect of the Project

a) all meter records;

b) all data collected for the purpose of Article 9.5.4 above;

c) records of the Annual Generation Schedule;

d) records of Scheduled Outages, Maintenance Outages, Forced Outages and any other restrictions or limitations affecting capacity or any capacity test;

e) records of daily supply position of Fuel and

f) any other records in relation to the Energy Output and the Power Output. Such records may be inspected by the other Party during normal business hours upon reasonable written notice of the same (including at any time during the pendency of any breach under this Agreement).

9.5.4.2 All records, documents and data mentioned in Article 9.5.4.1 shall be maintained for a minimum of sixty (60) months after creation of such records, documents or data.

**9.6 Energy Accounting**

**9.6.1 Regional Energy Account**

The billing will be done based on the joint readings taken by the Developer and the Procurer or by the Developer or the STU.

**9.6.2 RLDC/SLDC Charges**

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

**10 Article 10 : Insurances**

**10.1 Insurance during the Construction Period**

The Developer shall effect and maintain or cause to be effected and maintained during the Construction Period Insurances against such risks, with such deductibles and with such endorsements & co-insured(s) as are to be specified in Article 1 of Schedule 12 by the Parties, such Schedule to be filled up and completed prior to Financial Close, together with :- (a) such Insurances as may be required under :- (i) any of the Financing Agreements and (ii) the laws of India and (b) such other Insurances Prudent Utility Practices would ordinarily merit maintenance of.

**10.2 Insurance during the Operating Period**

Not later than three (3) months prior to the Scheduled Synchronisation Date of the Unit, the Developer shall effect and maintain during the Operating Period Insurances against such risks, with such deductibles and with such endorsements and co-insured(s) as are to be specified in Article 2 of Schedule 12, which Schedule shall be filled up and completed prior to the Financial Close, together with :- (a) such Insurances as may be required:

(i) under any of the Financing Agreements; and

(ii) the laws of India; and

(b) such Insurances Prudent Utility Practices would ordinarily merit maintenance of.

**10.3 Excuse in Failing to Insure**

10.3.1 The Developer shall not be in breach of its obligations to procure an Insurance under Articles 10.1 and 10.2 to the extent and only for the period that:

(a) the particular insurance is not available to it in the international and Indian insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the Developer or the Developer’s Contractors and

(b) the Developer effects & maintains for the period referred to in Article 10.3.1(a) complimentary Insurance cover having regard to the capacity of the international and Indian insurance markets.

10.3.2 In the event of any Dispute between the Developer and the Procurer as to the capacity of any Insurance or reinsurance markets for the purposes of this Article 10.3 the matter resolved pursuant to the provisions of Article 17.

**10.4 No change to Insurances**

The Developer may only effect the Insurances covering different risks, deductibles, endorsements, co-insured(s) or other terms different to those referred to in this Article 10 with the prior written consent of the each of the Procurer which consent shall not be unreasonably withheld or delayed.

**10.5 Non Payment of Premiums**

The Developer shall ensure that each policy of Insurance contains an endorsement providing that it may not be cancelled (except for non-payment of premiums) or reduced without at least thirty (30) days prior written notice being given by the insurer to, among others, the Procurer :- Provided that, each such endorsement shall provide :- a) that the insurer may not cancel the coverage for non-payment of premium without first giving both the Procurer ten (10) days written notice that the Developer has failed to make timely payment of the premium (including details of the amount owing) and b) that the Procurer shall after having received the notice referred to in Article (a) above have the right to pay such premium directly to the relevant insurer, without prejudice to any other rights it may have as against the Developer under the terms of this Agreement.

**10.6 Evidence of Insurance Cover**

10.6.1 The Developer shall furnish to both the Procurer copies of certificates and policies of the Insurances as soon as they are affected and renewed by or on behalf of the Developer and from time to time (and at the request of the Procurer) shall furnish evidence to the Procurer that all relevant premiums have been paid as soon as they have been so paid, and that the relevant policy or policies remain in existence.

10.6.2 Failure by the Developer to obtain the insurance coverage or certificates of insurance required pursuant to this Article 10 shall not relieve the Developer of its obligations under this Article 10 or in any way relieve or limit the Developer’s obligations or liabilities under any other provision of this Agreement.

10.6.3 If the Developer shall fail to effect and/or maintain any of the Insurances, the Procurer may effect such Insurances during the period in which the Developer does not, at the full cost and expense of the Developer, due and payable within thirty (30) days of a notice, from the Procurer, to the Developer.

**10.7 Preference for Indian Insurers**

10.7.1 The Insurances shall be effected with Indian insurance companies to the extent that the Insurances can be effected with them in accordance with this Agreement.

10.7.2 In the event of any Dispute between the Developer and any one of the Procurer as to whether any one of the Insurances are capable of being effected with Indian insurance companies, for the purposes of this Article 10.7, the matter shall be referred to resolve Dispute, pursuant to the provisions of Article 17.

**10.8 Application of Insurance Proceeds**

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

10.8.2 If a Force Majeure Event or a similar natural event or circumstance renders the Power Plant no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the portion of the proceeds of such Insurance available to the Procurer (after payment to the Lenders of the Total Debt Amount) shall be as determined by an Expert mutually agreed by the parties.

10.8.3 Any Dispute or difference between the Parties as to whether the Power Plant is no longer economically and technically viable due to a Force Majeure Event or a similar natural event or circumstance or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Article 17.

10.8.4 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense for which compensation is due to the Developer under any Insurance shall not be charged to or payable by the Procurer.

11 **Article 11 : Billing and Payment**

**11.1 General**

From the Commercial Operation Date (COD) of the Project, Procurer shall pay the Developer the Monthly Tariff Payment, on or before the Due date, comprising of quoted tariff by the Developer for every Contract Year, determined in accordance with this Article 11 and Schedule 6. All Tariff Payments by Procurer shall be in Indian Rupees.

**11.2 Delivery and content of Monthly Bills**

The Developer shall issue to Procurer a signed Monthly Bill for the Energy Output supplied by the Developer to Procurer for the immediately preceding Month. Provided that :- i) if the Project is Commissioned during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month or ii) if the Project is Commissioned after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the COD of the Project until the last day of the immediately following Month. Provided further that if a Monthly Bill is received before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) day of such Month and if such second (2nd) day is not a Business Day, the immediately succeeding Business Day.

Each Monthly Bill shall include :-

i. Meter output for the relevant Month referred to in Article 9.5.4;

ii. the Developer's computation of scheduled energy and Availability in accordance with Schedule 6;

iii. the Developer's computation of various components Monthly Tariff Payment in accordance with Schedule 6;

iv. supporting data, documents and calculations in accordance with this Agreement.

**11.3 Payment of Monthly Bills**

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

11.3.2 All such payments required to be made under this Agreement shall only include any deduction or set off for :- i) deductions required by the Law and ii) adjustments in Tariff required by the terms of this Agreement but not reflected in the Monthly Bill. Iii) any debit note raised by Procurer in relation to payments made under this Agreement.

11.3.3 The Developer shall open a bank account at Gandhidham (the "Designated Account") for all Tariff Payments to be made by Procurer to the Developer, and notify Procurer of the details of such account at least thirty (30) days before the dispatch of the first Monthly Bill to Procurer. Procurer shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Developer of such instructions on the same day. The date of such instructions shall be deemed to be the date of payment by Procurer under this Agreement. Procurer shall also designate a bank account at [Identified Place] for payments to be made by the Developer (including Supplementary Bills) to Procurer and notify the Developer of the details of such account by the COD of the Project.

11.3.4 In the event of delay in payment of a Monthly Bill by Procurer beyond the period of one month from the date of billing, a Payment Surcharge shall be payable by Procurer to the Developer at the rate of two (2) percent in excess of the SBIPLR for the time being, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) on per annum basis, for each day of the delay.

11.3.5 For payment of monthly bills within 7 days of date of billing, a rebate of 2% shall be allowed. If the payments are made after 7 days but within a period of one month of presentation of bills by the Developer, a rebate of 1% shall be allowed.

**11.4 Payment Security Mechanism**

These rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the Bid Documents.

**11.4.1 Letter of Credit** : The Procurer shall provide Payment Security Mechanism to the Developer in respect of payment of Monthly Bills, in the form of a monthly revolving and irrevocable Letter of Credit, opened and maintained by Procurer, which may be drawn upon by the Developer in accordance with Articles 11.4.1.1 through 11.4.1.5 and 11.4.1.1 Not later than one (1) Month prior to the COD of the Project, Procurer shall through a scheduled bank at Gandhidham open a monthly revolving and irrevocable Letter of Credit in favour of the Developer, to be made operative from a date prior to the Due Date of the first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to :- i) for the first Contract Year, equal to the estimated average monthly billing based on Normative Availability; ii) for each subsequent Contract Year, equal to the one point two (1.2) times the average of the Monthly Tariff Payments of the previous Contract Year. Provided that the Developer shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and shall not make more than one drawl in a Month.

11.4.1.2 Procurer shall cause the scheduled bank issuing the irrevocable Letter of Credit to intimate the Developer regarding establishing of such irrevocable Letter of Credit to the Developer in writing.

11.4.1.3 If at any time, such irrevocable Letter of Credit amount falls short of the amount specified in Article 11.4.1.1, Procurer shall restore such shortfall within seven (7) days.

11.4.1.4 If Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 11.6.7, the Developer may draw upon the Letter of Credit for an amount equal to such Monthly Bill or part thereof plus Payment Surcharge, if applicable in accordance with Article 11.3.4 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents :- i) a copy of the Monthly Bill which has remained unpaid by Procurer; ii) a certificate from the Developer to the effect that the bill at item (i) above, or specified part thereof, has remained unpaid beyond the Due Date and iii) calculations of applicable Payment Surcharge, if any. For the avoidance of doubt it is clarified that the Developer shall not be entitled to drawdown on the Letter of Credit for any failure of Procurer to pay a Supplementary Bill.

11.4.1.5 Procurer shall ensure that the Letter of Credit shall be renewed not later than 30 days prior to its expiry.

11.4.1.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Developer.

11.4.1.7 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by Procurer and the Developer.

11.4.2 Collateral Arrangement

11.4.2.1 As further support for Procurer’s obligations, the Procurer and the Developer, together with the Scheduled Bank as Escrow Agent, shall at least 30 days before the commercial operation date, enter into an Escrow and Disbursement Agreement (referred as “Escrow Agreement”) for the establishment and operation of the Escrow Account in favour of the Developer, into which the revenues from the customers of Procurer in particular geographic areas specified therein, shall be deposited. The parties shall contemporaneously with the execution of the Escrow Agreement enter into a Security and Hypothecation Agreement (referred as “Security Agreement”), whereby Procurer shall hypothecate to the Developer the amounts deposited in the Escrow Account and the receivables. The Escrow Agreement and the Security Agreement are collectively referred to as the “Collateral Arrangement”. If Procurer fails to make any payment under Article 11.3 and the Letter of Credit as mentioned in Article 11.4.1 is not operational or is not having sufficient amount to pay for the pending payments of the Developer, the Developer can draw upon the Collateral Arrangement in accordance with the terms thereof.

**11.5 Third Party Sales on default**

11.5.1 If the Procurer is unable to implement the Payment Security Mechanism specified in Article 11.4, for any reason whatsoever, the Developer shall have the right to offer such portion of the Available Capacity and Electricity produced earmarked for the defaulting Procurer to any other Procurer (“Default Electricity”), after giving 60 days notice to the defaulting Procurer. The new Procurer has the right to elect to receive the whole or any part of the Default Electricity referred to hereinabove, either himself or by nominating a third party, who shall, on such nomination, be entitled to receive the same.

11.5.2 If the new Procurer does not make the election to receive the Default Electricity, either himself or by nominating a third party within thirty (30) days of it being so offered or he expressly waives his first right to receive the same and/or to nominate a third party to receive the same, the Developer shall have the right (but not the obligation) to make available and sell 25% of the Default Electricity, without loosing claim on the Capacity Charges due from the Defaulting Procurer, to third party, namely :- (a) any consumer, subject to applicable law and (b) any licensee under the Electricity Act, 2003.

11.5.3 If the payment security mechanism is not fully restored within 60 days of the event of the payment default, the Developer can sell/ use the full Available Capacity to the other parties without loosing claim on the Capacity Charges due from the Procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the defaulting Procurer. In case the surplus over energy charges is higher than the capacity charge liability of the defaulting Procurer, such excess over the capacity charge liability shall be retained by the Developer.

11.5.4 If the new Procurer makes the election aforementioned in Article 11.5.1, but only in respect of a part of the Default Electricity, choosing to receive such part of the Default Electricity either himself or by nominating a third party within one (1) day of it being so offered, the Developer shall have the right (but not the obligation) to make available 25% of the entire remainder of the Default Electricity to third party. If the payment security mechanism is not fully restored within 60 days of the event of the payment default, the Developer can sell full Available Capacity to the other parties without loosing claim on the Capacity Charges due from the Procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the defaulting Procurer. In case the surplus over energy charges is higher than the capacity charge liability of the defaulting Procurer, such excess over the capacity charge liability shall be retained by the Developer.

11.5.5 Sales to any person or Party other than the defaulting Procurer under Article 11.5.2, 11.5.3 or 11.5.4 shall cease and regular supply of Electricity to the defaulting Procurer in accordance with all the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this period at the option of Developer :- (a) the day on which the defaulting Procurer pays the due payment to the Developer and renews the Letter of Credit as mentioned in Article 11.4.1 or (b) the date being “x” days from the date on which Notice referred to in Article 11.5.1 was served, where “x” days shall be calculated in accordance with **Schedule 2.**

**11.6 Disputed Bill**

11.6.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within ten (10) days of receiving it, such bill shall be taken as conclusive.

11.6.2 If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, that Party shall, within ten (10) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out :- i) the details of the disputed amount; ii) its estimate of what the correct amount should be and iii) all written material in support of its claim.

11.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 11.6.2, the invoicing Party shall revise such bill within fifteen (15) days of receiving such notice and make a refund to the disputing Party within fifteen (15) days of receiving such notice.

11.6.4 If the invoicing Party does not agree to the claim raised in the Bill dispute Notice issued pursuant to Article 11.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing :- i) reasons for its disagreement; ii) its estimate of what the correct amount should be and iii) all written material in support of its counter-claim.

11.6.5 Upon receipt of such notice of disagreement to the Bill Dispute Notice, authorized representative(s) of a director of the board of directors of each Party shall meet and make best endeavours to amicably resolve the dispute within thirty (30) days of receiving such notice of disagreement to the Bill Dispute Notice.

11.6.6 If the Parties do not amicably resolve the dispute within thirty (30) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 11.6.4, the matter shall be referred to Dispute Resolution in accordance with Article 17.

11.6.7 In case of Disputed Bills it shall be open to the aggrieved party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 17 and also for interim orders protecting its interest including for orders for interim payment pending Dispute Resolution and the parties shall be bound by the decision of the Appropriate Commission including in regard to interest or delayed payment surcharge, if any directed to be paid by the Appropriate Commission.

11.6.8 If a dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 11.6.5 or by Dispute Resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party within five (5) days of the dispute either being amicably resolved by the Parties pursuant to Article 11.6.5 or settled by Dispute Resolution Mechanism in accordance with Article 11.6.7 along with interest and /or delayed payment surcharge as may directed by the Appropriate Commission.

**11.7 Quarterly and Annual Reconciliation**

Both Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation at the end of each quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA (if applicable), Tariff Adjustment Payments, Tariff Rebate Payments, Tariff Surcharge Payments, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Parties shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Developer or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff Adjustment Payments for the relevant Contract Year and payment of such Supplementary Bill for the Tariff Adjustment Payments for the relevant Contract Year.

**11.8 Payment of Supplementary Bill**

11.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of :- i) Adjustments required by the Regional Energy Account (if applicable); ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 6 and iii) Change in Law as provided in Article 13 and such Bill shall be paid by the other Party.

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

11.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond one month from the date of billing, a Payment Surcharge shall be payable at the rate of interest equal to two (2) percent in excess of the SBIPLR for the time being. The Payment Surcharge shall be applicable on the outstanding amount of payment, calculated on a day-to-day basis on per annum basis for each day of delay and such Payment Surcharge shall be added to the amount of the Supplementary Bill and payment made accordingly.

**11.9 Payment for Start up Power and Auxiliary Load**

The Developer shall pay to Procurer or other entity directly for the power and energy consumed for start-up of the Project and sourced from such entity.

**12 Article 12 : Force Majeure**

**12.1 Definitions**

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

**12.2 Affected Party**

An affected Party means the Procurer or Developer whose performance has been affected by an event of Force Majeure. An event of Force Majeure affecting the CTU/STU or any other agent of Procurer or Developer, which has affected the transmission line beyond the delivery point, shall be deemed to be an event of Force Majeure affecting Procurer. Any event of Force Majeure affecting the performance of the Construction Contractor shall be deemed to be an event of Force Majeure affecting Developer only if the Force Majeure event is affecting :- a) late delivery of plant, machinery, equipment, materials, spare parts, water or consumables for the Project or b) a delay in the performance of any of the Developer’s Contractors. Similarly, any event of Force Majeure affecting the performance of the Construction Contractor of the Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure event is affecting a delay in the Performance of Procurer’s Contractors.

**12.3 Force Majeure**

A Force Majeure means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices :- i) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, Pandemic, tornado, war embargo or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years or ii) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or iii) any event or circumstance of a nature analogous to any of the above.

**12.4 Force Majeure Exclusions**

Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure :- a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project; b) Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Article 12.2; c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; d) Strikes or labour disturbance at the facilities of the Affected Party; e) Insufficiency of finances or funds or the agreement becoming onerous to perform and f) Non-performance caused by, or connected with, the Affected Party’s :- i) Negligent or intentional acts, errors or omissions; ii) Failure to comply with an Indian law or Indian Directive or iii) Breach of, or default under this Agreement or any Project Agreements or Government Agreements.

**12.5 Notification of Force Majeure Event**

12.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) 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 not reasonable 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 Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.

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

**12.6 Duty to perform and duty to mitigate**

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

**12.7 Available Relief for a Force Majeure Event**

Subject to this Article 12 :- (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event and (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to his obligations including but not limited to those specified under Article 4.5.

**13 Article 13 : Change in Law**

**13.1 Definitions**

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

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

i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulation, notice, circular, code, rule or direction by any Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. or ii) the imposition by any Governmental Instrumentality of any material condition in connection with the issuance, renewal, modification, revocation or non-renewal (other than for cause) of any Consent after the date of this Agreement.

That in either of the above cases result in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation or sale of electricity;

13.1.2 "Competent Court" means :- the Supreme Court of India or any High Court or any tribunal or any similar judicial or quasi-judicial body that has jurisdiction in relation to issues relating to the Project.

13.2 Tariff Adjustment Payment for Change in Law

13.2.1 If a Change in Law results in the Developer's revenue or costs directly attributable to the Project being decreased or increased by half a percent (0.5%) of the estimated revenue from the Electricity for the Contract Year (considering the quoted tariff and the energy corresponding to 80% of the Contracted capacity and for the purpose of above calculations the quoted tariff will be determined and non-escalable capacity charge indices notified by CERC at the time when it is being brought to the notice of other party as per Article 13.2.2) for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Developer shall be proportionately increased or decreased.

13.2.2 The Procurer or the Developer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect all increases or decreases till the date of such certificate.

13.2.3 The adjustment in Monthly Capacity Payment for reasons attributable to Article 13.2.1 shall be effective from :- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law; (ii) the date of order/judgment of the Competent Court, if the Change in Law is on account of a change in interpretation of Law; (iii) the date of impact resulting from the occurrence of Article 13.1.1(ii).

13.2.4 The payment for Changes in Law shall be through Supplementary bill as mentioned in Article 11.8.

**13.3 Appeal against Change in Law**

If the results stated in Article 13.1.1 are brought about by a change in the interpretation of Law by a court or tribunal that does not qualify as a Competent Court, the Developer agrees that it shall, at its own cost, appeal against such order/judgment up to the level of the appropriate Competent Court and the right of the Developer to recover the additional amount from the Procurer on account of Changes in Law shall, unless waived in writing by the Procurer, shall be dependent on the Developers taking adequate steps to contest the increase.

**14 Article 14 : Events of Default and Termination**

**14.1 Developer 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 Procurer of its obligations under this Agreement, shall constitute a Developer Event of Default :-

(i) the failure of any Unit to be Commissioned by the date falling twelve (12) months after its Scheduled Commercial Operation Date or (ii) after the commencement of construction of the Project, the abandonment by the Developer for a period of two (2) months or (iii) if at any time following a Unit being Commissioned and during its retest, such Unit’s Tested Capacity is less than 15% and such Tested Capacity remains below fifteen (15) percent even three (3) months thereafter or (iv) after Commercial Operation Date of the Project, the Developer fails to achieve Average Availability of 95%, for a period of twelve (12) consecutive months or (v) the Developer fails to make any payment required to be made to Procurer under this Agreement within three (3) Months after the Due Date of a valid invoice raised by the Procurer on the Developer or (vi) any misrepresentation or untrue statement made in the representation and warranties made by the Developer in Schedule 10 of this Agreement or (vii) if the Developer :- a) assigns or purports to assign its assets or rights in violation of this Agreement or b) transfers or novates any of its rights and/or obligations under this agreement, in violation of this Agreement or (viii) if the Developer becomes voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such

dissolution of the Developer 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 Developer and expressly assumes all obligations under this Agreement and is in a position to perform them or (ix) the Developer repudiates this Agreement or (x) except where due to the a Procurer’s failure to comply with its obligations, the Developer is in material breach of any of its obligations pursuant to this Agreement.

**14.2 Procurer Event of Default**

The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Developer of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting Procurer :- (i) the defaulting Procurer fails to pay any portion of a Monthly Bill or Supplementary Bill for a period of 90 days after the Due Date and the Developer is unable to recover the amount outstanding to the Developer through the Payment security Mechanism provided in Article 11.4 or (ii) the defaulting Procurer repudiates this Agreement or (iii) the defaulting Procurer is otherwise in material breach of this Agreement which leads to inability of the Developer to perform its obligations under this Agreement or (iv) any misrepresentation or untrue statement made in the representation and warranties made by the Procurer in Schedule 10 of this Agreement.

**14.3 Termination procedure for Developer Event of Default**

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

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

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

14.3.4 Within a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Developer Event of Default giving rise to the Consultation Period shall have been remedied, Procurer may terminate this Agreement by delivering a Procurer Termination Notice, whereupon this Agreement shall terminate on the date of such notice.

14.4 **Termination procedure for Procurer Events of Default**

14.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 14.2 (i) in making payment of the amount due to the Developer, the Developer shall have the option to follow the remedies provided under Article 11.4. Provided that for any other Procurer Event of Default in regard to Payment Security Mechanism such as non maintenance of Letter of Credit or Escrow Mechanism the Developer shall not be entitled to terminate the Agreement but may invoke the Dispute Resolution under Article 17 including for direction for specific performance of then obligation of the Procurer.

14.4.2 Without in any manner affecting the rights of the Developer under Article 14.4.1 in the event payment of any undisputed bill or amount due as per the direction of the Appropriate Commission remains outstanding for more than 90 days or in the event of default under Article 14.2 (ii), (iii) or (iv), the Developer shall have the right to deliver to Procurer a Developer Preliminary Termination Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

14.4.3 Following the issue of a Developer Preliminary Termination Notice, the Consultation Period of 60 days or such longer period as the Parties may agree, shall apply.

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

14.4.5 Within a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed or the Procurer Event of Default giving rise to the Consultation Period shall have been remedied, the Developer may terminate this Agreement by delivering a Developer Termination Notice, whereupon this Agreement shall

terminate on the date of such notice.

**14.5 Consequences of Termination**

**14.5.1 Consequence of Termination for Developer Event of Default**

Where this Agreement is terminated by Procurer pursuant to Article 14 for any Developer Event of Default, the Developer shall pay as compensation to Procurer, an amount equivalent to six (6) months of the billing, at the quoted tariff and energy corresponding to the 80% of the contracted capacity, as liquidated damages. For the purpose of above calculations the quoted tariff will be considered and any non-escalable capacity charge notified by CERC/GERC at the time of issue of Preliminary Termination Notice. The above amount paid shall be shared by the Procurer in proportion to the capacity of the Project. In addition, in case any compensation pursuant to CERC/GERC Interstate Transmission Regulations for consequential relinquishment of transmission access is payable by Procurer, then such amount shall also be payable by the Developer and the same shall be paid to the Procurer. Such amount shall be paid within thirty (30) days of the day of termination of this Agreement. Further, Developer shall not sell power to any third party till such termination

payment has been made.

**14.5.2 Consequence of Termination for Procurer Event of Default**

Where this Agreement is terminated by the Developer pursuant to Article 14 for any of the Procurer Event of Default, the following shall be the consequences : (i) the Developer shall offer the other Procurer the first option to acquire the Capacity allocated to the defaulting Procurer on the same terms and conditions as was applicable to the Defaulting Procurer and in the event the other Procurer shall acquire such capacity or any part thereof this agreement shall stand amended to the extent of such capacity acquired as sale of the capacity to such other Procurer. The Defaulting Procurer shall stand released of all obligations under this Agreement in regard to such capacity acquired by the other procurer except for the actual loss suffered by the Developer from the date of the termination till the date of acquisition of the capacity by the other Procurer; (ii) in the event of the other Procurer does not acquire the capacity of the of the Defaulting Procurer at all or only in part, such capacity not so acquired shall be sold by the Developer to any person willing to purchase the capacity on the best possible tariff, terms and conditions. The other Procurer shall also be entitled to participate in the purchase of the capacity notwithstanding that such other procurer did not opt for purchase of the Capacity as provided in sub-clause (i) above. The Developer shall be entitled to claim compensation from the defaulting purchaser the actual loss suffered by the Developer pending the sale of such Capacity and thereafter on the difference in the price payable under this Agreement by the Defaulting Procurer and the best possible price the Developer can procure on such resale of the Capacity. (iii) the Developer shall make every effort to mitigate the loss to the Defaulting Procurer. (iv) notwithstanding anything contained above the aggregate liability of the Defaulting Procurer shall not in any event exceed an amount equivalent to six (6) months of the billing, at the quoted tariff and energy corresponding to the 80% of the contracted capacity, as liquidated damages. For the purpose of above calculations the quoted tariff will be determined assuming the fuel and nonescalable capacity charge indices67 notified by CERC at the time of issue of Preliminary Termination Notice.

14.5.3 The termination of the Agreement shall not affect the accrued rights and obligations of the parties.

**15 Article 15 Liability and Indemnification**

**15.1 Indemnity**

15.1.1 The Developer shall indemnify, defend and hold Procurer 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 Developer of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer and (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest suffered or incurred by Procurer by reason of a breach by the Developer of any of its obligations under this Agreement. (Provided that this Article 15 shall not apply to such breaches by the Developer, 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 Procurer the above losses together shall constitute “Indemnifiable Losses”.

15.1.2 Procurer shall indemnify, defend and hold the Developer 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 Procurer 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 Developer, 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 Developer by reason of a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 15 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such 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 Developer, its contractors, servants or agents The above losses together shall constitute “Indemnifiable Losses”.

**15.2 Limitation of liability**

A Party ("Indemnifying Party") shall not be liable to indemnify the other Party ("Indemnified Party") under this Article 15 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 exceeds half a percent (0.5%) of the average annual Tariff Payment for all the Contract Years up to the Contract Year in which the indemnity claim is made.

**15.3 Procedure for claiming indemnity**

**15.3.1 Third party claims**

(a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 15.1.1(a) or 15.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 15.1.1(a) or 15.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within [30 days] of receipt of the above notice.

Provided however that, if :- (i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 15.3.1(b) below and (ii) the claim amount is not required to be paid/deposited to such third party pending the resolution of the dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the dispute, if such dispute is not settled in favour of the Indemnified Party. (b) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 15.1.1(a) or 15.1.2(a) and the indemnifying Party shall reimburse to the indemnified Party all reasonable costs and expenses incurred by the indemnified party. However, such indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

**15.4 Indemnifiable Losses**

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 15.1.1(b) or 15.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses. The Indemnifiable Losses shall be paid by the Indemnifying Party within [30] days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party.

**15.5 Limitation on Liability**

Except as expressly provided in this Agreement, neither the Developer nor Procurer 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 nonperformance 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 therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Board, the Developer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise. Procurer shall have no recourse against any officer, director or shareholder of the Developer or any Affiliate of the Developer or any of its officers, directors or shareholders. The Developer shall have no recourse against any officer, director or shareholder of Procurer, or any affiliate of Procurer or any of its officers, directors or shareholders.

**16 Article 16 : Assignments and Charges**

**16.1 Assignments**

Subject to Article 16.2.2, this Agreement may 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 agreement between the Parties to be evidenced in writing :- Provided that, such consent shall not be unreasonably withheld if the Procurer 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 Gujarat and/or such transferee is a successor entity of any of the Procurer and (b) all Agreements shall remain in place and shall be effective as to such successor.

**16.2 Permitted Charges**

16.2.1 Notwithstanding Article 16.1, the Developer may create any encumbrance over all or part of the Security Package or the other assets of the Project to the Lenders or the Lender’s Representative on their behalf as security for :- (a) amounts payable under the Financing Agreements and (b) any other amounts agreed by the Parties, Provided that :- I) the Lenders or the Lender’s Representative on their behalf shall have entered into the Direct Agreement in the Agreed Form and II) any encumbrances granted by the Developer in accordance with this Article 16.2.1 shall contain provisions pursuant to which the Lenders or the Lender’s Representative on their behalf agrees unconditionally with the Developer itself and as trustee of the Procurer :- (i) to release from such encumbrances all of the right, title and interest of the Developer to Additional Compensation so as to enable the Procurer to claim its right of subrogation;

**16.2.2 Article 16.1 does not apply to :-**  (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of the developer carrying out the project; (b) pledges of goods, the related documents of title and/ or other related documents arising or created in the ordinary course of the developer 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 developer carrying out the project.

**17 Article 17: Governing Law and Dispute**

**Resolution**

**17.1 Governing Law**

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

**17.2 Amicable Settlement**

17.2.1 Either Party is entitled to raise any matter, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity (collectively “Dispute”) by giving a written notice to the other Party, which shall contain :- (i) a description of the Dispute; (ii) the grounds for such Dispute and (iii) all written material in support of its claim.

17.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 17.2.1, furnish :- (i) counter-claim and defences if any regarding the Dispute and (ii) all written material in support of its defences and counter-claim.

17.2.3 Within thirty (30) days of issue of notice by other Party pursuant to Article 17.2.2, both the Parties shall meet to settle such Dispute amicably, failing which the Dispute shall be referred to Dispute Resolution in accordance with Article 17.3.

**17.3 Dispute Resolution**

Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by the Appropriate Commission as provided under section 79 or 86 of the Electricity Act, 2003 and the Appropriate Commission may refer the matter to Arbitration as provided in the said provision read with section 158 of the said Act.

**17.4 Parties to Perform Obligations**

Notwithstanding the existence of any dispute and difference referred to the Appropriate Commission as provided in Article 17.3 and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations under this Agreement.

**18 Article 18 : Miscellaneous Provisions**

**18.1 Amendment**

This Agreement may only be amended or supplemented by a written agreement between the Parties.

**18.2 Third Party Beneficiaries**

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

**18.3 No Waiver**

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

**18.4 Remedies**

Where this Agreement provides for any rebate or other remedies for any breach or shortfall in performance, the Parties shall not be entitled to make any other claim or pursue other remedies under law.

**18.5 Entirety**

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

18.5.2 All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the sale or purchase of Electrical Output and Contracted Capacity under this Agreement to the Procurer by the Developer are abrogated and withdrawn.

**18.6 Assignment**

18.6.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

**18.7 Confidential Information**

Subject to Article 18.8, all Parties shall at all times during the continuance of this Agreement :- (a) use their reasonable endeavours to keep all information regarding the terms and conditions of this Agreement and any data or information acquired under or pursuant to this Agreement confidential and accordingly no Party shall disclose the same to any other person and (b) not use any document or other information (whether technical or commercial) obtained by them respectively by virtue of this Agreement concerning another’s undertaking for any purpose other than performance of that Party’s obligations and exercise of its rights under this Agreement :- Provided that, the provisions of this Article 18.7 shall not apply to information which at the time of disclosure was in the public domain other than by breach of the foregoing obligations of confidentiality.

**18.8 Disclosure of Confidential Information**

18.8.1 Each of the Parties shall hold in confidence the agreements relating to the Project and all documents and other information (whether technical or commercial) which is of a confidential nature disclosed to it by or on behalf of the other Party or Parties relating to the Project and shall not, save as may be required by law or appropriate regulatory or statutory authorities or to any Indian Governmental Instrumentality, or to prospective lenders to or investors in, the Developer or to the professional advisers of the Parties or of those prospective lenders or investors, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

18.8.2 The provisions of Article 18.8.1 shall not apply to :- (a) any information in the public domain otherwise than by breach of this Agreement; (b) information relating to the Project in the possession of a Party before that information was disclosed to it by or on behalf of the other Party or Parties and which was not obtained under any obligation of confidentiality and (c) information obtained from a third party who is free to disclose the same, and which is not obtained under any obligation of confidentiality.

18.8.3 Every Party shall be entitled to disclose the terms and conditions of this Agreement and any data or information acquired by it under or pursuant to this Agreement without the prior written consent of the other Party or Parties, as the case may be, if such disclosure is made in good faith :- (a) to any affiliate of such Party, having made it aware of the requirements of this Article 18.8 or to any Indian Governmental Instrumentality or (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, having made them aware of the requirements of this Article 18.8 or (c) to the Lenders, the Lenders’ Representative any security trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance, having made them aware of the requirements of this Article 18.8 or (d) to the extent required by the rules of a relevant and recognised stock exchange or (e) to the extent required by any applicable law of India or pursuant to an order of any court of competent jurisdiction or (f) to any insurer under a policy of Insurance or (g) to directors, employees and officers of such Party having made them aware of the requirements of this Article 18.8 and is necessary to enable such Party to perform this Agreement or to protect or enforce its rights under this Agreement or any other Project Document or to enable it to comply with any requirement referred to in Articles 18.8.3(d) and 18.8.3(e) or to carry on its ordinary business.

**18.9 Affirmation**

The Developer and Procurer 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 Developer and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

**18.10 Severability**

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.

**18.11 No Partnership**

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

**18.12 Survival**

Notwithstanding anything to the contrary herein, the provisions under article 12 (force majeure), article 15 (liability and indemnification), article 17 (governing law and dispute resolution), article 14 (events of default and termination), and article 18 (miscellaneous) shall continue and survive any expiry or termination of this agreement.

**18.13 Counterparts**

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

**18.14 Notices**

18.14.1 All notices to be given under this Agreement shall be in writing and in the English Language.

18.14.2 All notices must be delivered personally, by registered or certified mail to the addresses below :-

Developer : [insert details]

Procurer : Deendayal Port Authority

18.14.3 All notices or communications given by email or facsimile shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate Party for delivery by registered or certified mail. All Notices shall be deemed delivered upon receipt.

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

**18.15 Language**

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

**18.16 Breach of Obligations**

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties acknowledge the damages alone shall not be adequate remedy for such breach. Accordingly each Party agrees that in addition to any other rights or remedy which the other Party or Parties, as the case may be, may have at Law or in equity, the non breaching Party or Parties shall be entitled to specific performance and injunctive relief in any court of competent jurisdiction for any breach or threatened breach by the other Party.

**18.17 Nomination Restriction**

Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of a Procurer to nominate a third Party to receive benefits under this Agreement, such Third Party shall have a financial standing not less than to the Procurer in question.

**18.18 Dispatch Instructions**

Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to a Procurer or Procurer issuing a dispatch instruction to the Developer, where law so requires that dispatch instruction be issued only by a control centre, such references shall be construed as being references to the Developer receiving dispatch instructions from the said control centre and the same shall apply in relation to any other functions being exercised by any other entity or organisation in the future, from time to time.

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

For and on behalf of Deendayal Port Authority

For and on behalf

[THE Developer]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature with seal

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature with seal

Witness:

1.

2.

Witness:

1.

2.

3. **Schedule 1 : Developer’s Consents**

4. **Schedule 2 Calculation of ‘x’ days, refer Article 11.5.1**

Number of times a Notice has been issued under Article 11.5.1 to the defaulting Procurer prior to present occurrence Percentage of Monthly Invoice which is the subject of default under Article 11.4 as notified in the Notice (issued under Article 11.5.1) relatable to the present occurrence 1st time 2nd time 3rd time 4th time 5th time and onwards

Less than 25% x = 20 days x = 25 days x = 40 days x = 60 days x = 85 days

25% to 30% x = 20 days x = 30 days x = 45 days x = 65 days x = 90 days

More than 30% to 35% x = 20 days x = 35 days x = 50 days x = 70 days x = 95 days

More than 35% to 40% x = 20 days x = 40 days x = 55 days x = 75 days x = 100 days

More than 40% x = 20 days x = 45 days x = 60 days x = 80 days x = 105 days

**5. Schedule 3 : Functional Specification**

**S No. Description Unit Particulars**

**1.1 Grid Conditions at Interconnection Point**

1.1.1 Voltage :Nominal kV [ ]

Variation % [ ]

1.1.2 Frequency : Nominal 50 Hz.

Variation % [ ]

1.1.3 Combined Voltage and Frequency variation for Contracted Capacity % [ ]

1.1.4 Power Factor : Nominal [ ] lag

Variation [ ] to [ ]

lag lead

1.1.5 Basic Impulse Level (Peak) kV [ ]

**1.2 Fault Levels :**

1.2.1 3 Phase Maximum kA [ ]

1.2.2 Clearance time Maximum ms [ ]

(This chapter/article describes a sample functional specifications for a Solar plant and it needs to be customised considering the plant type and relevant Grid Code).

**1.3 Contracted Operating Characteristics**

1.3.1 Reactive power capability in accordance with reactive capability curves to be developed during detailed design, which are hereby incorporated by reference into, and made an integral part of, this Schedule 3.

1.3.2 Time period for synchronization :- The time period permitted to the Developer to start up the Unit and synchronise the unit with the Grid System under various starting conditions shall not exceed the following durations.

Hot Start [ ] Hours

Warm Start [ ] Hours

Cold Start [ ] Hours.

Wherein the various starting conditions are as defined below;

**Starting Conditions Time since last synchronisation in Hours**

Hot Start [ ]

Warm Start [ ]

Cold Start [ ]

However, the Power Plant should be capable of accommodating full load rejection in an emergency or on instruction without any problem.

**6. Schedule 4 : Commissioning and Testing**

1.1 **General**

Subject to Article 6.2 and 6.3 the Developer shall conduct with respect to the plant :-

(a) a Performance Test in accordance with Article 1.2 of this Schedule 4 and in accordance with the relevant provisions and (b) a Characteristics Test in accordance with Article 1.3 of this Schedule 4.

1.2 **Performance Test**

1.2.1 (a) The Performance Test shall be run under any and all ambient conditions (temperature, humidity etc.) that may exist during the time of the Performance Test and no corrections in final output of the Unit will be allowed as a result of prevailing ambient conditions. (b) The ability of the Unit to meet Contracted Capacity shall be demonstrated. (c) The correction curves will only be used if the Grid System operation during the Performance Test exceeds Electrical System Limits. (d) The Performance Test shall be deemed to have demonstrated the Contracted Capacity of the Unit under all designed conditions and therefore no adjustments shall be made ambient conditions. (e) The Developer shall perform in respect of the Unit a Performance Test, which shall be deemed to have passed if it operates continuously for fifteen days consecutive days at or above its Contracted Capacity and within the Electrical System Limits and the Functional Specifications.

1.2.2 For the purposes of any Performance Test pursuant to this Article 1.2, the Electrical System Limits to be achieved shall be as follows:

**(a) Voltage**

The Unit must operate within the voltage levels described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, voltage tests cannot be performed due to Grid System, data supplied from tests of the Developer step-up transformers and will be within the specified voltage limits.

**(b) Grid System Frequency**

The Unit shall operate within the Grid System frequency levels described in the Functional Specification for the duration of the Performance Test.

**(c) Power Factor**

The Unit shall operate within the power factor range described in the Functional Specification for the duration of the Performance Test. If, during the performance Test, power factor tests cannot be performed due to the Grid System, data supplied from the Developer step-up transformers supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified power factor range.

1.3 **Characteristics Test**

1.3.1 The Developer shall perform in respect of the Unit, at least the following set of tests (the “Characteristics Test”) to determine that the Unit when tested complies with Article 1.2 of Schedule 3 of the Functional Specification in accordance with Article 6.2 and 6.3.

(i) Capacity for the Unit shall be tested for a period of at least four (4) Hours.

1.3.3 A Unit shall pass all the tests to demonstrate their ability.

**7. Schedule 5 : Availability Factors**

**1.1 Introduction**

1.1.1 This Schedule sets out how Availability Factors are calculated for the purposes of the Tariff and determining whether a Developer Event of Default has arisen under Article 14.1(iv).

1.1.2 Article 1.2 deals with the Developer’s obligation to declare the Available Capacity, Spinning Reserve Response and any impairment of the Contracted Operating Characteristics of (if the Power Plant has been commissioned) the Power Plant in Capacity Notices.

1.1.3 Article 1.3 defines when (if the Power Plant has been commissioned) the Power Plant is considered to have been subject to a Capacity Failure both in normal operation and when it is being tested or monitored and sets out procedures for the Procurer to notify the Developer whenever Capacity

Failures occur by delivering Post Event Notices and Interim Post Event Notices.

1.1.4 Article 1.4 sets out how Available Capacity is to be determined, including how it is to be adjusted when a Unit or (if the Power Plant has been commissioned) the Power Plant is subject to a Capacity Failure.

1.1.5 Article 1.5 describes how Settlement Periods are divided into Settlement Period Categories for the purposes of calculating the Incentive Charge pursuant to Schedule 6.

1.1.6 Article 1.6 sets out the formula for calculating the Availability Factor in any relevant period from the data collected pursuant to this Schedule 5.

1.1.7 In this Schedules all notice provided to the Procurer shall also be simultaneously be provided to the Control Centre and vice versa.

1.1.8 In this Schedule, for the period before the Commissioning of the Power Plant, the term “Power Plant” shall stand substituted by “Unit”.

1.1.9 In this Schedule, Available and Declared Capacity shall at all times be equal.

**1.2 Capacity Notices**

1.2.1 As soon as practicable before the Unit is Commissioned the Developer shall deliver a notice (a “Daily Capacity Notice”) to the Procurer specifying :-

a. the date & time that the Capacity Notice is issued;

b. the Schedule Day to which it relates;

c. the Declared Capacity of the Power Plant for each Settlement Period in the relevant Schedule Day;

d. the extent (if any) to which the Developer expects the Power Plant to be incapable of performing in accordance with its Contracted Operating Characteristics in any Settlement Period (and save for any exceptions noted in the Capacity Notice, the Developer shall be deemed to have declared the Power Plant to be capable of meeting its Contracted Operating Characteristics) and

1.2.2 In Article 1.2.1, “prescribed time” means the latest time prescribed by the Electricity Acts, the Electricity Rules or any Grid Code for the delivery of Capacity Notices or, if no time is so prescribed 1000 Hours on the day prior to the relevant Schedule Day or such other time as the Parties may agree.

1.2.3 Whenever the Developer believes that any information previously provided to the Procurer pursuant to this Article 1.2 is no longer accurate, it shall promptly deliver a revised notice (a “Revised Capacity Notice”) to the Control Centre in accordance with this Article 1.2.3 specifying the following. Provided that a Revised Capacity Notice for a Settlement Period has to be issued at least six time blocks of 15 minutes (one and a half hour) before the beginning of such Settlement Period.

(a) the date and time that the Revised Capacity Notice is issued;

(b) a reference to the previously provided information that is to be revised;

(c) a statement of the changes required to be made to the previous information to make it consistent with the Developer’s current expectations regarding the performance of the Power Plant;

1.2.4 A declaration by the Developer increasing the Power Plant’s Declared Capacity from zero shall be taken to mean that the Power Plant could be synchronised to the Grid System not later than the time that the increase in Declared Capacity is stated to be effective (or, if no such time is stated, then immediately) if a Dispatch Instruction to synchronise were given at any time within thirty (30) minutes after the declaration was given and following synchronisation could comply with a Dispatch Instruction to ramp up immediately to its Declared Capacity or any intermediate load above its Minimum Stable Generation at a loading rate consistent with its Contracted Operating Characteristics (so any slower loading rate declared for the time being by the Developer pursuant to Schedule 3).

1.2.5 A declaration by the Developer increasing the Power Plant’s Declared Capacity from a level above zero shall be taken to mean that the Power Plant could comply with a Dispatch Instruction given at the time the increase in Declared Capacity is stated to be effective (or, if no such time is stated, then immediately) or at any later time to go from its then prevailing condition to its new Declared Capacity or any intermediate load within a time consistent with the start-up times and loading rates set out in the Contracted Operating Characteristics (or any longer start-up times or slower loading rates declared for

the time being by the Developer pursuant to Schedule 3).

1.2.6 A declaration by the Developer reducing the Power Plant’s Declared Capacity below its then prevailing level of generation shall be taken to mean that the Power Plant must be given a Dispatch Instruction to ramp down not later than the time when the reduction in Declared Capacity is stated to be effective (or if no such time is stated, then immediately) from the then prevailing level of generation to its Declared Capacity or any lower load and could comply with Dispatch Instruction by matching with its Contracted Operating Characteristics.

1.2.7 The Developer shall prepare Capacity Notices and Revised Capacity Notices with due care & attention in order to declare accurately the Developer’s expectations regarding the performance of the Power Plant.

1.2.8 The Developer shall not submit any Capacity Notice or Revised Capacity Notice declaring the Available Capacity of the Power Plant to be greater than its Contracted Capacity or less than its Minimum Stable Generation without the Procurer' prior written consent.

1.2.9 The Declared Capacity of the Power Plant shall be unaffected by any Dispatched shutdown of the Power Plant (unless the relevant Dispatch Instruction was issued to give effect to a requirement that the Unit be taken out of service to remedy any impairment of its ability to meet its Contracted Operating Characteristics) while the Power Plant continues to be capable of starting-up, being synchronised and ramping up to its Declared Capacity or any intermediate load above its Minimum Stable Generation within the time allowed by its Contracted Operating Characteristics.

**1.3 Capacity Failure**

1.3.1 A Capacity Failure occurs in a Settlement Period when a) the Power Plant’s Declared Capacity in that Settlement Period is less than the expected availability declared in the Daily Capacity Notice for that Settlement Period (a “Declared Capacity Failure”); b) the Power Plants level of generation in that Settlement Period (expressed in MW) and adjusted for Grid System frequency falls short of the Dispatched level after the time allowed for complying with the relevant Dispatch Instruction (determined consistently with the Operating Characteristics at that time) (1) by any amount during a Repeat Performance Test or a period of monitoring or (2) by more than the Permitted Tolerance at any other time (an “Undeclared Capacity Failure”) and c) the Power Plant’s reactive power capability in that Settlement Period (expressed in MVAr) falls short of the Dispatched level after the time allowed for complying with the relevant Dispatch Instruction (determined consistently with the Declared Operating Characteristics at that time) (1) by any amount during a Repeat Performance Test or a period of monitoring or (2) by more than the Permitted Tolerance at any other time (an “Undeclared Reactive Power Failure”).

**1.3.2 The Permitted Tolerance shall be** :-

(a) [ ] MW in relation to a failure to achieve the Dispatched MW output:

(b) [ ] MVAr in relation to a failure to achieve the Dispatched reactive power output.

1.3.3 Whenever the Procurer have reasons to believe that the Power Plant may not be capable of performing consistently with the declarations contained in the current Capacity Notice or Revised Capacity Notice, it may issue a notice (a “Monitoring Notice”) to the Developer identifying the performance parameters of the Power Plant that they wishes to monitor (which shall be its generating capacity, its reactive power capability and its loading or deloading rates) and shall indicate the Draft RFQ for long-term power procurement under maximum period over which monitoring will occur (which period shall not exceed ten (10) Hours). During a period of monitoring, the Procurer shall instruct the Developer to set the Power Plant so as to not be responsive to changes in Grid System frequency.

1.3.4 The Developer shall not be entitled to any additional compensation by reason of the monitoring of the Power Plant beyond its right to receive the Tariff.

**1.4 Available Capacity**

1.4.1 The Power Plant’s available capacity in each Settlement Period (its “Available Capacity”) shall be equal to its Declared Capacity in that Settlement Period, less any Capacity Reduction attributable to a Capacity Failure affecting the Unit or (if the Power Plant has been commissioned), the Power Plant in that Settlement Period.

1.4.2 If the Declared Capacity of the Power Plant changes during the course of a Settlement Period, the Power Plant’s Declared Capacity throughout that Settlement Period shall be equal to the lowest Declared Capacity in effect at any time during that Settlement Period.

1.4.3 The Capacity Reduction attributable to Capacity Failures shall be calculated for each Settlement Period in which they occur in accordance with the following provisions of this Article 1.4.3

1.4.3.1 Capacity Reductions for Declared Capacity Failures The Capacity Reduction (expressed in MW) attributable to a Declared Capacity Failure shall be two (2) times the difference (after excluding the Permitted Tolerance) between the level of generation achieved by the Power Plant in response to a Dispatch Instruction and the Dispatched level or if higher, the Power Plant’s Declared Capacity at that time, for a period of one (1) day.

1.4.3.2 Capacity Reductions for Undeclared Capacity Failures The Capacity Reduction (expressed in MW) attributable to an Undeclared Capacity Failure shall be four (4) times the difference (after taking into account the Permitted Tolerance) between the level of generation achieved by the Power Plant in response to a Dispatch Instruction and the Dispatched level or, if higher, the Power Plant’s Declared Capacity at that time, for a period of one (1) week.

1.4.3.3 Capacity Reductions for Undeclared Reactive Power Failures The Capacity Reduction attributable to an Undeclared Reactive Power Failure shall one (1) time the number of MW by which the Power Plant’s reactive power capability at the time of the Undeclared Reactive Power Failure fell short (after taking into account the Permitted Tolerance) of the Dispatched level or, if higher, the level that would have been achieved had the plant been capable of operating at a level consistent with its Declared Leading Power Factor or, as the case may be, its Declared Lagging Power Factor.

1.4.4 Nothing in this Article shall restrict the Procurer' right to require the Developer to take the Power Plant out of service in accordance with Article 7.6.3 to remedy any impairment in its Contracted Operating Characteristics.

1.4.5 The provisions of this Article 1.4 of Schedule 5 are intended to constitute the Procurer' sole remedy in the event of a Capacity Failure except one caused by the Developer’s wilful misconduct. If any Capacity Failure is caused by the Developer’s wilful misconduct, the Procurer may elect to recover from the Developer as an indemnity all direct costs, arising from that Capacity Failure.

**1.5 Availability Factors**

In any period, the availability factor (the **“Availability Factor”**) of the Power Plant shall be calculated as follows:

**Av =** {(100ΣACu

s) / (Cap**x** X nx)}

Where:

**“Av”** means the Availability Factor of the Power Plant;

Σ**ACu**

s is the sum of the Available Capacities of all Units in each Settlement Period in period x (expressed in MW)

**“Capx”** is the Contracted Capacity of Power Plant in period x;

**“nx**” is the number of Settlement Periods in period x

**1.6 Notices**

1.6.1 All written notices required to be given pursuant to this Schedule by e-mail.

1.6.2 Except for Interim Post Event Notices and Post Event Notices, which shall be effective only upon the receipt of a written notice in accordance with this Schedule 5, all other notices described in this Schedule 5 may be given by the Developer initially be telephoned and will he deemed to have been received by the Procurer upon such communication, provided that a written notice with respect to such communication is delivered to the Procurer within two (2) hours of such communication by telephone.

**8. Schedule 6 : Tariff**

**1.1 General**

1.1.1 The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule

1.1.2 The Tariff shall be paid in INR

**1.2 Capacity Charges**

1.2.1 The non-escalable Capacity Charge paid shall be same as quoted by the Developer at the time of the bidding, subject to the achievement of normative availability by the plant.

1.2.2 In case the actual availability is less than the normative availability, the Capacity Charges will be paid by the Procurer on prorata basis as determined by the following formula :-

AFCkn \* AA

AcFCkn =

NA

Where :-

AFCkn is the Capacity Charge for the Contract Year n as quoted in the bidding document (i.e. in Rs. per unit) and converted into Rupees after considering normative availability and the time period under consideration.

The non-escalable Capacity Charges in Rs./kWh, shall be quoted by the Developer in the Bid.

AcFCkn is the Capacity Charge payable (in Rs. crore) in period k, if the actual availability is less than the normative availability;

NA is the Normative Availability; and

AA is the Actual Availability and it is computed in percentage for a period as detailed in Article 1.5 of Schedule 5

1.2.3 The Normative Availability of the plant shall be equal to the Minimum Off-take Guarantee mentioned by Procurer in different periods of time in the RFP.

1.2.5 The Developer shall pay a penalty as mentioned earlier under shortfall below the Minimum Off-take Guarantee given, subject to the fact that only if drawl schedule given by the Procurer is more than the actual generation of the Developer.

**1.4 Monthly Tariff Payment**

**1.4.1 Components of Monthly Tariff Payment**

The Monthly Tariff Payment for any Contract Year shall consist of the following :-

(a) Monthly Capacity Charge Payment;

(b) Monthly Incentive Payment;

(c) Monthly Penalty Payment;

**1.4.2 Monthly Capacity Charge Payment**

The Monthly Capacity Payment for any Month in a Contract Year shall be based on the actual units fed to the grid.

**1.4.3 Monthly Penalty Payment for shortfall compared to minimum off-take limit given by Developer**

8.1.1.2 The developer will pay this penalty amount only if the actual generation is less than the scheduled generation and the penalty.

**1.4.4 Penalty for deviation from the schedule**

Variation between scheduled generation and actual generation shall be accounted for through either Unscheduled Interchange (UI) Charges or otherwise as detailed in the concerned section of the GERC/CERC (Terms and Conditions of Tariff) Regulations, 2004 (as amended from time to time). The penalty amount will be the double of either of the amount calculated proportionately by multiplying the shortfall generation with the offered tariff or UI Charges for shortfall generation, whichever is more.

**1.4.5 Transmission/Wheeling Charges and Scheduling Charges**

The payment of Transmission/Wheeling charges shall be settled between the CTU/STU and the procurer. The payment of scheduling charges to the respective Nodal Agency will be the responsibility of the Procurer.

**1.5 Settlement of Bills**

1. Monthly bill raised by the Developer will consist of Monthly Energy Incentive Payment and Penalty & Surcharge Payment for shortfall compared to minimum.

2. The Transmission & Scheduling Charges, Penalty from deviation from the schedule will be settled as detailed in Article 1.4.7, Article 1.4.6 and Article 1.4.8 of this schedule.

**9. Schedule 7: Details of Interconnection Facilities**

**11. Schedule 8 : Metering System**

1.1 The metering system for the Project (the “Metering System”) shall comprise of :- (a) a meter at the Unit (the “Generator Meters”); (b) a meter at the DPA’s Sub-Station (the “Interconnection Meter”); (c) check meters for the Generator Meters, the Interconnection Meter or as per the requirement, standards & specifications of the STU/CTU (the “Check Meters”). The RTU, if required as per SLDC, shall be installed & maintained by the Developer at their cost.

1.2 The entire Metering System shall have the accuracy class of 0.2/0.2S.

1.3 Each Metering System shall comply with the applicable Electricity Rules and in particular the Metering System shall meet the following :-

(i) Each of the Energy Meters :-

a) Shall be microprocessor based conforming to IEC:60687, IEC:1036, IEC:13779, IS:14697.

b) All the meters & equipments shall be tested & calibrated as per the requirement.

**12. Schedule 9 : Representation and Warranties**

**1 Representations and Warranties by the Procurer**

The Procurer agrees with the Developer as follows and acknowledges and confirms that the Developer is relying on such representations and warranties in connection with the transactions described in this Agreement :- (i) The Procurer has all requisite power to execute and consummate this Agreement; (ii) This Agreement is enforceable in accordance with its terms; (iii) The consummation of the transactions contemplated by this Agreement on the part of the said Procurer will neither violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction or other contract to which the said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived.

**13. Schedule 10 : Tariff Quoted by the Developer**

i) Tariff Rate : Rs. \_\_\_\_\_\_ per KWH;

**14. Schedule 11 : Insurance** (under bidder’s scope)

**Annexure - 4**

Not applicable.

**Vol II**

**Request for Proposal**

for

**Tariff Based Bidding Process for Procurement of Power on Long Term Basis by Setting up Solar Power Plant at the DPA’s land (which is inter-tidal, marshy, partially CRZ free & partially CRZ for which Environment Clearance to be obtained) parcel between Chirai & Jangi, Kachchh, Gujarat.**

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

**Long Term Procurement (for 25 years)**

**Standard Bid Documents**

**Issued by the**

**Office of the Executive Engineer (Electrical)**

**Ground Floor, New Kandla, Kachchh, Gujarat – 370 210.**

Bid specification for supply of power to Deendayal Port Authorityin Gujarat, (India).

This bid document along with Annexure as per Index is issued to -

M/s. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTES:

1. This document is not transferable.

2. Though enough care has been taken while issuing the bid documents, the Bidder should satisfy himself that documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received by this office from any Bidder within ten days from the date of issue of bid documents to him, then this office shall consider that the bid documents complete in all respects have been received by the Bidder.

**Executive Engineer (Electrical)**

Place : New Kandla

Date :

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**5. Introduction**

5.1.1.1 Deendayal Port Authority, (herein after referred to as Procurer) acting through the Office of the Executive Engineer (Electrical)*,* Ground Floor, Nirman Building, New Kandla, Kachchh, Gujarat – 370 210 wishes to invite bids for purchase of power on a long-term basis.

5.1.1.2 The intent of this bid document is to identify the developer for installing of 1000 MWp Solar PV Power Plant and to generate maximum 1750 MUs/Annum of power for a period of 25 years. The successful Bidders shall enter into a Power Purchase Agreement (PPA) as detailed out in the Power Purchase Agreement forming the part of this document.

5.1.1.3 The Bidders shall submit responses for supply of power at the DPA’s bus at its switch yard with contracted capacity being not less than 1750 MUs/Annum.

5.1.1.4 All Bidders are required to submit information in accordance with the guidelines set forth in this bid document. Bidders should provide information sought herein in order to satisfactorily establish their competence and suitability for executing the project.

5.1.1.5 The contracted power shall be sold only to the Procurer as per the terms and conditions of a Power Purchase Agreement (PPA). The PPA is attached in Annexure 3. Procurer would retain dispatch rights over the capacity of the generating Plant, during the term of the PPA, which has been allocated to it by the Bidder under this Bid. Post expiry of the PPA, Procurer reserves the right to extend the agreement for another five years on mutual agreed terms & conditions.

The PPA Term shall be for 25 years from the Scheduled Commercial Operation Date of the plant. The install capacity should be 1000 MWp.

**6. Information and Instruction to Bidders**

**6.1 Purchase of power by Procurer**

6.1.1.1 The terms used in this document have the same meaning as defined in the Power Purchase Agreement (PPA) provided in Annexure 3.

6.1.1.2 Procurer plans to procure the power. The power shall be delivered at the Procurer’s Bus at its Switchyard.

The Normative Availability or Normative Capacity Index required to be met by the Bidder on an annual basis is 98% annually.

6.1.1.3 Procurer guarantees to off-take of the required power during the tenure of the Agreement. However, the excess power may be sold to any party if the same could not be consumed by DPA.

6.1.1.4 The capacity charges of the Bidder will be reduced on prorate basis for any annual shortfall in achieving Normative Availability, in a period. The Bidder shall pay a penalty at the rate of 20% of the Capacity Charges, in Rs./kWh on the units under shortfall below the Minimum Off-take level 1750 MUs/Annum.

6.1.1.5 Electricity Act 2003, provided the terms and conditions for supply of power does not get affected through such assignment.

6.1.1.6 The successful Bidder shall intimate the procurer after completion of the work in all respects and after obtaining all the statutory & other clearances for signing the Power Purchase Agreement within 07 days. All charges for preparing the PPA including legal fee, stamp fee etc. shall be borne by the successful Bidder. The PPA shall be signed in three originals, two to be retained by Procurer and one by the Bidder.

6.1.1.7 If the successful Bidder fails to sign the PPA within the stipulated time frame, the same shall constitute sufficient grounds for annulment of the award of the particular project and invocation of Bank Guarantee.

***6.2* Specifications for the plant**

**6.2.1 Location of Plant**

6.2.1.1 The plant in the coastal land (which is inter-tidal, marshy, partially CRZ free & partially CRZ for which Environment Clearance to be obtained) of DPA between Chirai & Jangi.

**6.2.2 Choice of Technology**

6.2.2.1 The Bidder to set up the infrastructure requirements for this project.

6.2.2.2 The project may use any technology of ALMM of MNRE, Govt. of India.

**6.3 Commencement of Supply and Penalty for delay**

6.3.1.1 The Bidder shall achieve Scheduled Commercial Operation Date within 10 months from the signing of the PPA.

6.3.1.2 If supply of power from the plant is delayed beyond the Scheduled Commercial Operation Date (COD), due to any reason attributable to the selected Bidder, except for Force Majeure conditions (as specified in the PPA), the Bidder shall pay an agreed penalty as detailed in Articles 3.5 and 4.6 of Draft PPA enclosed along with the RFQ.

**6.4 Clearances**

6.4.1.1 The Bidder shall be responsible for obtaining all the clearances/approvals, wherever required, from Central/State Government Agencies and Statutory Bodies, for the supply of power up to DPA receiving Bus. All expenses for obtaining the clearances/approvals shall be borne by the Bidder. The payment for the Transmission Charges and other related charges for scheduling should be made by the Bidder to the CTU/STU/Other Transmission Licensee as per the norms notified by the Appropriate Commissions for computation of these charges. The Transmission Losses shall be borne by the Bidder.

2.4.1.2 The procurer shall provide details of the inter-connection network as per Annexure 6.

**6.5 Tariff Structure**

6.5.1.1 The tariff shall be payable in Indian Rupees only. Bidders shall quote tariff for the PPA. No escalation on the tariff will be allowed during the tenure of the PPA.

6.5.1.2 Capacity Charge may comprise of :-

Annexure 7 is deemed to be removed from the Tender.

In case the actual availability is less than the normative availability as specified in this bid document, the payment shall be reduced on the prorate basis. Moreover, a penalty will be imposed at the rate of 20% calculated on the units under shortfall as compared to the Minimum Off-take Guarantee provided by the Bidder in the tender. However, beyond three (03) months, the penalty amount shall be 40% calculated on the units under shortfall.

**6.6 Pre-bid Meeting**

The Pre-Bid Meeting will be held at the New Board Room, A. O. Building, Gandhidham on 17/09/2025 at 11:00 Hrs..

**6.7 Amendment of bid document**

6.7.1.1 At any time prior to the deadline for submission of bids, Procurer may, for any reason, modify the bidding documents by an amendment.

6.7.1.2 The amendment shall be uploaded on the DPA website for the information of all the prospective Bidders and shall be binding on them.

6.7.1.3 The Procurer may, at its discretion, extend the deadline for the submission of bids.

**6.8 The bidding process**

**6.8.1 Bid Formats**

6.8.1.1 The bids against this Invitation for Bids will be submitted by the Bidder in two volumes -

Volume I - Technical Information separately for each generating Plant (Annexure 1)

Volume II - Financial Information (Annexure 2)

The information to be submitted for each volume is specified in Chapter 4 (Formats of Application) of this document.

6.8.1.2 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures/pamphlets. Non-adherence to formats and/or submission of incomplete information may be grounds for declaring the bid non-responsive. Each format has to be duly signed and sealed by the Bidder.

6.8.1.3 The Bidder should note that:

a) If the Bidder deliberately gives wrong information in its bid to create circumstances for the acceptance of its bid, Procurer reserves the right to reject such bid and/or cancel the award, if made.

b) Bids submitted by the Bidder shall become the property of Procurer and Procurer shall have no obligation to return the same to the Bidder.

**6.8.2 Bidder to inform himself fully**

6.8.2.1 The Bidder shall make independent enquiry and satisfy himself as to all the required information, inputs, conditions and circumstances and factors that may have any effect on his bid tariff. In assessing the bid it is deemed that the Bidder has inspected and examined the site conditions and its surroundings, examined the laws and regulations in force in India, the transportation facilities available in India, the conditions of roads, bridges, ports etc. for unloading and/or transporting heavy pieces of material and to have based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power.

6.8.2.2 In their own interest, the Bidders are requested to familiarize themselves with the Income Tax Act, the Companies Act, the Customs Act and all other related acts and laws prevalent in India. Procurer shall not entertain any request for clarifications from the Bidders regarding such local laws and the conditions. However, Procurer shall direct the Bidder from where they may obtain such assistance provided the request for such assistance is received well in advance. However, non-receipt of such information shall not be a reason for the Bidder to request for extension in opening date of the bid. The Bidder shall understand and agree that before submission of its bid all such factors, as generally brought out above, have been fully investigated and considered while submitting the bid.

6.8.2.3 Procurer shall not permit any change in time schedule or any financial adjustment arising thereof which are based on lack of clear information of such site conditions, laws & regulations and other related information and/or its effect on the tariff quoted in the bid.

**6.9 Due dates**

6.9.1.1 The Bidder should submit the bid documents the following address by 12.30 Hrs. on \_\_\_\_\_\_\_\_\_:

**Address of the Office** :- Office of the Executive Engineer (Electrical), Deendayal Port Authority, Ground Floor, Nirman Building, New Kandla, Kachchh, Gujarat – 370210.

6.9.1.2 Important deadlines are mentioned below :-

**Date Event**

T0 Commencement of Sale of RFQ documents

T0 + 15 days Last date of Sale of RFQ documents

T0 + 30 days of date of Pre-Bid Meeting

T0 + 60 days Technical and Price Bid Submission

T0 + 75 days issue of LOI

T0 + 90 days Signing of Agreement

6.9.1.3 Note:-

• Volume I and II would be opened in the presence of one representative from each Bidder, on the same day as the last date of submission of bids at Office of the Executive Engineer (Electrical), Deendayal Port Authority.

• The following information from each bid will be read out to all Bidders at time of opening of Volume I and II

􀂃Name of the Bidding Company (Format 1 of Annexure 1)

􀂃Time schedule for commencement of delivery (Format 2 of Annexure 2)

􀂃Submission of Bank Guarantee (Annexure 5)

􀂃Tariff Quote - For entire term of PPA (Format 3 of Annexure 1)

**6.10 Validity of the Offer**

6.10.1.1 The offer shall remain valid for a period of not less than six (06) months from the last date of submission. Procurer reserves the right to reject any bid which does not meet this proposed validity requirement or discharge the entire tender even after opening of Price-Bids without assigning of any reason (in that case, the EMD/BG will be refunded).

6.10.1.2 In exceptional circumstances, Procurer may solicit the Bidder's consent for an extension of the period of validity. The request and the response thereafter shall be in writing. A Bidder may refuse the request without invoking its Bank Guarantee. A Bidder accepting Procurer’s request for validity extension shall not be permitted to modify his bid. The validity of the bank guarantee furnished by the Bidder shall also be suitably extended.

6.10.1.3 Procurer has the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

**6.11 Method of submission**

6.11.1.1 Various volumes of the bids are to be submitted in separate envelopes.

The envelopes should be transcripted in the following way;

First Envelope superscript - “Bidder Name- \_\_\_\_\_\_\_\_\_\_\_\_”

“Volume I : Technical Information”

Second Envelope superscript - “Bidder Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

“Volume II: “Financial Information”

6.11.1.2 Apart from Volume I : Technical Information, the first envelope should also contain a covering letter (format as per Annexure 4), and Bank Guarantee (s) (format as per Annexure 5). Bids without Bank Guarantee, shall be rejected.

6.11.1.3 The two envelopes for the bid submitted by Bidders should be packed in a single sealed envelope or a box, with the following superscript “Bid for supply of power to DPA”

“Name of the Office”

“Name of the Bidder \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

6.11.1.4 The Bidder has the option of sending his bid by registered post or courier or submitting the bid in person so as to reach the Procurer at the designated address by the time & date stipulated by Procurer. Bids submitted by fax/email, shall not be considered under any circumstances. Procurer shall not be responsible for any delay in receipt of the bids. Any bid, received by the Procurer after the deadline for submission of the bids stipulated by Procurer, shall not be opened.

6.11.1.5 It may please be noted that the covering letter and Volume I of the bids shall not contain any tariff related information. All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder*.*

6.11.1.6 All volumes shall be submitted in 1 original + 2 copies. No change or supplemental information to a bid will be accepted after its submission. Procurer reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the bids.

6.11.1.7 If the outer envelope is not sealed and not marked as per the requirement, Procurer will assume no responsibility for the bid's misplacement or premature opening.

**6.12 Preparation cost**

6.12.1.1 The Bidder shall be responsible for all the costs associated with the preparation of the proposal and participation in discussions and negotiations. Procurer shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

**6.13 Bank Guarantee**

6.13.1.1 Each Bidder shall submit bid accompanied by a refundable deposit of Rs. 5 Lakhs per MW of the Contract Capacity bid by the Bidder as Bank Guarantee (as per the format attached in Annexure 5). The Bank Guarantee can be from Nationalized/Scheduled Bank having its office at Gandhidham.

6.13.1.2 For unsuccessful Bidders the Bank Guarantee shall be released within 30 (thirty) days of placement of order on selected Bidder.

6.13.1.3 In case the conditions subsequent are not met by the envisaged time, the Procurer can either increase the time period to achieve the specific conditions subsequent without imposing any penalty looking at the reasons for delay or encash and appropriate in their favour as liquidated damages an amount equivalent to 20 % of the Bank Guarantee for delay of each month or part thereof, as the case may be, except in the case of Force Majeure. The bank guarantee (s) shall be valid up to two (02) months beyond the envisaged Scheduled Commercial Operation Date of the project.

6.13.1.5 The Bank Guarantee can be invoked on account of (but not limited to) the following:

• Failure of Bidder to complete any of the conditions subsequent within eight (08) months from the signing of the PPA.

• Penalties to be paid by the Bidder for delayed Entry into Commercial Operation.

• Any Bidder Event of Default, as detailed in PPA

6.13.1.6 **Bidders may note that**

• Language of the bids shall be English only.

• Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.

• Bids that are incomplete i.e. which do not substantially meet the requirements prescribed in this bid document and which do not submit the Bank Guarantee; will be rejected by Procurer.

• Bids containing incomplete information in the specified formats would be liable for rejection.

• All pages of the bids submitted must be initialed by the authorized signatories on behalf of the Bidder.

• Bidders delaying in submission of additional information or clarifications sought, may be liable for rejection.

• If the Bidder makes any claim in the bid, which does not reflect the truth or is material misrepresentation of facts, then the bid would be liable for rejection.

• Procurer reserves the right to reject all or any of the bids without assigning any reasons whatsoever.

• **Procurer reserves the right to restrict the capacity of power supply awarded to a Bidder, on the account of (but not limited to) the following :-**

− The technical strength of the Bidder

− The risk of relying on for required capacity

**6.14 Settlement of Disputes**

6.14.1.1 Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by the Appropriate Commission as provided under section 79 or 86 of the Electricity Act, 2003 and the Appropriate Commission may refer the matter to Arbitration as provided in the said provision read with section 158 of the said Act.

**6.15 Enquiries**

Clarifications may be sought from :-

Address of the Office :-

Email address :

**7. Evaluation Criteria**

7.1.1.1 The bid evaluation process comprises of the following four steps:

3. Step I – Responsiveness check

4. Step II - Technical evaluation of bids

5. Step III - Financial evaluation of bids

6. Step IV - Bidder selection

**7.2 Step I - Responsiveness check**

7.2.1.1 The Bids submitted by Bidders/ Bidding Consortia shall be initially scrutinized to establish “Responsiveness”. The following conditions shall cause the bid to be deemed “Non-responsive”:

􀂃 Bid not received by the due date

􀂃 Sufficient information not submitted for the bid to be evaluated and/or information not submitted in specified formats as mentioned in Annexure1 and Annexure 2

􀂃 Bid not signed by the authorised signatory and/or sealed in the manner and to the extent indicated in this Request for Proposal.

􀂃 Bid not accompanied by a valid Bank Guarantee as specified in this Request for Proposal

􀂃 Bid not including the covering letter as per format in Annexure 4

**7.3 Step II - Technical Evaluation of Bids**

7.3.1.1 Step II (technical evaluation of bids) will be carried out based on information furnished under Volume I, by Bidders as prescribed under Chapter on Format of Application.

7.3.1.2 The evaluation would be based on the assessment of the following parameters:

􀂃 Bidder quoting for the contracted capacity to be bid, as specified in the Article 1.1.1.3

􀂃 Ability of the Bidder to meet Procurer’s schedule for commencement of Power Supply.

􀂃 Ability of the Bidder to ensure the availability of the Power Supply.

7.3.1.3 Bids qualifying on Step I and Step II, would qualify for evaluation in Step III.

**7.4 Step III - Financial Evaluation of Bids**

**7.4.1 General**

7.4.1.1 Step III (financial evaluation of bids) will be carried out based on the information furnished under Volume II.

7.4.1.2 This Step would entail the evaluation of quoted tariff and the analysis of the scheduled time of completion etc.

7.4.1.3 The bids would be compared on the basis of the quoted tariff & the assured generation. For the purpose of evaluation, “year” shall mean period beginning from the COD in a calendar year and ending on one before the COD in the subsequent calendar year.

7.4.1.4 The Bidder would submit the tariff in the manner specified in Format 3 of Annexure II

7.4.1.5 The bid submitted above would be processed in the following manner to arrive at the nominal tariff.

**7.4.4 Transmission/Wheeling Charges (Rs./kWh) :-**

7.4.4.1 The above parameters (Capacity and Transmission Charges) would be summed up to arrive at the nominal tariff (per unit). The Procurer may ask the Bidder to get the design energy figures checked by an identified agency, at the stage of evaluation of the bid.

7.4.4.3 The Bidders will be ranked on the basis of the levelised tariffs multiplied by the yearly assured generation in KWH (given by the manufacturer of the Solar Panel) for 25 years with the degradation factor (given by the manufacturer of the Solar Panel). If two Bidders have the same tariff, then the Bidder with higher install Capacity experience with less land & higher power generation from the Solar PV Power Plant shall be given the preference.

**7.5 Step IV - Bidder Selection**

7.5.1.1 The Bidder with lowest Levelised Tariff (L1) with highest assured generation as evaluated in Step III would be the L-1 Bidder.

7.5.1.2 In case the Successful Bidder, i.e. Bidder with lowest Levelised Tariff (L1) does not sign the PPA within the timelines stipulated herein, the next ranked Bidder (L2) on the score in Step III would be invited for discussions. The process will continue till Bidders are selected for the complete 1750 MUs/Annum power purchase, subject to each Bidder having minimum contracted capacity of 1230 MUs/Annum.

**8. Format of Application**

8.1.1.1 This chapter prescribes formats for submission of information to ensure that information and data collected from each Bidder would be interpreted in a consistent manner. Hence it is required that all Bidders should submit information as per the formats indicated below.

**8.2 Technical Information (Volume - I)**

8.2.1.1 The details of information required for technical information are attached under Annexure 1. The Bidder shall provide a technical outline of the bid as under:

1. Scheme of supply

2. Details of proposed solar plant

3. Land requirement including plans for meeting the requirements

4. Communication System

5. Environmental & Statutory Aspects

6. Time schedule for commencement of supply (Format 2)

7. Pre-feasibility study/Detailed Project Report, if available for reference

8.2.1.2 The Bidder shall also ensure compatibility of the proposed plant with the grid requirements as specified by Procurer in Annexure 1.

**8.3 Financial Information (Volume - II)**

**8.3.1 Formats**

8.3.1.1 The reference to formats under financial information (Volume - II) is to formats attached under Annexure 2. Under this volume the Bidder have to indicate the tariff quote (Format 3)

o Details of the proposed plant- For reference only

All key operating parameters used for determination of tariff such as assumptions for working capital etc.

􀂃 Project cost (Format 4 )**(for information only - will not form basis of evaluation)**

􀂃 Proposed financing structure **(for information only - will not form basis of evaluation)**

**8.3.2 Tariff :-**

8.3.2.1 Bidders are required to provide the tariff quotes as per Format 3.

8.3.2.2 Tariff to be paid in Rupees will consist of following components:-

8.3.2.3 Non-Escalable Capacity Charge:- Bidder shall quote non-escalable Unit Charge in Rs./kWh for 25 years after the COD.

**8.3.3 Details of project cost and means of finance**

8.3.3.1 Details about Project cost (As per Format 4) :- Only for reference and not for evaluation.

**Note:**

1. Project cost (Format 4) will not be used as a basis for evaluation.

2. Correctness and completeness of the assumptions underlying the total project cost and other costs shall be responsibility of the Bidder.

3. No exclusions shall be allowed from the quoted tariff. The Bidder shall take into account all costs i.e. capital and operating (including statutory taxes, duties, levies etc.). Availability of the inputs necessary for generation of power should be ensured by the Bidder at the project site and all costs involved in procuring the inputs at the project site must be included in the quoted tariff.

**4. Bids having tariff quoted with conditionalities, shall be liable for rejection.**

**Checklist for Bidders**

The Bidder may use the checklist below to ensure that the bid submitted is complete in all respects.

**Volume I.**

• Information requirement as per Annexure 1.

• Design Energy data of the Solar Power Plant

• Format 1 – Executive Summary

• Covering Letter (Format as per Annexure 4)

• Bank Guarantee (s)(Format as per Annexure 5)

**Volume II**

• Format 3 - Tariff and capacity quotes

• Format 4 - Details about project cost

Please note that the information requirement prescribed above is the minimum information required from the Bidders.

**Annexure 1**

Formats for Technical Information (Volume I)

**1. Technical Information**

**2.1 Plant Capacity and Proposed Delivery Point**

Total Capacity :-

Delivery Point:- DPA’s Bus at its Switchyard.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address

**Format 1 : Executive Summary**

1.1.a Name of the Bidding Company

S. No. Name of the Company Role Envisaged

1.3 Details of the contact person

Name

Designation

Company

Address

Phone/Mobile Nos.

E-mail address

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address

**Format 2: Time Schedule for Commencement of Delivery**

* 1. Date of commencement of the full Capacity

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address.

**Annexure 2**

Formats for Financial Information (Volume II)

**Format 3:- Tariff**

The Bidder quote should be received in the following format, from year of commencement of supply till 25 years :

Capacity (in MUs per Annum) bid for :

i) Tariff Charge for 25 years (In case of payment of full land lease charges to DPA on yearly basis) in Rs./kWh : \_\_\_\_;

ii) Tariff Charge for 25 years (In case of one time payment to DPA of token amount of Rs. 1/- for 25 years) in Rs./kWh : \_\_\_\_

iii) Tariff Rate with battery back-up facility for delivering the power supply on 24X7 basis (in case of the land is provided on the payment basis of the yearly land lease charges to DPA) : Rs. \_\_\_\_\_\_ per KWH;

iv) Tariff Rate with battery back-up facility for delivering the power supply on 24X7 basis (in case of the land is provided on the one time token payment basis of Rs. 1 to DPA for 25 years) : Rs. \_\_\_\_\_\_ per KWH.

DPA, in its discretion, shall select & finalise any one of the above Tariff Rates, which shall be binding upon.

The rate shall be inclusive of all the charges, taxes, duties etc. but excluding the GST.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address.

**Format 4 : Details about Project cost** (for information only, not to be used for evaluation)

1. The format is to be filled for the proposed new plant to be set up.

*.*

No. Item Indigenous component Foreign component Total cost in Rs.

1 The yearly lease rent : Rs. 28000/- per Acre (as per DPA)

2 Cost of Civil works

3 Know-how engineering and consultancy

4 Plant& Equipment\*

a. Control instrumentation and Data Acquisition System

d. Fuel transportation

e. Miscellaneous tools and plants

5 Project Management

6 Commissioning expenditure

7 Total EPC costs

8 Contingency

9 WC margin

10 Interest during construction

11 Financing charges

12 Other costs (if any)

**Total**

\* Bidder should furnish the cost of the imported equipment along with the cost of the present customs duty.

Financing charges include commission fees, guarantees, commitment charges, underwriting fees etc.

The Bidder should also furnish the proposed financing structure*.*

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address

**Annexure 3**

Power Purchase Agreement

Enclosed herewith is the Power Purchase Agreement. The PPA has the terms and conditions under which the Procurer would purchase power

**Annexure 4**

Draft Format of Covering Letter

**Draft Format of Covering Letter**

Bidder's Name:

Full Address:

Telephone No.:

E-mail address:

To

Address of the Office

Sub. :- Supply of power on long term basis at the DPA’s Bus in its Switchyard.

Ref. :- Bid Specification for Long Term Power Purchase.

Dear Sir,

We, the undersigned Bidder having read and examined in detail the bid documents for supply of power on long term basis at Procurer bus, hereby submit our bids.

Installation Capacity bid for : 1000 MWp.

**1.1 Bid Validity**

We confirm that all the terms, conditions and tariff of this proposal are valid for acceptance for a period of 6 months from the date of last date of bid submission i.e. \_\_\_\_\_\_\_\_\_\_.

**1.2 Bank Guarantee**

We have enclosed a separate Bank Guarantee of Rs. [ ] lakh, in the form of Bank Guarantee as per the Annexure 5 from a nationalized/scheduled bank with office in Gandhidham, Gujarat, India.

**1.3 Geplant Period**

We hereby confirm that the supply of power shall commence strictly as per the time frame stipulated in the tender.

**1.4 Familiarity with relevant Indian Laws & Regulations**

We confirm that we have studied the provisions of relevant Indian laws & regulations as required to enable us to quote for this bid and execute the contract, if awarded.

**1.5 Contact Person**

Details of contact person as specified in Format 1 are furnished as under :-

Name

Designation

Company

Address

Mobile/Phone Nos.

E-mail address

We are enclosing herewith Volume I and II with duly signed formats, in 1 original + 2 copies as desired by you in your bid document for your consideration.

Dated the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ of 2025

Thanking you,

We remain,

Yours faithfully,

(Signature, Name, Designation and Company's Seal)

Business Address:

Name and address of principal Officer**.**

**Annexure 5**

Format of Bank Guarantee

**Format of Bank Guarantee for Earnest Money Deposit**

(To be stamped in accordance with Stamp Act)

The Bank of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby agree unequivocally and unconditionally to pay at *Name of the Place* within 48 hours on demand in writing from *Procurer or* any Officer authorized by it in this behalf, of any amount up to and not exceeding Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) to the said *Procurer* on behalf of M/s. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who have submitted bid for supply of power of install capacity of 1000 MWp at the DPA’s bus at its Switchyard*.*

This agreement shall be valid and binding on this Bank up to and including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall not be terminable by notice or any change in the constitution of the Bank or the firm of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made given, concerned or agreed with or without our knowledge or consent, by or between parties to the said within written contract. The validity of this Bank Guarantee will be extended by us for the further period of six months, one month prior to its present validity period at the request of *Procurer*. In case of any dispute arising out of or in connection with the extension or encashment of Bank Guarantee, the courts at *Gandhidham* will have jurisdiction.

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_\_\_\_\_\_\_ (Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only). Our Guarantee shall remain in force until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Unless a suit or action to enforce a claim under the guarantee is filed against us within six months from the date, all your rights under the said guarantee shall be invoked and we shall be relieved and discharged from all our liability thereunder.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Banker's Rubber Seal and Full Address.

**Annexure 6**

Delivery at the DPA’s Bus at its Switchyard.

**Annexure 7**

The tariff period shall be 25 years from COD or any extension thereof, whichever is later.

**Annexure 8**

Format for deviations from the PPA, if any

**Deviations from the Draft PPA**

The Bidder should provide details of the deviations if any, in the PPA in the following format. The Bidder should give the rationale for seeking deviations and suggest alternatives. If in the opinion of DPA, the deviation & alternative suggestion is not acceptable, then DPA will request to withdraw the deviation. If the bidder disagrees to withdraw, then their bid will not be considered for further evaluation & rejected.

S. No. Clause No. Existing provision Proposed change Rationale for change

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidder’s Rubber Seal and Full Address.