

Volume II

DRAFT

POWER PURCHASE AGREEMENT

FOR

PURCHASE OF POWER

FROM BIOMASS POWER PROJECT

BEING SET UP IN SOUTH ANDAMAN ISLAND

Between

The President of India through
The Superintending Engineer, Electricity Department,
Andaman & Nicobar Administration

And

_____ (Name of the Generating Company)

_____ 2011

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DRAFT POWER PURCHASE AGREEMENT FOR PURCHASE OF POWER FROM BIOMASS POWER PROJECT BEING SET UP IN SOUTH ANDAMAN ISLAND

This POWER PURCHASE AGREEMENT (hereinafter referred to as “Agreement” or “PPA” or “Power Purchase Agreement”) is made on the _____ Day of _____ 2011 at Port Blair, Andaman & Nicobar (A&N) islands

Between

The President of India through the Superintending Engineer, Electricity Department, A&N Administration having its office at Port Blair (hereinafter referred to as the ‘Authority’ or ‘Electricity Department’) which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns of the first part

And

M/s _____ (hereinafter referred to as the ‘Generating Company’ or ‘Company’) which expression shall unless repugnant to the context or meaning thereof and include its successors, administrators or permitted assigns of the second part.

Each of Electricity Department and Generating Company shall be referred to as a ‘Party’ and collectively as ‘Parties’.

Whereas:

- I. The Bidder/ Consortium of M/s. _____, M/s. _____ and M/s. _____ have been selected by Electricity Department, A&N Administration to design, finance, build, own, operate and maintain 2 (Two) MW biomass based power plant (hereinafter referred to as the ‘Project’) in a land parcel admeasuring 2 hectares bearing Survey No. 1/1 in Mithakhari village, Ferrargunj Tehsil, South Andaman island (hereinafter referred to as the “Site”) in the Union Territory of Andaman and Nicobar.
- II. The Consortium of M/s. _____, M/s. _____ and M/s. _____ have formed a Special Purpose Vehicle (SPV) viz. M/s. _____ for the purpose of this Project. The Special Purpose Vehicle i.e. M/s. _____ hereinafter referred to as the ‘Generating Company’ has agreed to design, finance, build, own, operate and maintain 2 (Two) MW biomass based power plant in Mithakhari village at South Andaman island to this effect for sale of the energy generated from the Project to the Electricity Department under the New & Renewable Sources of Energy projects. The shareholding of the Consortium Members and those of investors, financial institutions are as follows:

Particulars	Equity Shareholding	% Equity Shareholding
Lead Member		
Other Consortium Member 1		
Other Consortium Member 2		
Subtotal		
Investors/ Financial		

Institutions etc.		
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(All the consortium members together shall hold a minimum aggregate 51% shareholding in the SPV throughout the period of PPA. The shareholding of the members of consortium in the SPV shall be in the proportion of their individual shareholding in the consortium at the time of bidding.) (Applicable only in case of a consortium)

The Single Entity Bidder has formed a Special Purpose Vehicle viz. M/s. _____ hereinafter referred to as the ‘Generating Company’ has agreed to design, finance, build, own, operate and maintain 2 (Two) MW biomass based power plant in Mithakhari village at South Andaman island to this effect for sale of the energy generated from the Project to the Electricity Department under the New & Renewable Sources of Energy projects. The shareholding of the Single Entity Bidder and those of investors, financial institutions in the Special Purpose Vehicle are as follows:

Particulars	Equity Shareholding	% Equity Shareholding
Single Entity Bidder		
Investors/ Financial Institutions etc.		

(The Equity shareholding of the Single Entity Bidder shall be atleast 51% in the SPV throughout the period of PPA) (Applicable only in case of a Single Entity Bidder)

- III. The Bidder/ Consortium has submitted a Detailed Project Report for the proposed 2 MW biomass power project at South Andaman island to the Electricity Department and has obtained approval for the same from the Electricity Department.
- IV. The Generating Company has submitted the Performance Guarantee to the Electricity Department as per the format provided in Schedule 2 of this Agreement.
- V. Whereas, the Generating Company desires to the Electricity Department that the electric energy generated in the Generating Company facility be purchased by the Electricity Department and the Electricity Department agrees to the purchase of such energy offered by the Generating Company for sale, upon the terms and conditions set forth in this Agreement.

Now, therefore, in the consideration of premises and mutual covenants and conditions set forth herein, it is hereby agreed by and between the Parties hereto as follows.

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this PPA, 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 thereunder, including those issued / framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

- i. “Act” or “Electricity Act, 2003” shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
- ii. “Adjusted Equity” means the equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”) in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:
 - a. On or before the Commissioning Date, the Adjusted Equity shall be a sum equal to the equity funded in Indian Rupees and expended on the Power Project;
 - b. After Commissioning Date, the Adjusted Equity shall be equal to the Adjusted Equity on Commissioning Date reduced by 0.42%¹ for every month between the Reference Date and the Commissioning Date and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the Commissioning Date and the Reference Date.
- iii. “Agreement” or “Power Purchase Agreement” or “PPA” shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
- iv. “A&N Administration” means the administrative authority of the Union Territory of Andaman and Nicobar Islands and includes all agencies and authorities under its control/regulation;
- v. “Appropriate Commission” shall mean the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act, 2003 as the case may be;
- vi. “Approvals” means the consents, license, permits, approvals and registrations by or with any Government agency or any other authority as may be necessary for setting up and operating the Project;

¹ This number has been calculated by the product of 100 divided by the number of months comprising the Expiry Period. i.e., the figure for a 20 year Expiry Period, this number is calculated as $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42

- vii. “Business Day” shall mean with respect to Generating Company and Electricity Department, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the Union Territory of Andaman & Nicobar islands;
- viii. “CERC” shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;
- ix. “Change in Law” shall have the meaning ascribed thereto in Article 13 of this PPA;
- x. “Commencement of Commercial Operations” or “Commissioning Date” means the date on which the Project is capable of delivering power on regular basis after having successfully completing the commissioning tests as per Prudent Utility Practices;
- xi. “Competent Court of Law” shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
- xii. “Consents, Clearances and Permits” means all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the Generating Facility and/ or supply of power;
- xiii. “Contract Year” shall mean the period beginning from the Effective Date and ending on the immediately succeeding 31st March and thereafter each period of 12 months beginning on 31st March provided that:
 - a. in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding 31st March, and thereafter each period of twelve (12) months commencing on 1st April and ending on 31st March, and
 - b. provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
- xiv. “Cure Period” shall mean the period of sixty (60) days or such other longer period as the Parties agree, commencing from the date of issuance of a Generating Company Preliminary Default Notice or Electricity Department Preliminary Default Notice as provided in Article 15 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

- xv. “Debt Due” shall mean the principal amount of the debt outstanding provided by the Senior Lenders for financing the Power Project and does not include any accrued interest, financing costs or charges payable to Senior Lenders; Debt Due shall also does not include any unpaid principal due prior to the occurrence of Force Majeure Event or prior to Electricity Department Event of Default;
- xvi. “Delivery Point” shall mean the commercial metering at nearest available 33KV Grid of Electricity Department or above of
 - a. Power Project switchyard with the transmission system for injection of electrical energy generated from the Power Project into the transmission system; or
 - b. Dedicated transmission line from the Power Project switchyard with the transmission system for injection of electrical energy generated from the Power Project into the transmission system;
- xvii. “Dispute” means any dispute or difference whatsoever arising between the Parties, out of or relating to the construction, meaning, scope, operation or effect of this PPA, or the validity, breach or termination thereof.
- xviii. “DPR” means the Detailed Project Report prepared by the Generating Company and as approved by the Electricity Department or any revision thereof approved by the Electricity Department.
- xix. “Due Date” shall mean the thirtieth (30th) days after a Monthly Invoice or a Supplementary Bill is received and duly acknowledged by the Electricity Department or the Generating Company as the case may be or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Invoice or a Supplementary Bill is payable;
- xx. “Effective Date” shall have the meaning ascribed thereto in Clause 2.1 of this Agreement;
- xxi. “Electricity Laws” shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereto and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
- xxii. “Event of Default” shall mean the events as defined in Article 15 of this PPA;
- xxiii. “Expiry Date” shall mean the date occurring twenty (20) years from the Commissioning Date;
- xxiv. “Electricity Department’s Grid Sub-Station” means nearest available 33KV Grid substation of Electricity Department;

- xxv. “Electricity Department’s Interconnection Point” means the Interconnection Point of the nearest 33 KV Grid Sub Station to the Generating Facility of the Generating Company;
- xxvi. “Energy Unit” or “Unit” means one Kilo Watt Hour (KWh) of electrical energy;
- xxvii. “Financial Closure” shall mean the execution of all the Financing Agreements required for the Project and fulfillment of all conditions for the initial draw down of funds thereunder;
- xxviii. “Financing Agreements” shall mean the agreements pursuant to which the Generating Company has sought financing for the Project including the loan agreements, security documents, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Electricity Department;
- xxix. “Financial Bid” refers to the Bid submitted by the Bidder/ Consortium which was selected as the Successful Bid and on the basis of which the Electricity Department has entered into this PPA with the Special Purpose Vehicle formed by the Bidder/ Consortium;
- xxx. "Force Majeure" or “Force Majeure Event” shall have the meaning ascribed thereto in Article 12 of this Agreement;
- xxxi. “GOI” means Government of India and includes all agencies, authorities under its control/regulation including but not limited to Ministry of New and Renewable Energy;
- xxxii. “Grid” means the total system of electrical transmission circuits, transformers, switchgear and other equipment (including Interconnection Facilities) on the Electricity Department’s side of Interconnection Point;
- xxxiii. “Indian Governmental Instrumentality” shall mean the Government of India and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the Andaman and Nicobar Administration or any of the above or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Generating Company and Electricity Department;
- xxxiv. “Insurances” shall mean the insurance cover to be obtained and maintained by the Generating Company in accordance with Clause 5.16 of this Agreement;
- xxxv. “Interconnection Facilities” means all the facilities to be installed by the Generating Company on the Electricity Department’s side of the interconnection point to enable the Electricity Department to provide stable and adequate start up power to the Generating Company and to receive and utilize power from the Project in accordance with this PPA;

- xxxvi. “Installed Capacity” means 2 (two) Megawatt which is the installed capacity in the initial phase of the Project;
- xxxvii. “Invoice Date” shall have the meaning ascribed to in Clause 10.3;
- xxxviii. “Invoice Dispute Notice” shall mean the notice issued by a party raising a Dispute regarding a Monthly Invoice or a Supplementary Bill issued by the other Party;
- xxxix. "Law" shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
- xl. “Maximum Demand” shall mean the highest value of the power or apparent power taken within a month. Maximum Demand is recorded by a maximum-demand indicator which shows the new maximum demand if the demand during any half-hour period exceeds the previous maximum.
- xli. “Monthly Invoice” or “Monthly Bill” means the invoice required to be prepared in line with Clause 10.3 of the PPA;
- xlii. “Peak Hour” shall mean the period between 1730 hours and 2200 hours IST in a day;
- xliii. “Performance Bank Guarantee” shall mean the irrevocable unconditional bank guarantee, submitted by the Generating Company as Performance Security to Electricity Department from a Nationalized Bank or a Scheduled Commercial Bank whose networth is more than Rupees Two Hundred Crores, in accordance with the terms of this PPA;
- xliv. “Project” or “Power Project” or “Generating Facility” means the 2 Megawatt biomass power project including all the land, civil, structures, electrical and mechanical plant and equipment, 33 KV switch yard including transformer, breaker, CT/PTs, wave traps, structures, isolators etc., dedicated telephone lines, telephone and wireless systems, components, appurtenants, communications, etc. located at Survey No. 1/1 at village Mithakhari in South Andaman island.
- xlvi. “Prudent Utility Practices” means those practices, methods, techniques and standards as adopted from time to time that are generally accepted for use in electric utility industries taking into account applicable law, conditions in India, specifically in Andaman and Nicobar islands and commonly used for the designing, construction, testing, operation and maintenance of the Generating Facility, lawfully, safely, efficiently and economically as applicable to the generating stations of the size, service and type being set up by the Generating

Company and those generally conform to the manufacturer's operation and maintenance guidelines;

- xlvi. "Rupees" or "Rs." shall mean Indian rupees, the lawful currency of India;
- xlvii. "Scheduled Commissioning Date" shall mean _____ (*insert the date*)
- xlviii. "Scheduled Date of Synchronization" means the date on which the Project shall be synchronized with the Grid for first time, which shall be on or before 545 Days from the date of signing of this PPA
- xlix. "Selectee" shall mean a new company selected by the Electricity Department for substituting the Generating Company for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained Schedule 3;
 - 1. "Senior Lenders" shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Project to provide the Generating Company with the debt financing;
 - li. "Site" means the land admeasuring 2 hectares bearing Survey No.1/1 at village Mithakhari in South Andaman island where the Project is located;
 - lii. "Supplementary Bill" shall mean a bill other than a Monthly Bill raised by any Parties in accordance with Article 10 of this Agreement;
 - liii. "Tariff" shall mean the rate per Energy Unit as per Clause 9.1.1 of this Agreement;
 - liv. "Termination Notice" shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 15 of this Agreement;
 - lv. "Termination Payment" means the amount payable by the Electricity Department to the Generating Company upon Termination and may consist of payments and restricted to the Debt Due and Adjusted Equity as the case may be; For the avoidance of doubt, it is agreed that the Generating Company shall submit every month the capital cost incurred towards the Power Project and its disaggregation between Debt and equity from the start of construction till Commissioning Date and only the amounts so conveyed shall form the basis for computing the Termination Payment;
 - lvi. "Term of the Agreement" means the time period set out in Article 2 of this PPA;
 - lvii. "WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be

construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 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;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 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;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or reenactments from time to time;

- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 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;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

ARTICLE 2: TERM OF POWER PURCHASE AGREEMENT

Except where terminated by Default, this PPA shall remain in force for a period of 20 (Twenty) years from the Commissioning Date subject to the following:

2.1 Effective Date

This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

2.2 Term of Agreement

This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date till 20 years from the Commissioning Date of the Project. On expiry or early termination of this PPA, the Generating Company shall transfer to the Electricity Department, the land leased to the Generating Company together with all the assets, buildings, fixtures, plant and machinery of the Project Facilities in good working condition without any encumbrances. The Term of the Agreement shall not be extended by the Electricity Department for any reason whatsoever;

2.3 Early Termination

This Agreement shall terminate before the Expiry Date if either Electricity Department or Generating Company terminates the Agreement, pursuant to Article 15 of this Agreement;

2.4 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Clause 3.2, Article 12 (Force Majeure), Article 15 (Events of Default and Termination), Article 16 (Governing Law and Dispute Resolution), Article 17 (Liability and Indemnification), Article 19 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the Generating Company

The Generating Company agrees and undertakes to duly perform and complete all of the following activities at the Generating Company's own cost and risk within the time frame stipulated below, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by the Electricity Department:

- i. The Generating Company shall deliver to the Electricity Department a legal opinion from the legal counsel of Generating Company with respect to the authority of the Generating Company to enter into this Agreement and the enforceability of the provisions thereof within 30 days from the date of signing of this Agreement;
- ii. The Generating Company shall have obtained all Consents, Clearances and Permits required for supply of power to Electricity Department as per the terms of this Agreement within six (6) months from the Effective Date;
- iii. The Generating Company shall have achieved Financial Closure and has provided a certificate to the Electricity Department from the Senior Lender to this effect within six (6) months from the Effective Date;
- iv. The Generating Company shall commence the construction at the site within thirty (30) days of the Financial Closure;
- v. The Generating Company shall have provided an irrevocable letter to the Senior Lenders accepting and acknowledging the rights provided to the Senior Lenders under the terms of this Agreement;

3.2 Consequences of non-fulfillment of conditions subsequent

If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Generating Company within the timeline specified under Article 3.1 otherwise than for the reasons directly attributable to the Electricity Department or Force Majeure event, Electricity Department shall have the right to invoke and encash the Performance Bank Guarantee in its favor and also entitled to terminate this Agreement.

3.3 Performance Bank Guarantee

- i. The Performance Bank Guarantee to be furnished under this Agreement shall be for guaranteeing the commencement of the Project and continuity of the supply of power within the time specified in this Agreement. The Generating Company has provided a refundable interest free performance security of Rs. 50,00,000/- (Rupees Fifty Lakhs only) before signing of this Agreement in the shape of Bank Guarantee in favour of Superintending Engineer, Electricity Department, A&N Administration for carrying out the objects of this Agreement. The Performance Security shall be refunded to the Generating Company after completion of one year from Commercial Operations Date;

- ii. In case of encashment of the Performance Guarantee in part or whole by the Electricity Department, the Generating Company shall replenish, replace or issue fresh Performance Guarantee as the case may be to bring it to the original sum i.e. Rs. 50,00,000/- within 7 days of encashment of the Performance Guarantee by the Electricity Department;
- iii. The failure on the part of the Generating Company to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the Generating Company;
- iv. If the Generating Company fails to commence supply of power on or before the Scheduled Commissioning Date specified in this Agreement, subject to provisions of Clause 15.1, Electricity Department shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of Electricity Department under this Agreement.

3.4 Return of Performance Bank Guarantee

Subject to Article 3.3, Electricity Department shall return / release the Performance Bank Guarantee after twelve (12) months from the Commissioning Date. The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of Electricity Department under this Agreement.

ARTICLE 4: REPRESENTATION AND WARRANTIES

4.1 Electricity Department hereby represents and warrants to the Generating Company:

- i) That Electricity Department has the power to execute, deliver and perform fully all its obligations and liabilities under this Agreement; and
- ii) That the execution, delivery and performance by the Electricity Department of this agreement will not violate any court, provisions of any existing law or notification or regulation or order or decree of any court, governmental authority, or agency or any contract undertaking or agreement to which Electricity Department is a party/binding on Electricity Department and will not result in the imposition or creation of any item, charge or encumbrance or part thereof.

4.2 The Generating Company hereby represents and warrants to Electricity Department that:

- i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- iii) It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- iv) It has the financial standing and capacity to undertake the project;
- v) This agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii) All the information furnished in the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of the Generating Company's Memorandum and Articles of Association or any applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- viii) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement;

ARTICLE 5: CONSTRUCTION AND DEVELOPMENT OF THE PROJECT

5.1 Project Implementation

- 5.1.1 The Generating Company shall implement the Power Project as per time schedule specified in Clause 1.1 (xlvii) and (xlviii). In case of delays, the Electricity Department shall initiate action in accordance with Clause 5.20;
- 5.1.2 The Generating Company shall submit all application with regard to the Project to Electricity Department which shall in turn scrutinize and forward the same to concerned Ministry / Govt. of India / Department for approvals, clearances as admissible from time to time; However, the Generating Company shall be solely responsible for obtaining all the requisite approvals and clearances;
- 5.1.3 The Generating Company shall obtain all Consents, Clearances and Permits other than those obtained under Clause 5.1.2 and maintain all Consents, Clearances and Permits in full force and effect during the Term of this Agreement.

5.2 Project Performance

- 5.2.1 The Generating Company shall design and construct the Project as per Prudent Utility Practices, the relevant technical standards, safety standards, stipulated quality controls and specifications so as to ensure that the Project is capable of delivering power as per dispatch instructions and to operate in parallel with the Electricity Department grid system. The Generating Company shall also ensure the delivery of power to Electricity Department at the HT side of the Project at 33 KVA in a safe and reliable manner so as to avoid fluctuations and disturbance to the grid system due to parallel operation.
- 5.2.2 The Generating Company shall further ensure that the Project during the Term of the Agreement meets all condition prescribed in accordance with the Indian Standard(s)/code(s) then in effect and otherwise synchronization with the Electricity Department's grid system.
- 5.2.3 The Company shall operate and maintain the Project in accordance with
- i) Prudent Utility Practices;
 - ii) All applicable laws and directives of Electricity Department/ A&N Administration/ GOI;
 - iii) The manuals, instructions and manufacturers' guidelines supplied by construction contractors' / manufacturers and suppliers of equipment and the grid technical parameters; and
 - iv) operating procedures
- 5.2.4 Fulfill all obligations undertaken by the Generating Company under this Agreement.

5.3 Payments

The Generating Company shall:

- i) maintain the Performance Bank Guarantee of Rs.50,00,000 (Rupees Fifty Lakhs only) in terms of the provision of clause 3.3 and 3.4;
- ii) Electricity Department has given to the Company on lease land admeasuring 2 hectares bearing Survey No.1/1 located at Mithikhari Village for establishment, operation and maintenance of the biomass based power plant. The Company shall pay to the Electricity Department a monthly lease rent of Rs. 1 (Rupees One) for the entire period of this Agreement; The Lease Deed entered into between the Electricity Department and the Generating Company is co-terminus with this PPA and the Generating Company shall transfer the land along with the assets in working condition without any encumbrance on expiry or early termination of the Power Purchase Agreement.
- iii) bear all costs relating to obtaining the statutory approvals, registrations, license fees, taxes and duties applicable for setting up the Project;
- iv) bear the stamp duty for the execution of this Agreement;
- v) make any payments due to the Electricity Department under this Agreement.

5.4 Shareholding of consortium members in the Project

The Successful Bidder has been awarded the contract for development of the Project under a competitive bidding process and the same is assigned to the Special Purpose Vehicle formed by the Successful Bidder viz. the Generating Company with the approval of the Electricity Department. The equity shareholding of the members of the consortium shall not be altered till the completion of two years from the date of commissioning of the Project. The Members of the Consortium may alter the Equity Shareholding in the Generating Company after two years from the Commissioning of the Project subject to the following:

- 5.4.1 The subscribed and paid up equity capital of the Lead Member in the Generating Company shall not be less than 26% of the aggregate shareholding of the Generating Company throughout the period of the PPA;
- 5.4.2 All the Consortium Members together shall hold a minimum subscribed and paid up equity share capital of atleast of 51% of the aggregate shareholding of the Generating Company throughout the period of PPA;
- 5.4.3 The Lead Member shall have maximum equity shareholding amongst all the Consortium Members throughout the period of PPA;
- 5.4.4 Any Consortium Member intending to sell the entire equity shareholding in the Generating Company shall obtain a No Objection Certificate from the remaining members of the Consortium prior to selling its shareholding in the Generating Company.

5.5 Safety Measures

The Generating Company agrees to carry out the investigations as well as implement the Project keeping in view the quality control measures as well as safety standards to the

maximum extent possible. The Generating Company shall allow access to the authorized representatives of Electricity Department / A&N Administration to the Project facilities at all times to ensure compliance in this respect.

5.6 Alternative Facilities

The Generating Company shall ensure that while implementing the Project, the Project will not affect any public utility scheme such as drinking water, irrigation schemes, approach roads / paths etc. except to the extent required and approved by the concerned department / authority. The cost of the remedial measures shall be borne by the Generating Company. The Generating Company shall not interfere with any of the existing facilities till an alternate facility as identified is created.

5.7 Water Requirement for Construction

The Generating Company shall ensure that the water requirement for construction and operation and maintenance of the Project including potable water shall be arranged by them with the permission of Andaman Public Works Department (APWD).

5.8 Recruitment of Staff

The Generating Company shall ensure that, subject to availability and suitability, all the unskilled/skilled staff and other non-executives as may be required for implementation of the Project shall be recruited locally.

5.9 Use of Facilities

The Generating Company shall permit usage by the Electricity Department and the general public of all the Alternative Facilities of the Project as specified in clause 5.6 including, but not limited to service roads, bridges constructed and maintained by it for the Project.

5.10 Usage of Land

The Generating Company shall not transfer, assign the land acquired / leased for the Project in violation of the terms and conditions of this Agreement. The Generating Company shall also maintain the Site free from all encumbrances during the Term of this Agreement. The Generating Company shall be permitted to use the site for production of energy only and shall not carry out any other activity, business, and transactions from that area.

5.11 Use of other fuels

- 5.11.1 Use of coal or coke shall not be permitted. Use of any other fuel other than biomass for generation of power shall be subject to approval of Electricity Department;
- 5.11.2 The Generating Company shall produce energy using only biomass sources for which the Power Project has been approved. A suitable proforma shall be devised atleast one month before commissioning of the Power Project through which Generating Company shall report on a monthly basis the continuous use of biomass sources(s) for which the Power

Project has been approved. Occasional checks shall be carried out by the Electricity Department to ensure the use of biomass. In case the Generating Company is found using sources other than these, the Electricity Department shall be well within its rights to terminate the PPA;

- 5.11.3 The Electricity Department has planned to establish biomass based power plants either on its own or on Build Own and Operate (BOO) basis at Havelock, Neil, Little Andaman, Car Nicobar, Diglipur, Mayabunder, Rangat, Kamorta, Katchal, Therese and Campbell Bay islands. The biomass requirement for these proposed biomass based power plants shall be sourced locally. Electricity Department shall not entertain any other similar project to be set up in South Andaman islands, excluding any captive power plant, so as to avoid any adverse impact on the sourcing of biomass fuel for this Project, unless, it is found after survey and assessment conducted by the Electricity Department or any agency appointed by it, that surplus biomass residue is available in the A&N islands which can be exploited for establishing additional biomass based power generation systems at South Andaman island;
- 5.11.4 The Generating Company shall have no right to claim any compensation from the Electricity Department or any third party for exploitation of biomass available in A&N islands for similar project.

5.12 Disposal of ash/ waste from the Power Project

- 5.12.1 The Generating Company shall take utmost care for proper utilization and disposal of the ash and other waste generated from the Generating Facility without causing any environmental degradation;
- 5.12.2 The Generating Company shall submit an action plan for proper and safe disposal of the waste from the Generating Facility.

5.13 Adherence to law

The Company shall follow and obtain all necessary clearances / approval under all the relevant laws, including without limitation, all labour laws, and shall also provide for safety provisions as per the Indian Electricity Act 2003, Indian Electricity Rules, Factories Act, 1948, Mines Act, 1952 and such other statutory provisions relating to the Project.

5.14 Project Maintenance

The Generating Company shall ensure the project is maintained in accordance with the manufacturer's instructions, procedures, relevant safety code, Indian Electricity Act/ Rules and Prudent Utilities Practices and Indian/ International Standards during the Agreement Period and in accordance with Article 11.

5.15 Company's liability not limited by contractors

Notwithstanding any subletting or subcontracting by the Generating Company; and notwithstanding that the Electricity Department may have received copies of such sub-contracts, the Generating Company shall remain solely responsible for the quality of such

execution and performance of all the conditions of the Agreement in all respects, as if such sub-contracting or sub-letting had not taken place, and as if the work has been done directly by the Company.

5.16 Insurance Coverage

- 5.16.1 The Generating Company shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of Agreement, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements;
- 5.16.2 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;
- 5.16.3 If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, Electricity Department shall have no claim on such proceeds of such Insurance;
- 5.16.4 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the Generating Company can claim compensation, under any Insurance shall not be charged to or payable by Electricity Department;
- 5.16.5 Provided further that, the Generating Company shall indemnify and hold the Electricity Department and its employees harmless from, and against any, and all claims, demands, proceedings or causes of the action in respect of.
- i) Any death or injury to the personnel of the Generating Company, contractors and third Parties; and/or
 - ii) Any loss or damage to the Project or the property of the Generating Company, its personnel or third party;
 - iii) Any action taken by the Pollution Control Committee or any other Department of A&N Administration or any agency of the Central Government for improper handling, disposal of the waste generated from the Power Project by the Generating Company.

5.17 Installed Capacity & Energy Supply

- 5.17.1 Subject to provisions of this Agreement, the entire Installed Capacity subject to a maximum of 98,68,320 KWH (Units) (*assuming 2 MW capacity operational for 330 days at PLF of 70% and auxillary consumption of 11%*) in the first year of commercial operations and 1,12,78,080 KWH (Units) (*assuming 2 MW capacity operational for 330 days at PLF of 80% and auxillary consumption of 11%*) every year from second year of commercial operations onwards shall be for the exclusive benefit of Electricity

Department and the Generating Company shall have the obligation to produce the above number of Energy Units stipulated in this clause 5.17.

5.17.2 The Generating Company shall maintain a Maximum Demand of at least 60% during the Peak Hours; The Generating Company shall pay Damages to the Electricity Department at the rate of Re.1 per Kwh if the Maximum Demand falls below 60% during Peak Hours. *(the Damages will be calculated considering an installed capacity of 2 MW and auxillary consumption of 11%).*

5.17.3 The Generating Company shall have the right to install additional capacity within 5 (five) years from the Commissioning Date subject to the following:

- i. The additional capacity proposed shall not exceed 1 MW;
- ii. The period of PPA shall remain unaltered;
- iii. The Electricity Department shall not be under any obligation to purchase any additional Units other than those mentioned under Clause 5.18 below;

5.18 Minimum Purchase Obligation

The Electricity Department shall purchase a minimum of 74,01,240 KWH (Units) *(equivalent to 75% of the maximum number of units for the first year mentioned in 5.17 above)* in the first year of commercial operations and 84,58,560 KWH (Units) *(equivalent to 75% of the maximum number of units for the second year mentioned in 5.17 above)* every year from the second year of commercial operations onwards throughout the period of the PPA and shall not be obliged to purchase any additional energy from the Generating Company beyond the number of energy units mentioned in this clause 5.18.

5.19 Extensions of Time

5.19.1 In the event that the Generating Company is prevented from performing its obligations under Clause 5.1 by the Scheduled Commissioning Date due to:

- a. any Electricity Department Event of Default; or
- b. Force Majeure Events affecting Electricity Department; or
- c. Force Majeure Events affecting the Generating Company;

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Clause 5.19.2, for a reasonable period but not less than 'day for day' basis, to permit the Generating Company or Electricity Department through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Generating Company or Electricity Department, or till such time such Event of Default is rectified by Electricity Department;

5.19.2 In case of extension occurring due to reasons specified in Clause 5.19.1 (a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than six (6) months or the date on which the Generating Company elects to terminate this Agreement, whichever is later;

- 5.19.3 In case of extension due to reasons specified in Clause 5.19.1 (b) and Clause 5.19.1 (c), and if such Force Majeure Event continues even after a maximum six (6) months, any of the Parties may choose to terminate the Agreement as per the provisions of Clause 15.5;
- 5.19.4 If the Parties have not agreed, within thirty (30) days after the Affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16;
- 5.19.5 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement;
- 5.19.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond twelve months from the Scheduled Commissioning Date of the Project.

5.20 Liquidated Damages for delay in commencement of supply of power to Electricity Department

- 5.20.1 If the Generating Company is unable to commence supply of power to Electricity Department by the Scheduled Commissioning Date other than for the reasons specified in Clause 5.19.1, the Generating Company shall pay to Electricity Department, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date at the rate of Rs.15,000/- (Rupees Fifteen Thousand Only)/MW/day for delay of first 30 days and Rs.20,000/- (Rupees Twenty Thousand Only) /MW/day for delay thereafter;
- 5.20.2 The Generating Company's maximum liability under this Clause 5.20 shall be limited to the amount of liquidated damages calculated in accordance with Clause 5.20.1 for and up to six (6) months of delay for commencement of supply of power from the Scheduled Commissioning Date or the date of termination of Agreement whichever is later;
- Provided that in case of failure of the Generating Company to start supply of power to Electricity Department even after expiry of six (6) months from its Scheduled Commissioning Date, it shall be considered as a Generating Company Event of Default and provisions of Article 15 shall apply;
- 5.20.3 The Generating Company shall pay the amount calculated pursuant to Clause 5.20.1 to Electricity Department within ten (10) days of the earlier of:
- a. the date on which the Generating Company commences supply of power to the Electricity Department, or
 - b. expiry of the period mentioned in Clause 5.20.2;
- 5.20.4 If the Generating Company fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Clause 5.20.3, Electricity Department shall be

entitled to recover the said amount of the liquidated damages by invoking the Performance Bank Guarantee. If the then existing Performance Bank Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Generating Company to Electricity Department under this Clause 5.20, then the Generating Company shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Performance Bank Guarantee by Electricity Department.

5.21 Third Party Verification

- 5.21.1 The Generating Company shall be further required to provide entry to the site of the Power Project at all times during the Term of the Agreement to Electricity Department and any third party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the Generating Company at the site of the Project, subject to security of the operations and the personnel;
- 5.21.2 The third party or Electricity Department may verify the construction works/operation of the Project being carried out by the Generating Company and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from the Generating Company.

5.22 Employment of foreign nationals

The Generating Company acknowledges, agrees and undertakes that employment of foreign personnel by the Generating Company and/ or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Generating Company and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Generating Company or any of its contractors or sub-contractors shall not constitute Force Majeure event, and shall not in any manner excuse the Generating Company from the performance and discharge of its obligations and liabilities under this Agreement.

ARTICLE 6: SYNCHRONISATION AND INTERCONNECTIONS FACILITIES

- 6.1 The Generating Company shall be required to obtain all information with regard to the Grid and Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Generating Company's side of the Delivery Point which is compatible with the Electricity Department's systems;
- 6.2 Prior to synchronization of the Power Project, the Generating Company shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by an agency identified by the central government/ A&N Administration to carry out testing and certification for the biomass power project. All the costs incurred for obtaining the certification shall be borne by the Generating Company;
- 6.3 The Generating Company shall give the concerned Interconnection Point and Electricity Department at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronise the Project to the Grid system;
- 6.4 The synchronization equipment will be installed by the Generating Company at its Generating Facility at its own cost. The Generating Company shall synchronize its system with the Electricity Department's system only after the approval of synchronization scheme is granted by Superintending Engineer (SE), Electricity Department and checking/verification is made by the concerned Executive Engineers (EE), Assistant Engineer (AE), Electricity Department. The Generating Company shall, immediately after each synchronization/ tripping of generator, inform the grid substation to which the Generating Facility is electrically connected;
- 6.5 The Generating Company shall provide step up transformers, panels, kiosks, protection and metering equipment at the Generating Facility and fully equipped line bay(s) in its switch yard for termination of interconnecting transmission line(s) of the Electricity Department. The Generating Company shall also provide proper and reliable communication between the Generating Facility and Grid Sub-Station of the Electricity Department where power is to be delivered by the Generating Facility. The cost of these works will be borne by the Generating Company;
- 6.6 The Electricity Department shall provide and maintain at its own cost required transmission line(s) for evacuation of power. Associated equipment(s) at the Electricity Department's Grid Sub-Station for accepting energy from the Generating Facility shall also be provided and maintained by the Electricity Department.
- 6.7 The Generating Company and the Electricity Department shall consult with each other and jointly decide on the scheme for protection of the interconnection line(s) and of the facilities at both its ends. All electric equipments installed shall be consistent with orders of the Superintending Engineer, Electricity Department;

- 6.8 Notwithstanding the provisions of this Agreement, the Electricity Department will not be responsible for any damage that may occur to the Generating Facility with the Electricity Department's system;
- 6.9 The Electricity Department shall allow the Generating Company to interconnect its Generating Facility and operate it in parallel with the Electricity Department's system subject to the terms and provisions of this PPA. The Generating Company shall run the Generating Facility as a part of the integrated system to generate power in parallel with the grid and shall inject three phase 50 Hz(nominal) AC supply into Electricity Department's system at 33KV.
- 6.10 The Generating Company shall start commercial operations as soon as it receives communication from Electricity Department and directions from the concerned Interconnection Point.

ARTICLE 7: PROTECTIVE EQUIPMENT & INTERLOCKING

- 7.1 The Generating Company shall provide necessary protective equipment and interlocking devices at Generating Facility, so that no adverse effect is caused to the Electricity Department's Grid Systems. The Generating Company shall obtain approval of the Electricity Department for the protection logic of the generator system and synchronization schemes and any modification thereto subsequent to commissioning of the Generating Facility;
- 7.2 The Generating Company shall energize its equipment/ synchronization scheme only after the approval of the Superintending Engineer of the Electricity Department at the time of commissioning and thereafter any rectification of the defects/observations pointed out by him, routine checking /testing shall be carried out of the Generating Company's substation/equipment on the same basis as is being done for Electricity Department's Sub-Station;
- 7.3 Testing Charges shall be borne by the Generating Company for commissioning as well as routine checking;

Notwithstanding such checking/verification in any event, the Electricity Department shall not be responsible for any damage caused to the Generating Facility on account of any mistake in such checking/verification.

ARTICLE 8: METERING

8.1 Metering at Interconnection Point

Actual energy made available to the Electricity Department pursuant to the Agreement shall be measured at the Interconnection Point by the Metering System. The Generating Company shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at Generating Company's side of Delivery Point.

8.2 Metering Equipment

The Metering System shall consist to main energy meters of two-tenths of one percent (0.2%) accuracy class (the "Main Meters") which shall be installed at the 33 KV points of supply and generator terminals at the Unit by the Generating Company and check meters (the "Check Meters") at the same point and of the same accuracy and make which shall be installed by the Electricity Department at its cost. Each of these will be a pair of export and import meters. If the Electricity Department fails to install the Check Meters the Generating Company may do so at the Electricity Department's expense.

8.3 Inspection of Meters

All Meters shall be jointly inspected and sealed on behalf of both the Parties and shall not be interfered with, except in the presence of the authorized representatives of both the Parties. For testing and calibration of meters, a notice of two (2) days shall be given by the Party requesting testing, to enable authorized representatives of both the Parties to be present.

8.4 Accuracy Determinations

All meters shall be checked for accuracy quarterly by both the Parties jointly and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the class as per International Electro Technical Commission 687 ("IEC687") metering transformers shall be checked for accuracy at least once every two (2) years. Meter readings of the Main Meters will form the basis of billing hereunder, so long as the results of the quarterly checks thereof are within the prescribed limits.

8.5 Periodic Calibration of Meters

All the Main Meters and the Check Meters shall be calibrated once in every six (6) months jointly by both the Parties in January and July, irrespective of the calibrations that might have been done, where necessary during the quarterly checks. The Parties shall endeavour to adjust errors to as close to zero (0) as possible.

8.6 SSS Meter Calibration for Testing

For the purpose of testing and calibration, the static substandard meter shall be calibrated and sealed. This calibration and sealing shall be done every six (6) months at any of (i) Institute of Design for Electricity Measuring Instruments at Mumbai, India (ii) Chief Electrical Inspector at Madras or (iii) National Physical Laboratories at Delhi/ Kolkata, India (iv) any other agency authorized to calibrate and seal the meters.

8.7 Determination if Meters Defective

The quantity of net electrical output as recorded by the Main Meters will be Actual Energy supplied to the Electricity Department. However if during the period when the Main Meters or the ancillary or part thereof is found defective or the quarterly checks / half yearly checks indicate errors beyond the prescribed limits of accuracy, the net electrical output as recorded by the Check Meters will be taken as the Actual Energy supplied for the purpose of preparation of the relevant Tariff Invoice. Further, if the Main Meters and Check Meters or any ancillary or part thereof are found defective or errors in meters are beyond the prescribed limits, then the actual Energy will be jointly determined by the Parties.

8.8 Determination if Meters Variances

The quantity of net electrical output supplied to the Electricity Department shall be computed from the readings of the Main Meters. However, if in any month, the energy recorded by the Main Meters differs from the energy recorded by the corresponding Check Meters by more than plus/minus two fifth of one percent (0.4%) the Main Meters and the Check Meters shall be jointly tested in turn and errors at various levels as per the standard procedure shall be tabulated. If on such testing the Main Meter error is found to exceed plus/ minus one fifth of one percent (0.2%), the energy recorded by Main Meters for the above month(s) shall be revised accordingly and the Main Meters shall be recalibrated or replaced by correct meters. Pending results of such testing, billing and payment shall continue to be based on the energy recorded by the Check Meters.

8.9 Testing and Corrections in Billing

Corrections in Billing, wherever necessary shall be applicable to the period between the previous meter reading and the date and time of test calibration in the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at one hundred and five percent (105%), one hundred percent (100%), eighty five percent (85%), seventy five percent (75%) and fifty percent (50%), load at unity (1) power factor and one-half power factor. Of these ten values, the error at the load and power factor nearest the average monthly load and the corresponding power factor during the period shall be taken as the error to be applied for correction.

8.10 Generating Company's access to the Metering system

The Generating Company and its representatives shall be entitled to be present at any test inspection, maintenance and replacement of any part of the Metering system performed by the Electricity Department.

ARTICLE 9: ENERGY PURCHASE AND SALE

9.1 Sale of Energy by the Generating Company

9.1.1 The Electricity Department shall purchase the number of Units in accordance with the provisions of Clause 5.17 and Clause 5.18. The Energy Unit rate applicable for the first year of commercial operations shall be ____ (Rs./ KWH). The unit rate shall escalate at the rate of 3% every year and shall be reset on the anniversary of Commercial Operations Date every year.

9.1.1 The Generating Company shall not sell power at any time to any third party during the period of this PPA;

9.1.2 Banking of Electricity shall not be allowed;

9.2 Liquidated Damages payable to the Electricity Department by the Generating Company for shortfall in supply of Energy Units

9.2.1 Cumulative energy account shall be prepared in accordance with clause 10.2 depicting the cumulative energy supplied in a year viz.

- i. for the first year, the energy supplied between the date of Commissioning and the date the change of tariff becomes effective for the first time which is the first anniversary of the date of Commissioning;
- ii. For subsequent years, the energy supplied for the period between two consecutive date of change of tariff;

9.2.2 If the cumulative energy supplied by the Generating Company in accordance with clause 9.2.1 is less than the minimum number of Energy Units guaranteed by the Generating Company to be supplied to the Electricity Department in accordance with clause 5.17, then the Generating Company shall pay compensation for the loss incurred by the Electricity Department which shall be calculated as provided in Schedule 4.

9.3 Liquidated Damages payable to the Generating Company by the Electricity Department towards deemed generation

9.3.1 Monthly minimum average purchase obligation of Energy Units by the Electricity Department from the Generating Company shall be calculated by dividing the annual commitment of the Energy Units proposed to be purchased by the Electricity Department from the Generating Company for a particular year as stipulated in Clause 5.18 by twelve (12); If the actual number of Units purchased by the Electricity Department from the Generating Company in a given month is less than the monthly minimum average purchase obligation in accordance with this Clause 9.3.1 on account of:

- i. Force Majeure event;
- ii. Periodic shut down or outage of the Generating Facility for maintenance by the Generating Company;
- iii. Any other reason solely attributable to the Generating Company;

Electricity Department shall not be liable to pay deemed generation charges;

- 9.3.2 If the actual number of Units purchased by the Electricity Department in a given month is less than the monthly minimum average purchase obligation of units calculated in accordance with clause 9.3.2 above for reasons solely attributable to Electricity Department including those stipulated in Clauses 14.1.1, 14.1.2, 14.1.3, 14.1.4 and 14.1.5 then Electricity Department shall pay deemed generation charges at the same tariff applicable for normal purchase of power from the Generating Company for the difference between the monthly minimum obligation of number of units applicable for that month and actual number of units which are solely attributable to the Electricity Department;

9.4 Purchase of Energy by Generating Company

- 9.4.1 During construction of the Project, the Generating Company shall purchase power from Electricity Department as per the then prevailing instructions for similar consumers of the Electricity Department;
- 9.4.2 After Commissioning Date of the Project, the electricity connection provided by the Electricity Department to the Generating Company shall be withdrawn and the Generating Company shall install its own DG set at its own cost for shut down/ start up operations.

ARTICLE 10: BILLING PROCEDURES AND PAYMENTS

- 10.1 The designated representative of the Parties shall record joint readings of the meters at the Interconnection Point. The meter reading in the first instance shall be at the time of synchronization and thereafter at 14.00 Hours on the last day of every calendar month. Readings will also be recorded at 14.00 Hours on the dates the change of Tariff becomes effective. Readings will be taken by Assistant Executive Engineer / Assistant Engineer (AE) or any designated representative of the Electricity Department (to be specified at the time of signing of this PPA) in charge of the area, under which the Generating Facility fall. It will be the responsibility of the AE in charge of the area to designate two or more officers for taking the reading in the event AE in charge does not make himself present. The Generating Company shall also contact the Superintending Engineer who shall ensure taking of the joint reading with the Generating Company by one or two of the designated officers or by himself;
- 10.2 Monthly energy account shall be prepared by the Electricity Department. This account shall depict energy delivered to the Electricity Department at the Interconnection Point. Cumulative energy supplied shall also be calculated for each year i.e. for the first year energy supplied between the Commercial Operations Date and the date of change of tariff and from the second year energy supplied between two consecutive tariff reset dates. The Generating Company shall at its own cost install diesel generators for their energy requirements during shut down/start up of the Project in accordance with clause 9.4.2. In the event monthly energy account depicting energy delivered to Electricity Department is not prepared and provided by the Electricity Department within two (2) working days then the Generating Company will be entitled to prepare the monthly average account of its own under intimation to the Electricity Department for the purpose of raising necessary invoices. Preparation of monthly energy account by the Generating Company in such case shall be subject to adjustment after verification of facts;
- 10.3 The monthly invoice pursuant to Clause 10.2 shall be delivered by the Generating Company to the Electricity Department at its designated officer on or before the fifth day of the month hereinafter called the invoice Date. If the Invoice Date i.e. fifth day of the month, happens to be a holiday then the Monthly Invoice will be submitted on the next working day. The Electricity Department shall make payment of such Monthly invoice within 30 days of receipt of the Monthly Invoice hereinafter called the Due Date. All payments shall be made in Indian Rupees by Cheque payable at Port Blair.
- 10.4 The Electricity Department pursuant to clause 9.2 shall make the necessary deductions from the Monthly Bill of the Generating Company for that month. If the total loss to the Electricity Department pursuant to clause 9.2 is not recoverable from that particular month's Monthly Bill the remaining amount due to the Electricity Department shall be deducted from the Generating Company's subsequent Monthly Bills;
- 10.5 Deemed generation charges calculated in accordance with Clause 9.3 shall be paid by the Electricity Department along with the Monthly Bill for that respective month;

- 10.6 In case the payments are delayed beyond the Due Date, the Electricity Department and the Generating Company would be liable to pay Late Payment Surcharge for the delayed amount at the rate of 12% per annum for the actual period of delay, the Late Payment Surcharge being calculated on a daily basis;
- 10.7 Electricity Department will provide to the Generating Company, an irrevocable and revolving Letter of Credit (LC) issued by any Nationalised Bank for an amount equivalent to one month bill amount, on the basis of average of last three months bill and in the first year of operation for the first three months after Commissioning it is calculated on the basis of estimated energy supply in that month, subject to the condition that all kinds of LC charges shall be borne by the Generating Company.
- 10.8 The Electricity Department reserves the right to make direct payment of any Bill by cheque before or on Due Date of payment in which case, the Generating Company shall not present the bill for payment against the Letter of Credit.

10.9 Disputed Bill

- 10.9.1 If a Party does not dispute a Monthly Invoice raised by the other Party by the Due Date, such Bill shall be taken as conclusive.
- 10.9.2 If a Party disputes the amount payable under a Monthly Invoice, that Party shall, within thirty (30) days of receiving such Invoice, issue a notice (the "Invoice Dispute Notice") to the invoicing Party setting out:
- a. the details of the disputed amount;
 - b. its estimate of what the correct amount should be; and
 - c. all written material in support of its claim.
- 10.9.3 If the invoicing Party agrees to the claim raised in the Invoice Dispute Notice issued pursuant to Clause 10.9.2, the invoicing Party shall revise such invoice within seven (7) days of receiving the Invoice Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised invoice from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within seven (7) days of receiving the Invoice Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 10.9.4 If the invoicing Party does not agree to the claim raised in the Invoice Dispute Notice issued pursuant to Clause 10.9.2, it shall, within fifteen (15) days of receiving the Invoice Dispute Notice, furnish a notice (Invoice Disagreement Notice) to the disputing Party providing:
- a. reasons for its disagreement;

- b. its estimate of what the correct amount should be; and
 - c. all written material in support of its counter-claim.
- 10.9.5 Upon receipt of the Invoice Disagreement Notice by the disputing Party under Clause 10.9.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Invoice Disagreement Notice.
- 10.9.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Invoice Disagreement Notice pursuant to Article 10.9.4, the matter shall be referred to Dispute resolution in accordance with Article 16.
- 10.9.7 In case of Disputed invoices, it shall be open to the aggrieved Party to seek Dispute Resolution in accordance with Article 16 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 Arbitration Tribunal, including in regard to interest or Late Payment surcharge, if any directed to be paid.
- 10.9.8 If a Dispute regarding a Monthly Invoice is settled pursuant to Clause 10.9 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Invoice Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Clause 10.9.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 10.9.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Electricity Department shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Invoice has been raised based on the energy accounts and in accordance with this Agreement.

10.10 Quarterly and Annual Reconciliation

- 10.10.1 The Parties acknowledge that all payments made against Monthly Invoices shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account the energy accounts, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement;
- 10.10.2 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 Generating Company and Electricity Department shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement,

the Generating Company or Electricity Department, as the case may be, shall raise a Supplementary Bill for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation including in accordance with provisions of Article 10. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.11 Payment of Supplementary Bill

- 10.11.1 Electricity Department shall remit all amounts due under a Supplementary Bill raised by the Generating Company to the Generating Company's designated account by the Due Date. Similarly, the Generating Company shall pay all amounts due under a Supplementary Bill raised by Electricity Department, if any, by the Due Date to concerned Electricity Department's designated bank account;
- 10.11.2 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly invoice in Clause 10.6.

ARTICLE 11: GENERATION FACILITY - OPERATION & MAINTENANCE

- 11.1 The Generating Company shall be responsible for obtaining and keeping in force at its own cost, all Consents, Clearances, and Permits required for establishing and operating the Generating Facility in accordance with the terms of this PPA through out its Term of the Agreement;
- 11.2 The Generating Company shall be responsible at its own expense for ensuring that the Generating Facility is operated and maintained in accordance with all legal requirements and Prudent Utility Practices within acceptable technical limits so as not to have an adverse effect on the Grid system or violation of applicable laws, rules, regulations and requirements in force from time to time in the Union Territory of Andaman and Nicobar/ Government of India;
- 11.3 Electricity Department shall have the right to designate from time to time its officers/officials who shall be responsible for inspecting the Generating Facility for the purpose of verifying the Generating Company's compliance with this PPA;
- 11.4 The details of the following procedures and requirements shall be supplied by the Generating Company to the Electricity Department as soon as possible, but in no event later than 30 (Thirty) days prior to the Scheduled Date of Synchronization
- i. Detailed Procedure for synchronization of the Generating Facility with the Electricity Department's grid under different conditions of operation;
 - ii. Shut down and Start up Procedures;
- 11.5 The Generating Company shall carry out regular maintenance and overhauls of the systems to maintain it in good condition. The schedule of maintenance and overhauls which require a shut down of the Generating Facility shall be intimated to the Electricity Department's Interconnection Point to which the Generating Facility is attached;
- 11.6 The Generating Company shall supply the particulars of the generation system as well as generator transformer and control gear to the Electricity Department for examining stability of Generating Facility. The Generating Company shall also install and whenever required, augment the equipment at its own cost to match it with the fault level of Electricity Department's system during the tenure of this PPA;
- 11.7 The Generating Company shall use all reasonable efforts to give advance notice to the Electricity Department to the extent possible of any unscheduled outage and shall provide the Electricity Department with an estimate of duration and scope of such outage;
- 11.8 For matters relating to grid operations and load dispatch, the directions of the Electricity Department's officer who may be authorized by the Electricity Department shall be strictly complied with by the Generating Company. Any dispute on this account shall be referred to Superintending Engineer, Electricity Department whose decision shall be final;
- 11.9 The Generating Company shall also generate matching MVARs corresponding to Power Factor between (PF) 0.8 and 0.95 lagging, so that there is no adverse effect on Electricity

Department's system. Monthly average PF shall be computed from the ratio of KWH to KVAH injected into the Electricity Department's system during the month.

11.10 Open Access: Open Access is not permitted.

ARTICLE 12 : FORCE MAJEURE

12.1 Definitions

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

12.2 Affected Party

12.2.1 An Affected Party means Electricity Department or the Generating Company whose performance has been affected by an event of Force Majeure.

12.3 Force Majeure

12.3.1 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:

- a. 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 or tornado, tsunami;
- b. Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Affected Party; or
- c. the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Parties to perform their obligations under this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Project , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down;
- d. any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the Generating Company to Electricity Department, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down;
- e. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or
- f. radio active contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

12.4 Force Majeure Exclusions

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

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

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

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

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

12.6.1 To the extent not prevented by a Force Majeure Event pursuant to Clause 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 Force Majeure Event as soon as practicable.

12.7 Available Relief for a Force Majeure Event

12.7.1 Subject to this Article 12:

- a. no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Clause 5.19;
- c. For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party;
- d. Neither Party shall be under any obligation to provide monetary compensation to the other Party for any losses arising on account of Force Majeure event.

12.8 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the provisions of Article 16; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and / or excuse on account of such Force Majeure Event.

ARTICLE 13: CHANGE IN LAW

13.1 Definitions

- 13.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the Generating Company or any income to the Generating Company:
- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
 - b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
 - c. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
 - d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Generating Company;
 - e. any change in tax or introduction of any tax made applicable for supply of power by the Generating Company as per the terms of this Agreement;
- but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Generating Company, or (ii) any change on account of regulatory measures by the Appropriate Commission.

13.2 Relief for Change in Law

- 13.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking relief on account of Change in Law.
- 13.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and provide relief for the same shall be final and binding on both the Parties.

ARTICLE 14: CONTINUITY OF SERVICE

- 14.1 The Electricity Department may require the Generating Company to temporarily curtail or interrupt supply of power under the following circumstances:
- 14.1.1 For repair, replacement and removal of the Electricity Department's equipment or any part of its system that is associated with the Generating Company's Facility. However as far as practicable such an event shall be scheduled during the annual shut-down period of the Generating Facility;
 - 14.1.2 Load Crash in Electricity Department's Grid system due to wide spread rains, cyclones or typhoons;
 - 14.1.3 Conditions leading to over loading of interconnecting transformers, transmission lines and switch gears due to outage of some equipment at the Electricity Department's interconnecting Grid;
 - 14.1.4 If the Electricity Department determines that the continued operation of the Generating Facility may endanger the safety of the Electricity Department's personnel or integrity of the Electricity Department's electric system or have an adverse effect on the electric service to the Electricity Department's other customers;
 - 14.1.5 In line with directions received from the Electricity Department's Interconnection Point;
 - 14.1.6 Under Force Majeure Conditions of the Electricity Department;
- 14.2 Instructions for the disconnection of the Generating Facility from the Electricity Department's system shall be notified by the Electricity Department's Interconnection Point for the period/duration indicated by it. However the Electricity Department shall take all reasonable steps to minimize the number & duration of such interruptions, curtailments or reductions.

ARTICLE 15: EVENTS OF DEFAULT AND TERMINATION

15.1 Generating Company Event of Default

- 15.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Generating Company Event of Default:
- i. the failure to commence supply of power to Electricity Department within six (6) months from the Scheduled Commissioning Date;
 - ii. the Generating Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets related to the Power Project in contravention of the provisions of this Agreement;
 - iii. the Generating Company transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement;
 - iv. (a) the Generating Company becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Generating Company, or (c) the Generating Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law; Provided that a dissolution or liquidation of the Generating Company will not be a Generating Company Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Generating Company and expressly assumes all obligations of the Generating Company under this Agreement and is in a position to perform them;
 - v. the Generating Company repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Electricity Department in this regard;
 - vi. except where due to any Electricity Department's failure to comply with its material obligations, the Generating Company is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Generating Company within thirty (30) days of receipt of first notice in this regard given by Electricity Department.
 - vii. failure to replenish, replace/ provide fresh Performance Bank Guarantee, as per the terms of this Agreement;
 - viii. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Generating Company;

- ix. abandonment of its Generating Facility by the Generating Company or the discontinuance by the Generating Company of Services covered under this PPA unless discontinuance is caused by Force Majeure or an event of default by the Electricity Department;
- x. failure to pay to Electricity Department any amount payable and due under this PPA within sixty(60) calendar days after receipt of Monthly Invoice or
- xi. failure on the part of the Generating Company to use reasonable diligence in operating, maintaining or repairing the Generating Facility, such that the safety of persons and property, the Electricity Department's equipment or the Electricity Department's service to others is adversely affected.

15.2 Electricity Department Event of Default

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

- i. Electricity Department fails to pay (with respect to a Monthly invoice) an amount equal to the undisputed part of the most recent Monthly invoice for a period of sixty (60) days after the Due Date and the Generating Company is unable to recover the amount outstanding to the Generating Company through the Letter of Credit;
- ii. Electricity Department repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Generating Company in this regard;
- iii. except where due to any Generating Company's failure to comply with its obligations, Electricity Department is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Electricity Department within thirty (30) days of receipt of notice in this regard from the Generating Company to Electricity Department;
- iv. if Electricity Department becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or any winding up or bankruptcy or insolvency order is passed against, or Electricity Department goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a Electricity Department Event of Default, where such dissolution or liquidation of or is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Electricity Department and expressly assumes all obligations of Electricity Department and is in a position to perform them;

- v. occurrence of any other event which is specified in this Agreement to be a material breach or default of Electricity Department;
- vi. failure to pay to the Generating Company any amount payable and due under this PPA within sixty (60) Calendar days after receipt of Monthly Invoice;
- vii. failure to use reasonable diligence in operating, maintaining or repairing the Electricity Department's interconnecting facilities, such that the safety of persons or property, the Generating Company's equipment or the Generating Company is adversely affected.

15.3 Procedure for cases of Generating Company Event of Default

- 15.3.1 Upon the occurrence and continuation of any Generating Company Event of Default under Clause 15.1, Electricity Department shall have the right to deliver to the Generating Company a notice with a copy to the Senior Lender's representative, stating its intention to terminate this Agreement (Electricity Department's Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice;
- 15.3.2 Following the issue of Electricity Department's Preliminary Default Notice, the Cure Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances;
- 15.3.3 During the Cure Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement;
- 15.3.4 Within a period of seven (7) days following the expiry of the Cure Period unless the Parties shall have otherwise agreed to the contrary or the Generating Company Event of Default giving rise to the Cure Period shall have ceased to exist or shall have been remedied, the Electricity Department shall issue Substitution Notice for selection of new company to substitute the Generating Company and Termination Notice to terminate the Agreement with the Generating Company in accordance with provisions of Schedule 3 of this Agreement. A copy of the Substitution Notice and Termination Notice shall be given to the Senior Lenders.
- 15.3.5 Upon early termination of the Agreement on account of Generating Company Event of Default, the Generating Facility with all its assets without any encumbrance, lien, hypothecation shall vest with the Electricity Department. Electricity Department with the express consent of the Senior Lenders shall select a Selectee in accordance with provisions of Schedule 3.

15.4 Procedure for cases of Electricity Department Event of Default

- 15.4.1 Upon the occurrence and continuation of any Electricity Department Event of Default specified in Clause 15.2 the Generating Company shall have the right to deliver to Electricity Department, a Generating Company Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue;

- 15.4.2 Following the issue of a Generating Company Preliminary Default Notice, the Cure Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances;
- 15.4.3 During the Cure Period, the Parties shall continue to perform their respective obligations under this Agreement;
- 15.4.4 After a period of seven (7) days following the expiry of the Cure Period and unless the Parties shall have otherwise agreed to the contrary or Electricity Department Event of Default giving rise to the Cure Period shall have ceased to exist or shall have been remedied, the Electricity Department shall make Termination Payment equal to the Debt Due less insurance cover and one hundred percent (100%) of the Adjusted Equity which shall be deposited with the Senior Lenders of the Generating Company; provided further that any refusal or dispute in payment to the Generating Company by the Electricity Department on account of Electricity Department Event of Default shall be settled in accordance with the Dispute Resolution procedure in accordance with the provisions of Article 16;

Provided further that at the end of three (3) months period from the period mentioned in this Clause 15.4.4, this Agreement may be terminated by the Generating Company.

15.5 Termination due to Force Majeure

- 15.5.1 If the Force Majeure Event or its effects continue to be present beyond the period of six (6) months, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

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

16.2 Amicable Settlement and Dispute Resolution

16.2.1 Amicable Settlement

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - a. a description of the Dispute;
 - b. the grounds for such Dispute; and
 - c. all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article i, furnish:
 - a. counter-claim and defences, if any, regarding the Dispute; and
 - b. all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Clause 16.2.1(i), if the other Party does not furnish any counter claim or defence under Clause 16.2.1 (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve the Dispute arising under this Agreement in an equitable manner, and unless otherwise provided herein, to exercise the authority of the Parties to make decision by mutual agreement. If the designated representatives are unable to resolve any such Dispute within fifteen (15) days, such Dispute shall be referred by such representatives to a senior officer designated by the Generating Company and a senior officer designated by the Electricity Department, respectively, who shall attempt to resolve the Dispute within a further period of 15 days. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Clause 16.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Clause 16.3.

16.3 Dispute Resolution

16.3.1 Dispute Resolution through Arbitration

If the Parties are unable to resolve the dispute pursuant to Clause 16.2.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:

- i. The Arbitration Tribunal shall consist of three (3) Arbitrators. Each Party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of Dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as Chairman of the Arbitration Tribunal. In case the Party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrators fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator shall be made by the Indian Council of Arbitration (ICA).
- ii. The place of arbitration shall be Port Blair. The language of the arbitration shall be English;
- iii. The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- iv. The provisions of this Article shall survive the termination of this PPA for any reason whatsoever;
- v. The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

16.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Clause 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

ARTICLE 17: LIABILITY AND INDEMNITY

17.1 Indemnity

17.1.1 The Generating Company shall indemnify, defend and hold Electricity Department harmless against:

- i. any and all third party claims against Electricity Department 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 Generating Company of any of its obligations under this Agreement; and
- ii. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Generating Company from third party claims arising by reason of:
 - a. breach by the Generating Company of any of its obligations under this Agreement, (provided that this Article 17 shall not apply to such breaches by the Generating Company, for which specific remedies have been provided for under this Agreement), or
 - b. any of the representations or warranties of the Generating Company, if any made under this Agreement, being found to be inaccurate or untrue.

17.1.2 Electricity Department shall indemnify, defend and hold the Generating Company harmless against:

- i. any and all third party claims against the Generating Company, 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 Electricity Department of any of its obligations under this Agreement; and
- ii. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Generating Company from third party claims arising by reason of
 - a. a breach by Electricity Department of any of its obligations under this Agreement (Provided that this Article 17 shall not apply to such breaches by Electricity Department, for which specific remedies have been provided for under this Agreement) or
 - b. any of the representations or warranties of Electricity Department, if any made under this Agreement, being found to be inaccurate or untrue.

17.2 Procedure for claiming Indemnity

17.2.1 Third party claims

- i. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Clause 17.1.1(i) or 17.1.2(i), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Clause 17.1.1(i) or 17.1.2 (i) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying

Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- a. the Parties choose to refer the dispute before the Arbitrator in accordance with Clause 16.3.2; and
- b. 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.

- ii. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 17.1.1(i) or 17.1.2(i) 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 without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

17.3 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 17.1.1(ii) or 17.1.2(ii), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Clause 17.3, such event shall constitute a payment default under Article 15.

17.4 Limitation on Liability

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

- 17.4.2 Electricity Department shall have no recourse against any officer, director or shareholder of the Generating Company or any affiliate of the Generating Company or any of its

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

17.5 Duty to Mitigate

The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 17.

ARTICLE 18: ASSIGNMENTS AND CHARGES

18.1 Assignments

- 18.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing;
- 18.1.2 Provided that, such consent shall not be withheld if Electricity Department seeks to transfer to any transferee all of its rights and obligations under this Agreement;
- 18.1.3 Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement;

18.2 Permitted Charges

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

ARTICLE 19: MISCELLANEOUS PROVISIONS

19.1 Nodal Agency

Superintending Engineer, Electricity Department shall act as a nodal agency for implementing this PPA.

19.2 Amendments

Any waiver, alteration, amendment or notification of this PPA or any part hereof shall not be valid unless it is in writing and signed by the parties.

19.3 Binding Effect

This PPA shall be binding upon and ensure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns

19.4 Notices

Any written notice provided hereunder shall be delivered personally or sent by registered posts acknowledgment due or by courier for receipted delivery with postage or courier charges prepaid to the other party at the following address:

Superintending Engineer,

Electricity Department

A&N Administration

Port Blair

Generating Company

Notice delivered personally shall be deemed to have been given when it is delivered to the Generating Company at address set forth above and actually delivered to such person or left with a responsible person in such office. Notice sent by post or courier shall be deemed to have been given on the date of actual delivery as evidenced by the date appearing on the acknowledgement of delivery.

Any party hereto may change its address for written notice by giving written notices of such changes to the other party hereto.

19.5 Effect on Section Headings

The headings or titles of the several sections hereof are for convenience of reference and shall not effect the construction or interpretation of any provisions of this PPA.

19.6 Non-Waiver

No delay or forbearance of either party in the exercise of any remedy or right, will constitute a waiver thereof and the exercise or partial exercise of remedy or right shall not preclude further exercise of the same or any other remedy or rights.

19.7 Relationships of the Parties

Nothing in this PPA shall be deemed to constitute either party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties.

19.8 No Party Deemed Drafter

The parties agree that no party shall be deemed to be drafter of this PPA and that in the event this PPA is ever construed by arbitrators or by court of law they shall not constitute this PPA or any provisions hereof against either party as the drafter of the PPA. The Electricity Department and the Generating Company acknowledge that both parties have contributed substantially and materially to the preparation of this PPA.

19.9 Approval

Wherever either Electricity Department or Generating Company approvals are required in this PPA, it is understood that such approval shall not be unreasonably withheld.

19.10 Further Instruments

Each of the parties agrees to execute and deliver all such further instruments and to do and perform all such further acts and things, as shall be necessary are required to carry out the provisions of this PPA and to consummate the transactions contemplated hereby.

19.11 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.

19.12 Confidentiality

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

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

without the prior written consent of the other Party.

19.13 Severability

The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

19.14 Language

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

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

19.15 Restriction of Shareholders / Owners' Liability

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

19.16 Taxes and Duties

19.16.1 The Generating Company shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Generating Company, contractors or their employees, which are required to be paid by the Generating Company as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement;

19.16.2 Electricity Department shall be indemnified and held harmless by the Generating Company against any claims that may be made against Electricity Department in relation to the matters set out in Clause 19.16.1;

19.16.3 Electricity Department shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Generating Company by Electricity Department on behalf of Generating Company.

19.17 No Consequential or Indirect Losses

The liability of the Generating Company and Electricity Department shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall Electricity Department or the Generating Company claim from one another any indirect or consequential losses or damages.

19.18 Order of priority in application

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

- i. applicable Law, rules and regulations framed thereunder;
- ii. the terms and conditions of this Agreement; and
- iii. Prudent Utility Practices

19.19 Independent Entity

19.19.1 The Generating Company shall be an independent entity performing its obligations pursuant to the Agreement;

19.19.2 Subject to the provisions of the Agreement, the Generating Company shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Generating Company or contractors engaged by the Generating Company in connection with the performance of the Agreement shall be under the complete control of the Generating Company and shall not be deemed to be employees, representatives, contractors of Electricity Department and nothing contained in the Agreement or in any agreement or contract awarded by the Generating Company shall be construed to create any contractual relationship between any such employees, representatives or contractors and Electricity Department.

19.20 Compliance with Law

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

IN WITNESS WHEREOF, the Electricity Department and the Generating Company have executed this PPA as of the ___day of ___in the year 2011

For the Generating Company

For the Electricity Department

By

By

Its

Its

Witness by:

Witness by

Name

Name

Designation

Designation

Address:

Address

SCHEDULE 1: THE SITE

1 THE SITE

- 1.1** Site refers to the parcel of land bearing Survey No. 1/1 at Mithakhari village in Ferrargunj Tehsil in South Andaman Islands out of which only about 2 hectares of land can be used by the Selected Bidder for the project.
- 1.2** The Site includes the land, structures, trees and any other immovable property on or attached to the Site mentioned in 1.1 above.

SCHEDULE 2: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the[Insert name of the Generating Company with address] agreeing to undertake the obligations under the PPA and the Electricity Department, A&N Administration (herein after referred to as Electricity Department), agreeing to execute the PPA with Generating Company for procurement of Power on long term basis, the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Electricity Department at Office of Superintending Engineer, Electricity Department, A&N Administration, Port Blair forthwith on demand in writing from Electricity Department or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees Fifty Lakhs only (Rs.50,00,000/-) as per the terms of PPA on behalf of Electricity Department.

This guarantee shall be valid and binding on the Guarantor Bank up to and including[Insert date of validity of Performance Guarantee] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rupees Fifty Lakhs only (Rs.50,00,000/-). Our Guarantee shall remain in force until [Insert the date of validity of the Performance Guarantee]. Electricity Department shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from Electricity Department, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to Electricity Department.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by Generating Company [Mention name of Generating Company] and/ or any other person. The Guarantor Bank shall not require Generating Company to justify the invocation of this Bank Guarantee, nor shall the Guarantor Bank have any recourse against Electricity Department in respect of any payment made hereunder.

This Bank Guarantee shall be interpreted in accordance with the laws of India and the courts at Port Blair shall have exclusive jurisdiction.

The Guarantor Bank represents that this Bank Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

In order to give effect to this Guarantee, the Electricity Department shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Generating Company and/ or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

The Electricity Department shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Power Purchase Agreement (PPA) or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Generating Company contained in the PPA or to postpone for any time, and from time to time, any of the rights and powers exercisable by Electricity Department against the Generating Company, and either to enforce or forbear from enforcing any of the terms and conditions contained in the PPA and/ or the securities available to the Electricity Department, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Generating Company or any forbearance, indulgence, act or omission on the part of the Electricity Department or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Electricity Department in respect of or relating to the PPA or for the fulfillment, compliance and/ or performance of all or any of the obligations of the Generating Company under the PPA.

This Bank Guarantee shall be a primary obligation of the Guarantor Bank and accordingly Electricity Department shall not be obliged before enforcing this Bank Guarantee to take any action in any court or arbitral proceedings against Generating Company, to make any claim against or any demand on Generating Company or to give any notice to Generating Company or to enforce any security held by Electricity Department or to exercise, levy or enforce any distress, diligence or other process against Generating Company.

The Guarantor Bank acknowledges that this Bank Guarantee is not personal to Electricity Department and may be assigned, in whole or in part, (whether absolutely or by way of security) by Electricity Department to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that Electricity Department shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees Fifty Lakhs only (Rs.50,00,000/-) and it shall remain in force until[Date to be inserted is One year after the Scheduled Commissioning Date], with an additional claim period of thirty (30) days thereafter. This Bank Guarantee shall be extended from time to time for such period, as may be desired by Electricity Department/Generating Company. We are liable to pay the guaranteed amount or any part thereof

under this Bank Guarantee only if Electricity Department serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [Insert Name of the Bank]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

Note: The Stamp Paper should be in the name of the Executing Bank.

SCHEDULE 3: SUBSTITUTION

3.1 Substitution of the Generating Company

- 3.1.1 Subject to the terms of this Agreement, upon occurrence of a Generating Company Event of Default under this Agreement, the Electricity Department shall have the right to seek substitution of the Generating Company by a Selectee for the residual period of the Agreement, for the purposes of recovering the losses incurred by the Electricity Department by way of Damages and performing the obligations of the Generating Company, in accordance with the provisions of this Schedule;
- 3.1.2 The Electricity Department shall seek the consent of the Senior Lender for substitution of the Generating Company by a Selectee;
- 3.1.3 The Electricity Department may seek to exercise right of substitution by an amendment or novation of the PPA in favour of the Selectee. The Generating Company shall cooperate with the Electricity Department to carry out such substitution.

3.2 Electricity Department Notice of Default

Electricity Department while serving the Preliminary Default Notice on the Generating Company as per this Agreement, shall simultaneously also issue a copy of the same to the Senior Lenders.

3.3 Substitution Notice

In the event of failure of the Generating Company to rectify the Generating Company Event of Default giving rise to Preliminary Default Notice the Electricity Department shall with the consent of the Senior Lenders terminate the Agreement and shall issue a Substitution Notice to the Generating Company to substitute the Generating Company by the Selectee for the residual period of the PPA (the “Substitution Notice”) with a copy to the Senior Lenders.

3.4 Interim operation of Power Project

The Generating Company shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the Selectee is finally substituted.

3.5 Process of Substitution of Generating Company

- 3.5.1 The Electricity Department shall invite offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Such Selectee shall be entitled to receive all the rights of the Generating Company and shall undertake all the obligations of the Generating Company under the PPA, in accordance with these terms of substitution.

3.5.2 The Electricity Department shall transfer the Generating Facility to such Selectee simultaneously with the amendment or novation of the PPA in favour of the Selectee as mentioned in Clause 3.1.2 of this Schedule.

3.6 Criteria for selection of the Selectee

The Electricity Department shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- a. the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Generating Company to Electricity Department under and in accordance with the PPA and also payment of the debt amount due to the Senior Lenders by the Generating Company;
- b. any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained.
- c. The Senior Lenders shall recover the debt amount due only after the Electricity Department has recovered all its dues and charges including its right to recover the losses under this agreement;

3.7 Modalities for Substitution

3.7.1 The following modalities shall be applicable to any substitution of the Generating Company by the Selectee pursuant to this Agreement.

- a. grant of all the rights and obligations under the PPA to the Selectee (as substitute for the Generating Company);
- b. amendment of the PPA to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Generating Company under the original PPA; and
- c. the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.

3.7.2 The Selectee shall perform the role of the Generating Company including:

- a. observe, comply, perform and fulfill the terms, conditions and covenants of the PPA, which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Generating Company, as if such Selectee was the Generating Company originally named under the PPA; and
- b. be liable for and shall assume, discharge and pay the dues and charges payable to the Electricity Department by the Generating Company and payment of the debt amount or then outstanding dues to the Senior Lenders under and agreed to by the Senior Lenders provided that the dues shall be paid to the Lenders only after all the dues and charges that are due to the Electricity Department are paid; any surplus after payment of dues to the Electricity Department and the Senior Lenders shall be paid to the Generating Company.

3.7.3 The substitution of the Generating Company by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Generating Company, Electricity Department and the Senior Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Electricity Department and upon transfer of the Power Project to the Selectee. The quantum and manner of payment of the consideration payable by the Selectee to the Electricity Department towards assumption of all the rights and obligations of the Generating Company under the PPA as mentioned in this Agreement shall be entirely between the Selectee and the Electricity Department.

3.7.4 Upon the substitution becoming effective pursuant to Clause 3.7.3 above of this Schedule, all the rights of the Generating Company under the PPA shall cease to exist.

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Generating Company against Electricity Department or any claim of Electricity Department against the erstwhile Generating Company or the Selectee.

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

3.7.6 The decision of the Electricity Department in the selection of the Selectee shall be final and binding on the Generating Company and shall be deemed to have been made with the concurrence of the Generating Company. The Generating Company expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

3.8 Generating Company's Waiver

3.8.1 The Generating Company irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Senior Lenders and Electricity Department or exercise of their rights under and in accordance with these terms.

3.8.2 The Generating Company irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 3.7.4 of this Schedule, it shall cease to have any rights under the PPA other than those expressly stated therein.

3.8.3 The Generating Company warrants and covenants that any agreement entered into by the Generating Company, in relation to the Power Project, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Electricity Department. The Generating Company further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Project and which lack a legally enforceable clause providing for automatic

novation of such agreement, the Generating Company shall procure an amendment in the concluded agreement to incorporate such clause.

3.9 Interim protection of service and preservation of assets

3.9.1 In order to protect the assets of the Power Project, the Electricity Department shall be entitled to elect to act as the operator (“the Operator”) for the purposes of this Clause and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Generating Company hereby consent and agree to the same. Upon Electricity Department so intimating the Generating Company their desire to act as Operator, the Generating Company shall co-operate with Electricity Department to facilitate the same.

3.9.2 When acting as an Operator in accordance with Clause 3.9.1 of this Schedule, Electricity Department shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as an Operator, Electricity Department shall not be liable to the Senior Lenders, Generating Company or any third party for any default under the PPA, damage or loss to the Power Project or for any other reason whatsoever, except for wilful default of Electricity Department.

3.10 Substitution Consideration

3.10.1 The Electricity Department shall be entitled to appropriate any consideration received for the substitution of the Generating Company as hereinabove provided, from the Selectee towards the payment of Electricity Department’s and Lender’s respective dues, if any, to the exclusion of the Generating Company. Any surplus funds after appropriation of the respective dues of the Electricity Department and the Lender shall be paid to the Generating Company.

3.10.2 The Generating Company shall be deemed to have nominated, constituted and appointed the Electricity Department as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Generating Company by the Selectee pursuant to these terms.

SCHEDULE 4: PROCEDURE FOR CALCULATION OF LOSS TO ELECTRICITY DEPARTMENT

The loss incurred by the Electricity Department in any year on account of deficit in the number of Energy Units supplied by the Generating Company is calculated as follows:

Year	Minimum No. of Units guaranteed by the Generating Company annually in KWH	Cumulative No. of Units supplied by the Generating Company annually in KWH	Rate Per Unit applicable for the year in Rs.	Benchmark Rate for calculation of Loss in Rs.	Loss to Electricity Department Month-wise in Rs.
A	B	C	D	E	(E-D) X (B-C)
1				10.00	
2				10.30	
3				10.61	
4				10.93	
5				11.26	
6				11.59	
7				11.94	
8				12.30	
9				12.67	
10				13.05	
11				13.44	
12				13.84	
13				14.26	
14				14.69	
15				15.13	
16				15.58	
17				16.05	
18				16.53	
19				17.02	
20				17.54	