

POWER PURCHASE AGREEMENT

BETWEEN

(INSERT THE NAME OF COMPANY)

AND

M. P. POWER TRADING COMPANY LIMITED

TABLE OF CONTENTS

ARTICLE - 1: DEFINITIONS AND INTERPRETATION	8
ARTICLE - 2: TERM OF AGREEMENT	35
ARTICLE - 3: CONDITIONS SUBSEQUENT	37
ARTICLE - 4: SUPPLY OF ENERGY	44
ARTICLE - 5: CAPACITY, AVAILABILITY AND DISPATCH.....	59
ARTICLE - 6: OPERATION AND MAINTENANCE	63
ARTICLE - 7:	65
ARTICLE - 8: METERING AND ENERGY ACCOUNTING.....	66
ARTICLE - 9: INSURANCES.....	67
ARTICLE - 10: TARIFF, BILLING AND PAYMENT	68
ARTICLE - 11: FORCE MAJEURE	80
ARTICLE - 12: CHANGE IN LAW	91
ARTICLE - 13: EVENTS OF DEFAULT, DISPUTE RESOLUTION AND TERMINATION	94
ARTICLE - 14: LIABILITY AND INDEMNIFICATION.....	104
ARTICLE - 15: ASSIGNMENTS AND CHARGES.....	112
ARTICLE - 16: MISCELLANEOUS PROVISIONS	114
SCHEDULE - 1: OPERATIONS.....	127
SCHEDULE - 2: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE	128
SCHEDULE - 3: REPRESENTATION AND WARRANTIES.....	132
SCHEDULE - 4: TECHNICAL LIMIT AND CONTRACTED PERFORMANCE PARAMETERS	135
SCHEDULE - 5: TARIFF	136
SCHEDULE - 6: TARIFF ADJUSTMENT PAYMENT	137
SCHEDULE - 7: COMMISSIONING AND TESTING	138
SCHEDULE - 8: DELIVERY POINT AND INTERCONNECTION POINT	139
SCHEDULE - 9: PANEL OF INDEPENDENT ENGINEERS	ERROR! BOOKMARK NOT DEFINED.

THIS AGREEMENT IS MADE ON THE [] day of [] 20[]

Between

- (a) **Madhya Pradesh Power Trading Company Limited**, a company incorporated under the Companies act, 1956 and having its registered office at (hereinafter referred to as the MPTradeco, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);
- (b) **Madhya Pradesh Poorva Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as Discom 1, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);
- (c) **Madhya Pradesh Madhya Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as Discom 2, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and
- (d) **Madhya Pradesh Paschim Kshetra Vidyut Vitaran Nigam Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as Discom 3, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

MPTradeco, Discom 1, Discom 2 and Discom 3 all forming part of parties of FIRST PART and MPTradeco hereinafter referred to as Procurer and the Discom 1, Discom 2 and Discom

M.D.

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3

M.P Tradeco

[Name of the Company]

3 collectively referred to as Discoms. Discom 1, Discom 2 and Discom 3 are executing this agreement as confirming parties.

AND

(e) [Insert Name of the Company], (hereinafter referred to as “the Company”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

[Insert Name of the Company] forming part of party of SECOND PART.

Each of the “Procurer”, “Discoms” and “the Company” are individually referred to as “Party” and collectively to as the “Parties”.

WHEREAS the Government of Madhya Pradesh (hereinafter referred to as ‘GoMP’) is desirous of facilitating private sector participation and investments in power generation projects in the State of Madhya Pradesh by providing assistance and support and in terms of the Memorandum of Understanding and Implementation Agreements entered into with the interested parties for development of such projects and in consideration being entitled to a certain share of power generated from such projects for the utilization by the Procurer or Discoms, individually or collectively.

AND WHEREAS pursuant to the above, the Company and the GoMP have entered into a Memorandum of Understanding dated as well as an Implementation Agreement

M.D.

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4

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[Name of the Company]

dated for setting up of[insert name of the Power Station] Power Station by the Company with a proposed capacity ofMW to be located at, District in the State of Madhya Pradesh.

AND WHEREAS as per the terms of the Implementation Agreement, the GoMP, acting through its Energy Department has agreed to facilitate expeditious grant of permissions, approvals, no objection certificates, recommendations etc., as defined in greater detail in the said Implementation Agreement.

AND WHEREAS in terms of the Memorandum of Understanding and the Implementation Agreement entered into with GoMP, the Company has granted a right to GoMP to purchase power from the project up to 30% (.....MW) of the Power Station's Net Capacity with a right to designate any agency for the said purchase and the tariff, other terms and conditions applicable to such purchase of power shall be as per the relevant Tariff Notifications of the Appropriate Commission notified from time to time and Orders passed by the Appropriate Commission determining the tariff.

AND WHEREAS the above right of GoMP to purchase up to 30% of the Power Station's Net Capacity on the tariff and other terms and conditions to be determined by the Appropriate Commission is in addition to and not in derogation of GoMP's rights to purchase 10% (.....MW) of the Power Station's Net Capacity at a price equivalent to the variable cost only to be determined by the Appropriate Commission (excluding fixed charges) as provided in the Implementation Agreement.

M.D.

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5

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[Name of the Company]

AND WHEREAS in accordance with the notification No. 3474/FRS/17/XIII/2002, dated 03.06.2006 of the GoMP, the Discoms herein shall buy electricity of their requirement from the single source, i.e. from MPTradeco, as per the inter-se Bulk Supply Agreement at the tariff as determined/ approved by the Appropriate Commission, and the role of MPTradeco will be that of the authorized nominee of the Government of Madhya Pradesh to cater to the requirement of power by the Discoms.

AND WHEREAS the GoMP in terms of the Implementation Agreement shall have the first right to purchase additional power up to 30% of the Net Power generated from the Power Station for a period of 20 years through its nominated agency at the rate to be approved by the Appropriate Commission and the GoMP has exercised its right to purchase the aforesaid power to the extent of%.

AND WHEREAS the GoMP has nominated the Discoms herein to be the beneficiaries of the 30% (.....MW) of the Power Station's Net Capacity and has further directed that MPTradeco shall be the authorized agency for purchase of the said power for and on behalf of the Discoms, and to make available the quantum of power to each of Discoms in the proportion as may be directed by GoMP and after meeting the requirements of Discoms to sell the surplus power to third parties as MPTradeco may consider appropriate.

AND WHEREAS Discoms have agreed to receive the aforesaid power in the proportion as directed by the GoMP from time to time.

AND WHEREAS pursuant and in terms of the above, the Company, MPTradeco and Discoms have mutually agreed on the terms and conditions for developing, commissioning, operation and maintenance of the Power Station and for generation and sale of energy from

M.D.

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6

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[Name of the Company]

the Power Station by the Company to MPTradeco and to enter into this Power Purchase Agreement to incorporate the terms and conditions agreed to between them.

AND WHEREAS, Discoms being the beneficiaries under the terms of this Agreement; are consenters to this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISE AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

M.D.

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7

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[Name of the Company]

ARTICLE - 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them in the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by the Appropriate Commission (as defined hereunder), and as amended or re-enacted from time to time.

The words and expressions mentioned below shall have the same meanings as respectively assigned to them hereunder:

“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;
“Affiliate”	shall mean a company that either directly or indirectly <ul style="list-style-type: none">i. controls orii. is controlled by oriii. is under common control with and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

M.D.

[Designation of Signatory]

8

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[Name of the Company]

<p>“Aggregate Capacity”</p>	<p>shall mean, in relation to a Unit the Installed Capacity of the Unit and in relation to the Power Station the total Installed Capacity of the Power Station as agreed to between the parties to this Agreement. Such capacity of the Power Station in mega watt shall be the sum total of Installed Capacity of each of the Units as mentioned below: Unit 1: [] MW Unit 2: [] MW Unit n: [] MW;</p>
<p>“Agreement” or "Power Purchase Agreement" or "PPA "</p>	<p>shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;</p>
<p>“Appropriate Commission”</p>	<p>shall mean the Madhya Pradesh Electricity Regulatory Commission and wherever the context so admits the Central Commission and/ or other State Electricity Regulatory Commissions constituted under the Electricity Act, 2003;</p>
<p>“Availability Based Tariff” or “ABT”</p>	<p>shall mean the regulations contained in the Central Electricity Regulatory Commission (terms and conditions of Tariff) Regulations, 2009, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;</p>

M.D.

[Designation of Signatory]

9

M.P Tradeco

[Name of the Company]

“Availability Factor” or “Availability”	shall have the meaning ascribed thereto in ABT (provided that in place of Installed Capacity and normative Auxiliary consumption it shall be Contracted Capacity).
“Available Capacity”	shall have the meaning ascribed thereto in ABT;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
Business Day	shall mean with respect to the Company and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business at Jabalpur in the State of Madhya Pradesh;
“Capacity Charge” or “Fixed Charge”	shall have meaning ascribed thereto in the applicable Tariff Regulations and/ or Tariff Orders of the Appropriate Commission;
“Capital Cost”	shall mean the Capital Cost of the Power Station as approved by the Appropriate Commission;
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

M.D.

[Designation of Signatory]

10

M.P Tradeco

[Name of the Company]

“CERC” or `Central Commission’	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;
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commercial Operation Date” or “COD”	shall mean in relation to a Unit the date on which the Unit is Commissioned and in relation to the Power Station the date of Commissioning of the last Unit of the Power Station;
“Commissioned Unit”	shall mean the Unit in respect of which COD has occurred;
“Commissioning” or “Commissioned” with its grammatical variations	shall mean, in relation to a Unit, that the Unit or in relation to the Power Station, all the Units of the Power Station have passed the Commissioning Tests successfully;
“Commissioning Test” or “Commissioning Tests”	shall mean the Tests provided in Schedule 7 herein;

M.D.

[Designation of Signatory]

11

M.P Tradeco

[Name of the Company]

“Competent Authority”	Means State Load Despatch Centre, Regional Load Despatch Centre, Regional Power Committee, State Government, Appropriate Commission or any other governmental authority having jurisdiction over the Company;
“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;
"Conditions Subsequent"	shall have the meaning set out in Article 3;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Construction Contractor(s)"	shall mean one or more main contractors, appointed by the Company to design, engineer, supply, construct and commission the Power Station;

M.D.

[Designation of Signatory]

12

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[Name of the Company]

<p>“Consultation Period”</p>	<p>shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a the Company Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 13.3 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;</p>
<p>“Contract Performance Guarantee”</p>	<p>shall mean the irrevocable unconditional bank guarantee submitted or to be submitted by the Company to the Procurer from a bank and in the format provided in Schedule 2 in accordance with the terms of this Agreement;</p>

M.D.

[Designation of Signatory]

13

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[Name of the Company]

<p>“Contract Year”</p>	<p>shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;</p> <p>Provided that:</p> <ul style="list-style-type: none"> (i) in the financial year in which the Scheduled COD or Revised Scheduled COD, as the case may be, would occur, the Contract Year shall end on the date immediately before the Scheduled COD or Revised Scheduled COD, as the case may be, and a new Contract Year shall commence once again from the Scheduled COD or Revised Scheduled COD, as the case may be and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
<p>“Contracted Capacity”</p>	<p>with respect to the Company, shall mean the capacity of <i>[Insert capacity]</i> MW or 30% of the Power Station’s Net Capacity, whichever is higher, contracted with the Procurer for supply at the Delivery Point;</p>

M.D.

[Designation of Signatory]

14

M.P Tradeco

[Name of the Company]

“Contracted Energy”	shall mean the 30% of the Electrical Output at the Power Station and contracted to be sold by the Company to the Procurer, in accordance with the terms of this Agreement hereof;
“Declared Capacity”	shall mean the Power Station’s Net Capacity at the relevant time at the Delivery Point (expressed in MW) as declared by the Company in accordance with the Grid Code and dispatching procedures and as per the Availability Based Tariff;
“COD”	shall mean the date on which the Company commences supply of the Contracted Capacity to the Procurer;
“Delivery Point”	shall mean the ex-bus point of the Power Station at the Power Station swithyard;
“Despatch”	shall mean to schedule and control the generation of the Power Station in order to commence, increase, decrease or cease the Electrical Output as delivered to the Grid system in accordance with the instructions from the SLDC in conformity with the Grid Code, this Agreement and Prudent Utility Practices;

M.D.

[Designation of Signatory]

15

M.P Tradeco

[Name of the Company]

"Despatch Instruction"	shall mean any instruction issued by the Procurer through the respective SLDC and RLDC to the Company, in accordance with applicable Grid Code and this Agreement;
"Dispute"	shall mean any dispute or difference of any kind between the Parties hereto in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement.
"Due Date"	shall means the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is delivered to and acknowledged by the Procurer (or, if such day is not a Business Day, the immediately succeeding Business Day) by which date such Monthly Bill or Supplementary Bill is payable by the Procurer;
"Effective Date"	Shall have the meaning set out in Article 2.1 of this Agreement;
"Electrical Output"	shall mean the electrical energy in kilo watt hour (kWh) generated at the Power Station and delivered at the Delivery Point;

M.D.

[Designation of Signatory]

16

M.P Tradeco

[Name of the Company]

“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 thereof and any other Law pertaining to electricity including Orders and directions in any form made by the Appropriate Commission;
“Energy Account”	Means the Regional Energy Account as defined in the Grid Code and issued by the Western Region RPC secretariat or other Appropriate Agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date "	shall mean the 20 th anniversary of the Commercial Operation Date of the Power Station ;
"Final Test Certificate"	shall mean a certificate of the Independent Engineer certifying and accepting the results of a Commissioning Test(s) in accordance with Article Error! Reference source not found. of this Agreement;

M.D.

[Designation of Signatory]

17

M.P Tradeco

[Name of the Company]

"Financial Closure"	shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of Conditions Subsequent and waiver, if any, of any of the Conditions Subsequent for the initial draw down of funds there under
"Financing Agreements"	shall mean the agreements pursuant to which the Company has sought financing for the Power Station including the loan agreements, security documents, notes, indentures, security agreements, and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurer;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Forced Outage"	shall have the meaning ascribed thereto in Grid Code;
"Fuel"	means primary fuel (coal) used to generate electricity from the Power Station;
"Fuel Supply Agreement(s)"	shall mean the agreement(s) entered into between the Company and the Fuel supplier and others for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station.

M.D.

[Designation of Signatory]

18

M.P Tradeco

[Name of the Company]

"GoI"	shall mean the Government of India
"GoMP"	shall mean the Energy Department, Government of Madhya Pradesh;
"Governmental Approval"	shall mean all Consents, Clearances and Permits, approvals, licenses or other actions required to be taken or obtained from the GoMP, or GOI or any of their instrumentalities in connection with this Agreement or the Power Station;
"Grid Code"	shall mean the grid code notified by the Appropriate Commission, as may be applicable in relation to this Agreement and as may be amended from time to time;
"Grid System"	shall mean the interconnection and transmission facilities and any other transmission or distribution facilities through which the Procurer supply electricity to its customers or the transmission company transmits electricity to the Procurer.
"IEGC"	shall mean the Indian Electricity Grid Code, notified by the Central Electricity Regulatory Commission and as amended from time to time;
"Implementation Agreement"	Shall have the meaning set out in the Recitals above

M.D.

[Designation of Signatory]

19

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[Name of the Company]

“Independent Engineer”	shall have the meaning set forth in Article Error! Reference source not found.;
“Indian Governmental Instrumentality”	shall mean the Government of India, Government of Madhya Pradesh and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Madhya Pradesh 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 Company and the Procurer;
“Installed Capacity”	shall mean the sum of MCR capacities of the Units of the Power Station, confirmed by the respective Performance Tests;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the Company in accordance with Article 9 of this Agreement;
“Interconnection Facilities”	shall have the meaning as set out in Schedule 8 of this Agreement;
"Interconnection Point"	shall have the meaning as set out in Schedule 8 of this Agreement;

M.D.

[Designation of Signatory]

20

M.P Tradeco

[Name of the Company]

"Invoice or Bill"	shall mean a Monthly Invoice and / or a Supplementary Invoice as per Article 10 or an invoice from the Procurer, in accordance with Article 10.3.2;
"Late Payment Surcharge"	Shall have the meaning as defined in Article 10.4.2;
"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 Commissions;

M.D.

[Designation of Signatory]

21

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[Name of the Company]

<p>“Lender(s)”</p>	<p>shall mean the banks, other financial institutions, multilateral agencies, Reserve Bank of India 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 Station to provide the Company with the debt financing and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:</p> <p>Provided that, such assignment or transfer shall not relieve the Company of its obligations to the Procurer under this Agreement in any manner and does not lead to an increase in the liability of the Procurer at any given point of time;</p>
<p>“Maintenance Outage”</p>	<p>shall have the meaning as ascribed to this term as per the provisions of the Grid Code;</p>
<p>“MCR”</p>	<p>shall mean Maximum Continuous Rating of Unit(s) as defined in the Grid Code or Tariff Regulations of the Appropriate Commission, as may be amended from time to time;</p>

M.D.

[Designation of Signatory]

22

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[Name of the Company]

“Meters” or “Metering System”	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
“Month”	shall mean a period of 30 days from (and excluding) the date of the event where applicable, else a calendar Month;
“Monthly Bill” or “Monthly Invoice”	shall mean a Monthly invoice comprising Capacity Charges (applicable after COD of the first Unit) and Energy Charges;
“MPEGC”	shall mean the Madhya Pradesh Electricity Grid Code, notified by the Madhya Pradesh Electricity Regulatory Commission and as amended from time to time.
“Net Power”	shall mean the Electrical Output in kilo watt, delivered by the Company at the Delivery Point.
“Normative Availability”	shall mean equal to eighty per cent (85%) Availability at the Delivery Point on Contract Year basis as specified in the tariff regulations of the Appropriate Commission, and as amended from time to time.

M.D.

[Designation of Signatory]

23

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[Name of the Company]

<p>“Notice to Proceed” or “NTP”</p>	<p>shall mean the notice to be issued by the Company to the Procurer and the GoMP, confirming that it has fulfilled the Conditions Subsequent and that it is ready to proceed with the construction of the Power Station ;</p>
<p>"Operating Period";</p>	<p>shall mean the period commencing from the COD, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2.3 of this Agreement;</p>
<p>“Performance Test” and “Repeat Performance Test”</p>	<p>shall mean the tests to be carried out in accordance with Article 5 and Schedule 7 hereof.</p>

M.D.

[Designation of Signatory]

24

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[Name of the Company]

<p>“Power Station”</p>	<p>shall mean the coal based [insert the name of the Power Station] of Aggregate Capacity of [] MW consisting of [] Units of [] MW each, proposed to be established in District _____ in the State of Madhya Pradesh;</p> <p>This includes all Units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke [if applicable]; bay/s for transmission system in the switchyard, intake water conductor system [if applicable], and all the other assets, buildings/ structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development (including design, engineering, financing, construction, operation and maintenance, R&M and other activities incidental thereto) or intended to be developed and constructed for the purpose of supply of power as per this Agreement</p>
<p>“Power Station’s Net Capacity”</p>	<p>shall mean [.....] MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by the Central Commission from time to time;</p>
<p>“Preliminary Default Notice”</p>	<p>shall have the meaning ascribed thereto in Article 12 of this Agreement;</p>
<p>“Procurer Event of Default”</p>	<p>shall mean the default by the Procurer of any of its obligations specified in this Agreement;</p>

M.D.

[Designation of Signatory]

25

M.P Tradeco

[Name of the Company]

<p>“Power Station Documents”</p>	<p>shall mean</p> <ol style="list-style-type: none"> 1) Construction Contracts; 2) Fuel Supply Agreements (as applicable)/Fuel mining agreements (applicable in case where coal block allocated), including the Fuel Transportation Agreement, if any; 3) O&M contracts; 4) Any other agreements designated in writing as such, from time to time , jointly by the Procurer and the Company;
<p>“Prudent Utility Practices”</p>	<p>shall mean those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safe, efficient and economic design, construction, commissioning, testing, operation and maintenance of the various components of the Power Station and which practices, methods and standards shall be adjusted as necessary to take into account :</p> <ol style="list-style-type: none"> i) Installation, Operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Power Station. ii) The requirement of Indian Law iii) Conditions affecting the Grid system and iv) Physical conditions at the Site;

M.D.

[Designation of Signatory]

26

M.P Tradeco

[Name of the Company]

“Rebate”	shall have the same meaning as ascribed thereto in Article 10.4.1 of this Agreement;
“Regional Energy Accounts” or “REA”	shall have the meaning as defined in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Revised Scheduled Commercial Operation Date”	shall have the meaning as ascribed thereto in the Article 4.1.6;
“Revised Scheduled COD”	shall have the meaning ascribed thereto in Article 4.2 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

M.D.

[Designation of Signatory]

27

M.P Tradeco

[Name of the Company]

“Scheduled Commercial Operation Date” or “SCOD”	shall mean the scheduled date for achieving COD, as specified in Article 4.1.5;
“Scheduled Connection Date”	shall mean the date on or before which the evacuation facilities for the Contracted Energy beyond the Interconnection Point shall have to be established by the Procurer, which shall be the date falling 210 days before the Scheduled COD of the first Unit
“Scheduled COD”	shall have the meaning ascribed thereto in Article 4.2 of this Agreement;
“Scheduled Energy” or “Scheduled Generation”	shall mean scheduled generation as defined in the ABT;
“Scheduled Outage”	shall have the meaning ascribed to this term as per the provisions of the Grid Code;
“Scheduled Synchronisation Date”	shall mean in relation to a Unit, the date, which shall be maximum of one hundred and eighty (180) days prior to the Scheduled COD of the respective Unit;

M.D.

[Designation of Signatory]

28

M.P Tradeco

[Name of the Company]

"Settlement Period"	shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;
"Site"	means the land over which the Power Station will be developed;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003 for the State of Madhya Pradesh being at present the Madhya Pradesh Power Transmission Company Limited;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Company to the Procurer
"State Energy Accounts" or "SEA"	shall mean as defined in the Grid Code and issued by the Madhya Pradesh SLDC for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"State Transmission Utility" or "STU"	shall mean the Government company notified by the Madhya Pradesh State Government under Sub-section (1) of Section 39 of the Act;
"Supplementary Bill"	shall mean a Bill other than a Monthly Bill raised by any of the Parties in accordance with Article 10 of this Agreement;

M.D.

[Designation of Signatory]

29

M.P Tradeco

[Name of the Company]

“Tariff”	shall mean the tariff payable by the Procurer for the supply of Contracted Energy, as may be determined by the Appropriate Commission;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills and the relevant Supplementary Bills;
“Term of Agreement”	shall mean the period commencing from the execution of this Agreement and expiring on the Expiry Date;
“Termination Notice”	shall have the meaning ascribed thereto in Article 12.7.1 of this Agreement;
“Tested Capacity”	shall mean, in relation to a Unit, or the Power Station as a whole (if all the Units of the Power Station have been Commissioned) the results, as certified by the Independent Engineer, of the most recent Performance Test or Repeat Performance Test carried out in accordance with Article 5 as the case may be, and Schedule 7 of this Agreement;
“Unit”	shall mean, in relation to the Power Station one steam generator, one turbine, one electrical generator and associated auxiliaries of the Power Station, all of which together is capable of generating electricity at the terminals of the electrical generator;

M.D.

[Designation of Signatory]

30

M.P Tradeco

[Name of the Company]

“Unscheduled Interchange” or “UI”	Shall have the meaning ascribed thereto in the CERC (Unscheduled interchange charges & related matters) Regulations 2009 as amended or revised from time to time;
“Unscheduled Outage”	shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;
“Variable Charge” or “Energy Charge” or “Variable Cost”	shall have the meaning assigned to the term under the applicable tariff regulations and tariff orders of the Appropriate Commission
“Wheeling Charges” or “Transmission Charges”	shall mean the charges paid by the Procurer to the CTU or STU or any other agency for the transfer of power from the Power Station switchyard end to the Interconnection Point;
“Week”	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2. Interpretation

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

- 1.2.1. “Agreement” shall be construed as including a reference to its Schedules, Appendices and Annexures;

M.D.

[Designation of Signatory]

31

M.P Tradeco

[Name of the Company]

- 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;

M.D.

[Designation of Signatory]

32

M.P Tradeco

[Name of the Company]

- 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 deed, instrument, license 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 re-enactments 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. Any reference to period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include such days or dates;
- 1.2.14. Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.15. The words/expressions used in this Agreement shall have the same meaning as assigned to them in the context in which these have been used in this Agreement provided that their respective meaning, if any, assigned to such undefined word/expression in the Electricity Act, 2003 shall also be taken into consideration for harmonious interpretation of the Agreement.
- 1.2.16. 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;
- 1.2.17. All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

M.D.

[Designation of Signatory]

33

M.P Tradeco

[Name of the Company]

- 1.2.18. The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.19. 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;
- 1.2.20. Unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Company to the Procurer/Government/ Appropriate Commission shall be provided free of cost and in three copies and if such authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof;

M.D.

[Designation of Signatory]

34

M.P Tradeco

[Name of the Company]

ARTICLE - 2: TERM OF AGREEMENT

2.1. Effective Date

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

2.2. Term of Agreement

2.2.1. This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. This Agreement may be renewed for a further term or terms as the Parties may mutually agree in writing on the term as well as the terms and conditions for such extended period.

2.3. Early Termination

2.3.1. This Agreement shall terminate before the Expiry Date:

- (i) if the right to terminate, is exercised pursuant to a specific provision of this Agreement; or
- (ii) in such other circumstances as the Company and the Procurer may mutually agree, in writing.

2.4. Survival

2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right

M.D.

[Designation of Signatory]

35

M.P Tradeco

[Name of the Company]

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 Article 3.3.2, Article 11 (Force Majeure), Article 12 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 13 (Dispute Resolution), Article 16 (Miscellaneous Provisions),

M.D.

[Designation of Signatory]

36

M.P Tradeco

[Name of the Company]

ARTICLE - 3: CONDITIONS SUBSEQUENT

3.1. Satisfaction of Conditions Subsequent by the Company

3.1.1. The Company agrees and undertakes to duly perform and complete the following activities at the Company's own cost and risk within 12 (Twelve) months from the Effective Date, unless such completion is affected by any Force Majeure Event or due to the Procurer's failure to comply with its obligations under this Agreement, or if any of the activities is specifically waived in writing by the Procurer.

- (i) The Company shall have executed the Fuel Supply Agreement and have provided the copy of the same to the Procurer;
- (ii) The Company shall have taken the possession of land required, for the setting up of the Power Station and shall have submitted a letter to this effect to the Procurer;
- (iii) The Company shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable instructions to proceed and shall have submitted a letter to this effect to the Procurer;
- (iv) The Company shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect to the Procurer;
- (v) The Company shall have made available to the Procurer the data with respect to the Power Station for design of Interconnection Facilities and Transmission Facilities;
- (vi) The Company shall have obtained approval of this Agreement from the Appropriate Commission for sale of Contracted Energy;

M.D.

M.P Tradeco

[Designation of Signatory]

[Name of the Company]

37

- (vii) The Company shall have submitted to the Procurer, the milestone schedule for implementation of the Power Station;

3.2. Satisfaction of Condition Subsequent by the Procurer

The Procurer agrees and undertakes to duly perform and complete the following activities within the time stipulated against each, unless such completion is affected due to any Force Majeure Event or if any of the activities is specifically waived in writing by the Company.

- (i) The Procurer shall have obtained open access for evacuation of the Contracted Energy from the Delivery Point at least 60 (sixty) days prior to Commissioning of the first Unit;
- (ii) The Procurer shall have established the necessary evacuation infrastructure beyond the Interconnection Point, necessary for evacuation of the Contracted Energy at least 210 days prior to COD.

3.3. Consequences of non-fulfilment of conditions under Article 3.1

- 3.3.1. If any of the conditions specified in Article 3.1 is not duly fulfilled by the Company even within three (3) Months after the time specified under Article 3.1, otherwise than for reasons directly attributable to the Procurer or Force Majeure Event in terms of Article 3.3.3, then on and from the expiry of such period and until the Company has satisfied all the conditions specified in Article 3.1, the Company shall be liable to furnish to the Procurer additional Weekly Performance Guarantee of Rs. (insert amount not less than that derived on the basis of Rs. 1.50 lakhs per MW of Contracted Capacity) within two (2) Business Days of expiry of every such Week. Such additional Weekly Performance Guarantee shall be provided to Procurer in the manner provided in Article 3.4.1 and shall become

M.D.

[Designation of Signatory]

38

M.P Tradeco

[Name of the Company]

part of the Contract Performance Guarantee and all the provisions of this Agreement shall be construed accordingly. The Procurer shall be entitled to hold and/or invoke the Contract Performance Guarantee, including such additional Weekly Performance Guarantee, in accordance with the provisions of this Agreement.

3.3.2. Subject to Article 3.3.3, if:

- (i) Fulfilment of any of the conditions specified in Article 3.1 is delayed beyond the period of three (3) Months and the Company fails to furnish any additional Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof; or
- (ii) the Company furnishes additional Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.1 for a period of eight (8) Months beyond the period specified therein,

The Procurer or the Company shall have the right (but not an obligation) to terminate this Agreement by giving a Termination Notice to the Company/ Procurer in writing of at least seven (7) days. The termination of the Agreement shall take effect upon expiry of the last date of the said notice period (“Termination Date”).

If the Procurer or the Company elects to terminate this Agreement in the event specified in the preceding paragraph of this Article 3.3.2, the Company shall be liable to pay to the Procurer on the Termination Date an amount of Rupees (*insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity*) only as pre-estimated liquidated damages.

The Procurer shall be entitled to recover this amount of liquidated damages by invoking the Performance Guarantee and additional performance guarantee to the

M.D.

[Designation of Signatory]

39

M.P Tradeco

[Name of the Company]

extent of Rs. (*insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity*) and shall then return the balance Contract Performance Guarantee, if any, to the Company. If the Procurer is unable to recover the said amount of Rupees (*insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity*) or any part thereof from the Contract Performance Guarantee, the amount not recovered from the Contract Performance Guarantee, if any, shall be payable by the Company to the Procurer within ten (10) days. The Company unequivocally and unconditionally agrees to pay the damages so determined to the Procurer without any demur.

For the avoidance of doubt, it is clarified that (a) the Company shall have no right to terminate this Agreement for non fulfilment of any Conditions Subsequent on the part of the Company as mentioned in this Article and (b) this Article shall survive the termination of this Agreement.

- 3.3.3. In case of inability of the Company to fulfill the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1 shall be extended for the period of such Force Majeure Event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer or the Company by giving a notice of at least seven (7) days, in writing to the other Party.

3.4. Contract Performance Guarantee

- 3.4.1. Prior to or simultaneously with the execution of this Agreement, the Company has provided to the Procurer, the Performance Guarantee from any scheduled bank, for the amount calculated @ Rs. 30 lakhs per MW of the Contracted Capacity and rounded off to the nearest Rupees one lakh (100,000) with the principle that

M.D.

[Designation of Signatory]

40

M.P Tradeco

[Name of the Company]

amounts below Rupees Fifty Thousand (Rs. 50,000) shall be rounded down and amounts of Rupees Fifty Thousand (Rs. 50,000) and above shall be rounded up. Subject to Article 3.3 the Performance Guarantee shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time to be valid up to three (3) Months after the actual COD of the Power Station.

- 3.4.2. The Performance Guarantee including the additional Performance Guarantee furnished under this Agreement shall be for guaranteeing the due and timely completion of the Power Station, achievement of Scheduled Commercial Operation Date of each Unit and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.
- 3.4.3. The failure on the part of the Company to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Company.
- 3.4.4. If the Company fails to achieve COD of each of the Units on their respective Scheduled Commercial Operation Date specified in this Agreement, subject to conditions mentioned in Article 4.5.1, the Procurer shall have the right (but not an obligation) to encash the Contract Performance Guarantee and appropriate in its favour as liquidated damages an amount specified in Article 4.6.1, without prejudice to the other rights of the Procurer under this Agreement.
- 3.4.5. The Performance Guarantee furnished under this Article shall be initially valid till three (3) Months after the Scheduled COD of the Power Station and which shall be extended from time to time to be valid up to three (3) Months after the actual COD of the Power Station. If such extended Performance Guarantee is not received as per the date specified above, the Procurer shall have the right to encash the then existing Performance Guarantee.

M.D.

[Designation of Signatory]

41

M.P Tradeco

[Name of the Company]

3.5. Reduction in the amount of Contract Performance Guarantee

3.5.1. On successful supply of power as per the terms of this Agreement for a duration of five (5) years from the COD and provided that there has been no Company Event of Default in the immediately preceding thirty-six (36) Months, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees [Insert amount calculated at Rs. 15 lakhs / MW of the Contracted Capacity]. The Company shall thereafter provide such reduced Contract Performance Guarantee to the Procurer for the amount calculated pro-rata and rounded off to the nearest Rupees one lakh (100,000) with the principle that amounts below Rupees Fifty Thousand (Rs. 50,000) shall be rounded down and amounts of Rupees Fifty Thousand (Rs. 50,000) and above shall be rounded up in lieu of the Contract Performance Guarantee, of an amount of Rupees (.....) [Insert amount calculated at Rs. 30 lakhs per MW of the Contracted Capacity]. Such reduced Contract Performance Guarantee shall be initially valid for a further period of five (5) years. Thereafter the Performance Guarantee shall be dealt with in accordance with the provisions of the Article

3.5.2. The Performance Guarantee specified in Article 3.5.1 hereof shall be in substitution of the earlier Performance Guarantee furnished under Article 3.4.1.

3.6. Return of Contract Performance Guarantee

3.6.1. The Procurer shall return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.3.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees (.....) [Insert amount not less than that derived on the basis of 40.00 lakhs per MW of

M.D.

[Designation of Signatory]

M.P Tradeco

[Name of the Company]

the Contracted Capacity], or (ii) termination of this Agreement by any Party under Article 3.3.3, or Article 3.3.2 of this Agreement.

- 3.6.2. Subject to the provisions of Article 3.6.1, the Procurer shall return / release the Contract Performance Guarantee to the Company at the end of the tenth anniversary of the COD.
- 3.6.3. The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.
- 3.6.4. The return/release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement and subject to adjustment by the Procurer any amount due to the procurer from the Company at the relevant time.

M.D.

[Designation of Signatory]

43

M.P Tradeco

[Name of the Company]

ARTICLE - 4: SUPPLY OF ENERGY

4.1. Company's Obligations to Build Own and Operate the Power Station

4.1.1. Subject to the terms and conditions of this Agreement, the Company undertakes to be responsible, at its own cost and risk, for:

- (i) Obtaining and maintaining in full force and effect all Consents, Clearances, and Permits during the Term of this Agreement required by it pursuant to this Agreement and Law;
- (ii) Executing the Power Station in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned not later than its Scheduled Commercial Operations Date and such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer's scheduling and despatch requirements throughout the Term of this Agreement;
- (iii) Operation and maintenance of the Power Station in accordance with the provisions of this Agreement;
- (iv) To make arrangements for evacuation of the Contracted Energy by a dedicated transmission line, if required, from the Delivery Point to the Interconnection Point as specified in Schedule 8.
- (v) Procure the requirements of electricity at the Power Station (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;
- (vi) To file petition with the Appropriate Commission for approval Tariff on periodical basis as may be required under Law;

M.D.

[Designation of Signatory]

44

M.P Tradeco

[Name of the Company]

- (vii) Provide to the Procurer, on a timely basis, relevant technical information on Power Station specifications, which may be required by the Procurer to design the Interconnection Facilities;
- (viii) Performance and fulfillment of all other obligations of the Company in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Company under this Agreement.

4.1.2. Submission of progress reports

The Company shall furnish to the Procurer, quarterly progress reports of actual progress of the Power Station and shall give all such other relevant information as may be required by the GoMP or its nominated agency.

4.1.3. To provide all information required under Approvals

The Company shall provide all information and supporting documentation required to be submitted under Law, to any Competent Authority.

4.1.4. Safety Measures

The Company shall ensure proper safety measures during implementation of the Power Station including, but not limited to, any geological study, construction and testing at the site as per Law.

4.1.5. Scheduled COD

The Company shall achieve Commercial Operation Date for the first Unit within [...insert number of months...] Months from the date of Financial Closure and every subsequent Unit within [...insert number of months...] Months thereafter.

4.1.6. Revised Scheduled COD

The Revised Scheduled COD of any Unit shall be mutually discussed between the Procurer and the Company.

M.D.

[Designation of Signatory]

45

M.P Tradeco

[Name of the Company]

4.2. Procurer's Obligations

Subject to the terms and conditions of this Agreement, the Procurer undertakes to be responsible, at its own cost and risk, for:

- (i) Ensuring the availability of Interconnection Facilities and evacuation of power from the Interconnection Point before the Scheduled COD or the Revised Scheduled COD, as the case may be;
- (ii) Payment of the Tariff in accordance with Article 10;
- (iii) Payment of the transmission charges beyond Delivery Point (except in case of a dedicated transmission line provided by the Company), RLDC and SLDC charges and any other charges, for the Contracted Energy;
- (iv) Make all reasonable arrangements for the evacuation of the infirm power from the Power Station, subject to the available transmission capacity; and
- (v) Fulfilling other obligations undertaken by them under this Agreement.

4.3. Purchase and sale of Contracted Energy

4.3.1. Subject to the terms and conditions of this Agreement, the Company undertakes to sell to the Procurer and the Procurer undertakes to purchase the Contracted Energy and pay the Tariff for all of the Contracted Energy.

4.3.2. Unless otherwise instructed by the Procurer, the Company shall sell all the Contracted Energy to Procurer pursuant to the Despatch Instructions given by the Procurer.

4.4. Right to Contracted Energy

M.D.

M.P Tradeco

[Designation of Signatory]

[Name of the Company]

46

4.4.1. Subject to other provisions of this Agreement, the entire Contracted Energy shall at all times be for the exclusive benefit of the Procurer who shall have the exclusive right to purchase the Contracted Energy from the Company. The Company shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Energy.

4.4.2. Notwithstanding Article 4.4.1, in the event the Procurer fails to despatch all or part of the Contracted Energy at any time, the Company shall be entitled to sell such non despatched Contracted Energy to third parties. For any such third party sale, all open access charges including losses, as may be applicable, shall be payable by such third party.

4.4.3. Consequences of sale under Article 4.4.2

In the event the Company sells power under the provisions of Article 4.4.2, the following conditions shall apply:

- (i) The Procurer shall continue to be liable to pay the Capacity Charges determined as part of the Tariff, to the Company for such Contracted Energy. Furthermore, in such a case, the sale price realized by the Company in excess of Variable Charges determined as part of the Tariff shall be shared by the Company and the Procurer in equal ratio. The Company shall maintain accounts and provide all details regarding cost of sale etc. to Procurer in respect of such sales under Article 4.4.2.
- (ii) In the event, the Company sells such Available Capacity to the shareholders of the Company or any direct or indirect Affiliate of the Company/shareholders of the Company without obtaining the prior written consent of the Procurer, the Company shall be liable to sell such Available Capacity to such entity at tariffs being not less than the Tariff payable by the Procurer.

M.D.

[Designation of Signatory]

47

M.P Tradeco

[Name of the Company]

(iii) Where the sale under Article 4.4.2 by the Company is consequent to a notice issued by the Procurer to the Company indicating its unwillingness to purchase the Contracted Energy or part thereof for a period specified in such notice, the Procurer shall be entitled to request the Company for the resumption of supply of the Contracted Energy at any time, however, the Company shall not be liable to resume such supply earlier than the period specified in the said notice subject to the provisions regarding scheduling as per the Grid Code.

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

4.4.5. Alternative Source of Power Supply

During the Operating Period, if the Company is unable at any time to supply Contracted Energy or part thereof from the Power Station, except due to a Force Majeure Event or due to default attributable to the Procurer, the Company shall be entitled to supply power up to the Contracted Energy from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer at the same Tariff that the Procurer was required to pay as per the terms of this Agreement in accordance with Article 10 and Schedule 5. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the equivalent charges applicable under this Agreement, the Company would be liable to bear such additional charges.

4.5. Extensions of time

4.5.1. In the event that:

M.D.

[Designation of Signatory]

48

M.P Tradeco

[Name of the Company]

- (i) The Company is prevented from performing its obligations to supply power from Scheduled COD, due to Procurer Event of Default; or
- (ii) A Unit cannot be Commissioned by its Scheduled COD because of Force Majeure Events;

Then in such events, the Scheduled Commercial Operations Date and the Scheduled Connection Date shall be deferred, subject to the limit prescribed in Article 4.5.3, for a reasonable period but not less than 'day to day' basis, to permit the Company through the use of due diligence to overcome the effects of the Force Majeure Events affecting the Company or in the case of the Procurer's Event of Default, till such time such default is rectified by the Procurer.

- 4.5.2. In the event of the Procurer and the Company are unable to agree, within thirty (30) days after the Affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled Commercial Operations Date, the Scheduled Connection Date or the Expiry Date should be deferred by, then such dispute may be resolved in accordance with Article 13.4.
- 4.5.3. In case of extension occurring due to reasons specified in Article 4.5.1(i) the original Scheduled Commercial Operations Date of any Unit or the Power Station as the case may be, shall not be extended by more than two (2) years.
- 4.5.4. In the event of any extension under this Article 4.5, the date newly determined shall be deemed to be the Scheduled Commercial Operations Date for the purposes of this Agreement.

4.6. Liquidated damages for delay in providing Contracted Capacity

- 4.6.1. If the Company is unable to commence supply of power to the Procurer by the Scheduled COD or the Revised Scheduled COD, as the case may be, other than for the reasons specified in Article 4.5.1, the Company shall pay to Procurer

M.D.

[Designation of Signatory]

49

M.P Tradeco

[Name of the Company]

liquidated damages as per this Article 4.6.1, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled COD or the Revised Scheduled COD, as the case may be without in any manner affecting the other rights of the Procurer.

Provided that the Company shall have the option to supply power from any alternative generation source from the Scheduled COD or the Revised Scheduled COD, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as would be applicable for supply from the Power Station as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the Company fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurer liquidated damages as per this Article 4.6.1 for the period of such non supply.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges up to the Interconnection Point, the Company shall be liable to bear such additional charges.

The sum total of the liquidated damages payable by the Company to the Procurer for such delayed Unit shall be calculated as follows:

If $dn \leq 60$ days, then the liquidated damages shall be calculated as follows:

$$SLDb = [CCun \times dn \times DR1] \times [..insert the contracted percentage of capacity...]\%$$

M.D.

[Designation of Signatory]

50

M.P Tradeco

[Name of the Company]

If $dn > 60$ days, then the liquidated damages shall be calculated as follows:

$$SLDb = [CCun \times 60 \times DR1] + [CCun \times (dn - 60) \times DR2] \times [..insert the contracted percentage of capacity...]\%$$

Where:

- (a) “SLDb” are the liquidated damages payable by the Company during the period beginning with the day from the Scheduled Commercial Operation Date or Revised Scheduled Commercial Operation date, as the case may be of a Unit up to and including the day on which Unit is actually Commissioned;
- (b) “CCun” is the capacity of the relevant Unit “n”;
- (c) “dn” is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date or Revised Scheduled Commercial Operation date, as the case may be of Unit “n” up to and including the day on which such Unit is actually Commissioned;
- (d) “DR1” is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case “d” is equal to or less than 60 days and “DR2” is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case “d” is more than 60 days. The amount so determined shall be paid by the Company without any demur and it agrees to pay the same unequivocally and unconditionally in the manner provided herein.

4.6.2. The Company’s maximum liability under this Article 4.6 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.6.1 for and up to twelve (12) Months of delay in Commissioning for the Unit. Provided that in

M.D.

[Designation of Signatory]

51

M.P Tradeco

[Name of the Company]

case of failure of the Company to Commission the Unit even after expiry of twelve (12) Months from its Scheduled Commercial Operation Date, the provisions of Article 12 shall apply.

4.6.3. The Company shall pay the amount calculated pursuant to Article 4.6.1 to the Procurer within ten (10) days of the earlier of:

(e) the date on which the Unit is actually Commissioned; or

(f) expiry of the twelve (12) Month period mentioned in Article 4.6.2.

4.6.4. If the Company fails to pay the amount of damages within the said period of ten (10) days, the Procurer shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Guarantee. If then existing Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Company to the Procurer under this Article 4.6, then the Company shall be liable to forthwith pay the balance amount. Further, the Procurer shall also be entitled to take recourse under Article 13.

4.6.5. The Parties agree that the formula specified in Article 4.6.1 for calculation of liquidated damages payable by the Company under this Article 4.6 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer.

4.6.6. If any Unit is not Commissioned by its Revised Scheduled COD other than for the reasons specified in Article 4.5.1, the Company shall pay to Procurer, the liquidated damages, for the delay in such Commissioning or making the Unit's Contracted Capacity available for despatch by such date. The total liquidated damages payable by the Company to the Procurer for such delayed Unit shall be equivalent to the damages payable by the Procurer to the CTU/STU (as the case may be) for the period of delay, as per the terms of agreement proposed to be entered into by the Procurer with CTU/STU for establishment of transmission system. Provided however, the liquidated damages payable by the Company to the

M.D.

[Designation of Signatory]

52

M.P Tradeco

[Name of the Company]

Procurer in case of delay under this Article 4.6.6 shall not be more than twenty percent of liquidated damages computed in the manner mentioned in Article 4.6.1. Provided further, in case of delay beyond Scheduled Commercial Operation Date, the provisions of Article 4.6.1 to Article 4.6.5 will apply for such delay beyond Scheduled Commercial Operation Date.

4.6.7. It is clarified that the liquidated damages payable under this Article 4.6.6 shall be in addition to the liquidated damages determined in terms of Articles 4.6.1 to 4.6.5.

4.7. Liquidated damages for delay due to Procurer Event of Default and Non Natural Force Majeure Events and Natural Force Majeure Event (affecting the Procurer)

4.7.1. If the Company is otherwise ready to commence supply of power and has given due notice, as per provisions of Article **Error! Reference source not found.**, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled COD or Revised Scheduled COD, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Force Majeure Event (provided such Force Majeure Event affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months, until the effects of the Procurer Event of Default or Force Majeure Event affecting the Procurer no longer prevent the Company from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

(a) In case of delay on account of the Procurer Event of Default, the Procurer shall make payment to the Company of Capacity Charges, calculated on

M.D.

[Designation of Signatory]

53

M.P Tradeco

[Name of the Company]

Normative Availability of Contracted Capacity for and during the period of such delay.

- (b) In case of delay due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer, the Procurer shall make payment to the Company for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity, which is due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- (c) In case of delay due to Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer or Procurer Event of Default, the Procurer shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer or Procurer Event of Default and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event or Procurer Event of Default had not occurred.

- 4.7.2. In every case referred to in Article 4.7.1 hereinabove, the Company shall undertake a Commissioning Test(s) as soon as reasonably practicable [and in no event later than two (2) weeks or such longer period as mutually agreed between the Company and the Procurer] after the point at which it is no longer prevented

M.D.

[Designation of Signatory]

54

M.P Tradeco

[Name of the Company]

from doing so by the effects of Force Majeure Events or Procurer Event of Default (as appropriate) and if such Commissioning Test(s) is not duly completed and / or demonstrate/s a Tested Capacity of a Unit which is less than ninety five (95) percent of its Power Station's Net Capacity, then:

- (i) The Unit which fails the Performance Tests, shall be deemed to have not been Commissioned from the deemed COD referred to in Article 4.6.1;
- (ii) The Company shall repay to the Procurer, all sums received by way of Capacity Charge for such Unit along with interest at the same rate as applicable to Late Payment Surcharge; and
- (iii) If the Company fails to achieve Commissioning by the Scheduled Commercial Operation Date, it shall also pay liquidated damages to the Procurer for such Unit calculated in accordance with Article 4.6.

4.8. Liquidated Damages for delay due to Direct Non Natural Force Majeure Event

4.8.1. If the Company is otherwise ready to commence supply of power and has given due notice, as per provisions of Article **Error! Reference source not found.**, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled COD or Revised Scheduled COD, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Company shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Company from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent,

M.D.

[Designation of Signatory]

55

M.P Tradeco

[Name of the Company]

be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

- (a) In case of delay due to Direct Non Natural Force Majeure not attributable to the Procurer, the Procurer shall make payment for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity which are due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- (b) In case of delay due to Direct Non Natural Force Majeure attributable to the Procurer, the Procurer shall make payment to the Company of Capacity Charges calculated on Normative Availability of Contracted Capacity for the period of such events in excess of three (3) continuous or non-continuous Months.
- (c) In case of delay due to Direct Non Natural Force Majeure Event, the Procurer shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Direct Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.

M.D.

[Designation of Signatory]

56

M.P Tradeco

[Name of the Company]

4.9. In every case referred to in Article 4.7.1 and 4.8.1 hereinabove, the Company shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurer as soon as reasonably practicable [and in no event later than two (2) Weeks or such longer period as mutually agreed between the Company and the Procurer after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable)]. If the Company is unable to provide supply of the Contracted Capacity in such a situation, then:

- (a) the Company shall repay to the Procurer, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and
- (b) If the Company fails to provide supply of power to Procurer by the Scheduled COD or the Revised Scheduled COD, as the case may be, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.6.

4.10. Limit on amounts payable due to default

4.10.1. The Parties expressly agree that the Procurer's only liability for any loss of profits or any other loss of any other kind or description whatsoever suffered by the Company by reason of the Procurer's failure to meet its obligations under Article 4.2 shall be to pay the Company the amounts specified in Article 4.7 and Article 13.

4.10.2. Similarly, Company's only liability for any loss suffered by the Procurer of any kind or description whatsoever by reason of the Company's failure to meet its obligations of Commissioning the various Units on their Scheduled COD, shall be as per Article 4.6 and Article 13.

M.D.

[Designation of Signatory]

57

M.P Tradeco

[Name of the Company]

4.11. Interconnection and Transmission Facilities

- 4.11.1. Interconnection Point shall be the point of off-take of power by MPTradeco for the power generated from the Power Station and shall be the point as specified in Schedule 8 of this Agreement.
- 4.11.2. The Contracted Energy shall be evacuated by a dedicated transmission line, if required, and shall be arranged by the Company from the Delivery Point to the Interconnection Point as specified in Schedule 8.
- 4.11.3. The Procurer shall bear the transmission losses and pay the monthly/periodic transmission charges as per prevailing regulations issued by the Appropriate Commission to the Company or to the designated owner of the transmission line from Delivery Point to the Interconnection Point.

4.12. Break down of the Grid System

- 4.12.1. In the event that Electrical Output is not evacuated due to breakdown of the Grid System, Procurer shall continue to remain responsible for evacuation of the Contracted Energy from the Interconnection Point, and this shall not be deemed to be a Force Majeure condition. Consequently, the Procurer shall continue to pay the Capacity Charges pertaining to the Contracted Capacity to the Company for the period of such breakdown.

M.D.

[Designation of Signatory]

58

M.P Tradeco

[Name of the Company]

ARTICLE - 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1. Obligation to Supply the Contracted Capacity

5.1.1. Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating Unit(s) and /or of the transmission system, the Company shall offer for sale the Contracted Capacity to the Procurer at the Delivery Point and arrange for transmission up to the Interconnection Point.

5.2. Allocation of Generation Capacity

5.2.1. The Company shall provide percent (.....%) [Insert number] of the Power Station's Net Capacity to the Procurer as per the terms of this Agreement.

5.3. Availability

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

5.3.2. The Contracted Capacity being a part of the Power Station's Net Capacity; in the event of Declared Capacity being less than the Normative Availability of the Power Station, the available capacity to the Procurer for dispatch shall not be reduced. The Company shall supply power to the Procurer equivalent to Contracted Energy.

5.4. Scheduling and Dispatch

M.D.

[Designation of Signatory]

59

M.P Tradeco

[Name of the Company]

5.4.1. The Company shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto.

5.4.2. The Company further agrees that the Availability entitlement of the Procurer for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Articles 4.4.2. If the Company willfully offers the power meant for dispatch to the Procurer to any third party without complying with the conditions specified in Article 4.4.2, the Company agrees to and acknowledges the Procurer's right to instruct the RLDC/ SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.

5.5. **Demonstration of Power Station's Net Capacity**

5.5.1. The Procurer may from time to time during the Operating Period, but only if the Available Capacity with respect to the Procurer has not been one hundred percent (100%) of the Contracted Capacity for one continuous period of at least three (3) hours during any last three (3) continuous months, request the relevant RLDC/ SLDC to assess the Power Station's Net Capacity. Such capacity assessment of the Power Station, by the said RLDC/ SLDC at the request of the Procurer, shall not be done more than once in a continuous period of six (6) Months.

5.5.2. If the Power Station's Net Capacity after such capacity assessment is determined to be less than the Normative Availability of the Power Station, then the provisions of Article 5.6.1 shall apply and the Company shall have a right to demonstrate to the satisfaction of the RLDC/ SLDC the Power Station's Net Capacity only after a period of six (6) Months from the date of such assessment.

M.D.

[Designation of Signatory]

60

M.P Tradeco

[Name of the Company]

5.5.3. If the Company wishes to take any Unit of the Power Station or the Power Station, out of service for repair before any assessment by the RLDC/ SLDC, it shall inform the RLDC/ SLDC in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Company to carry out those repairs and in such a case, the Procurer requiring the RLDC/ SLDC to conduct the assessment shall defer such assessment until such Unit or the Power Station is returned to service following that maintenance outage.

5.6. **Derating**

5.6.1. Based on the assessment carried out by the RLDC/ SLDC, if the Power Station's Assessed Capacity is less than Normative Availability, the Company shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Assessed Capacity, in which case:

(a) The Power Station's Net Capacity shall be reduced to its most recent Assessed Capacity and the Capacity Charges for the Contracted Capacity shall be paid with respect to such reduced Power Station's Net Capacity until the next assessment by the concerned RLDC/ SLDC.

(b) The Contracted Capacity of the Procurer shall be reduced proportionately, and the Availability Factor shall be calculated by reference to the reduced Contracted Capacity, in each case with effect from date on which the Procurer first requested the RLDC/ SLDC to assess the Power Station's Net Capacity.

5.6.2. If at the end of subsequent demonstration of the Power Station's Net Capacity by the Company at the end of the six Month period referred to in Article 5.5.2, the

M.D.

[Designation of Signatory]

61

M.P Tradeco

[Name of the Company]

Assessed Capacity comes out to be still less than the Normative Availability, the consequences mentioned in Article 5.6.1 shall apply on such Assessed Capacity for a period of at least one year from such date of demonstration of the Power Station's Net Capacity after which the Company shall once again have the right to demonstrate the Power Station's Net Capacity. The consequences mentioned in Article 5.6.1 shall be modified based on the most recent Assessed Capacity of the Power Station.

- 5.6.3. If the RLDC/ SLDC is unable to assess the Power Station's Net Capacity because of events or circumstances beyond the Company's reasonable control, the RLDC/ SLDC shall reschedule an assessment as soon as reasonably practicable.

M.D.

[Designation of Signatory]

62

M.P Tradeco

[Name of the Company]

ARTICLE - 6: OPERATION AND MAINTENANCE

6.1. Operation and Maintenance of the Power Station

6.1.1. The Company shall be responsible at its own expense for ensuring that the Generating Station is operated and maintained in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the State Grid Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.

6.2. Coordination among Parties:

6.2.1. The Parties herein agree that the issues relating to interconnection, evacuation, transmission facilities and issues related to inter-utility metering, and coordination with the Grid System will be decided and settled between the Parties mutually or as per any agreements executed between them and subsequently, on not being able to reach on a mutual agreement, shall be dealt with the provisions of the State Grid Code.

6.3. Maintenance of Records:

6.3.1. Each Party shall keep complete and accurate records of the meter records and other records needed to reflect power exchange between the Parties for each Settlement Period and Electrical Output of the Generating Station on a continuous real time basis;

6.3.2. Every Party shall have the right, upon reasonable prior notice, to examine the records and data of the other Parties relating to this Agreement or the operation

M.D.

[Designation of Signatory]

63

M.P Tradeco

[Name of the Company]

and maintenance of the Power Station at any time during normal office hours on normal business days.

M.D.

[Designation of Signatory]

64

M.P Tradeco

[Name of the Company]

ARTICLE - 7:

Not Used

M.D.

[Designation of Signatory]

65

M.P Tradeco

[Name of the Company]

ARTICLE - 8: METERING AND ENERGY ACCOUNTING

8.1. Meters

For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Company and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time or any other Law in force at that point of time.

8.2. RLDC/SLDC Charges

RLDC/SLDC charges, if any applicable up to the Interconnection Point shall be borne by the Company while any such charges beyond the Interconnection Point shall be borne by the Procurer.

M.D.

[Designation of Signatory]

66

M.P Tradeco

[Name of the Company]

ARTICLE - 9: INSURANCES

9.1. Insurance

The Company shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

9.2. Application of Insurance Proceeds

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

If a Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the Procurer shall have no claim on such proceeds of such Insurance.

9.3. Effect of liability of the Procurer

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

M.D.

[Designation of Signatory]

67

M.P Tradeco

[Name of the Company]

ARTICLE - 10: TARIFF, BILLING AND PAYMENT

10.1. General

- 10.1.1. The Tariff for the electricity supplied from the Power Station would be as determined by the Appropriate Commission from time to time. The Tariff payable by the Procurer for the Contracted Energy shall be a two part tariff comprising Capacity Charge and Variable Charge as determined by the Appropriate Commission.
- 10.1.2. From the COD of the first Unit, the Procurer shall pay the Company the Tariff, on or before the Due Date, comprising Tariff for every Contract Year, determined in accordance with this Article 10 and Schedule 5.
- 10.1.3. In case the Tariff is not determined by the Appropriate Commission prior to the commencement of commercial operation of the first generating Unit or the Power Station, as the case may be, the Parties agree to jointly work out an ad-hoc tariff based on the CERC's tariff regulation for the applicable period. Based on the ad-hoc tariff, the Procurer shall make a provisional payment to the Company, subject to appropriate adjustment till the Tariff is determined by the Appropriate Commission or any order passed by the Appropriate Commission pending the determination of such Tariff.
- 10.1.4. Infirm power i.e. sale of energy prior to commercial operation of the Unit, will be billed by the Company for Energy Charges as determined by the Appropriate Commission.
- 10.1.1. All Tariff payments by the Procurer shall be in Indian Rupees (INR).

10.2. Monthly Billing

M.D.

[Designation of Signatory]

68

M.P Tradeco

[Name of the Company]

The Tariff under this Agreement shall be billed by the Company and shall be paid by the Procurer in accordance with the following provisions:

- (i) The Company shall issue to the Procurer a signed Monthly Bill for the immediately preceding Month as per Regulations of the Appropriate Commission for energy supplied to the Procurer from the Power Station as per the Energy Accounts;
- (ii) The Company shall submit the Bill to the Procurer, which shall include:
 - (a) Availability and energy account for the relevant Month as per SEA/ REA for Monthly Bill;
 - (b) the Company's computation of various components of the monthly Tariff payment in accordance with Schedule 5; and
 - (c) supporting data, documents and calculations in accordance with this Agreement.
- (iii) The Monthly Bill for the energy supplied to Procurer shall be in accordance with the provisions of this Agreement. If for certain reasons some of the charges which otherwise are in accordance with this Agreement, can not be included in the main Monthly Bill, such charges shall be billed as soon as possible through Supplementary Bill (s).
- (iv) The Bill (s) of the Company shall be paid in full subject to the condition that –
 - (a) There is no apparent arithmetical error in the Bill (s).
 - (b) The Bill (s) is/are claimed as per the Tariff determined by the Appropriate Commission.
 - (c) They are in accordance with the Energy Accounts.

M.D.

M.P Tradeco

[Designation of Signatory]

[Name of the Company]

69

- (v) If Procurer disputes any amount, it shall pay 100% of the disputed amount forthwith and file a written objection with the Company within thirty (30 days) of presentation of the Bill, giving following particulars:
 - (a) Item disputed, with full details / data and reasons of dispute
 - (b) Amount disputed against each item

Provided that non-acceptance of Tariffs determined/ approved by the Appropriate Commission or any other Competent Authority shall not be a valid ground for dispute.

10.3. Payment of Monthly Bills

10.3.1. The Procurer shall pay the amount payable under Monthly Bill by the Due Date to such account of the Company, as shall have been previously notified by the Company to Procurer in accordance with Article 10.3.3 below.

All payments made by the Procurer shall be appropriated by the Company in the following order of priority:

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

10.3.2. All payments required to be made under this Agreement shall only include any deduction or set off for:

- (i) deductions required by Law; and
- (ii) amounts claimed by the Procurer from the Company, through an invoice

M.D.

[Designation of Signatory]

70

M.P Tradeco

[Name of the Company]

duly acknowledged by the Company, to be payable by the Company, and not disputed by the Company within thirty (30) days of receipt of the said invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) day period.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rupees [Insert amount calculated as Rs. 2.5 lakhs per MW of Contracted Capacity] only, except under sub Article (i) above.

10.3.3. The Company shall open a bank account at [Identified Place or Account designated by Lenders] (the "Designated Account") for all Tariff Payments to be made by Procurer to the Company, and notify the Procurer of the details of such account at least ninety (90) days before the despatch of the first Monthly Bill to Procurer. The Procurer shall instruct its bankers to make all payments under this Agreement to the Designated Account and shall notify the Company of such instructions on the same day. The Procurer shall also designate a bank account at [Identified Place] for payments to be made by the Company (including Supplementary Bills) to the Procurer and notify the Company of the details of such account ninety (90) days before the COD of the first Unit.

10.4. Billing and Payment of charges

10.4.1. Rebate

For payment of any Bill before Due Date, the following rebate shall be paid by the Company to the Procurer in the following manner.

M.D.

[Designation of Signatory]

71

M.P Tradeco

[Name of the Company]

- (a) Two percent (2%) rebate for credit to Company's account made within one (1) Day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- (b) Applicable rate of rebate at (a) above shall be based on the date on which payment has been actually credited to the Company's account. Any delay in transfer of money to the Company's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurer.
- (c) For credit to Company's account made on other days the rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	Rates of Rebate applicable
29	Two percent (2.00%)
Each day thereafter up to the Due Date	2% less [0.033% x {29 less number of days before Due Date when the payment is made by the Procurer}]

- (d) The above rebate will be allowed only to the Procurer if it credits to Company's account the full Monthly Bill;
- (e) No rebate shall be payable on the bills raised on account of Change in Law relating to taxes, duties and cess;

10.4.2. Late payment surcharge

In case the payment of any Bill for charges payable under this Agreement is delayed by the Procurer beyond the Due Date thereof, a Late Payment Surcharge shall be payable by the Procurer to the Company at the rate of 1.25% per Month

M.D.

[Designation of Signatory]

72

M.P Tradeco

[Name of the Company]

on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests.

Similarly if any amount outstanding against the Company and payable to Procurer is not paid beyond its Due Date a Late Payment Surcharge shall be payable by the Company to the Procurer at the rate of 1.25% per Month on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests.

10.5. Establishment of Letters of Credit

10.5.1. Letter of Credit

The Procurer shall provide to the Company, in respect of payment of its Monthly Bills, a unconditional, revolving and irrevocable letter of credit (“**Letter of Credit**”), opened and maintained by the Procurer, which may be drawn upon by the Company in accordance with Articles 10.5.1.1 through Article 10.5.1.5. The Procurer shall provide the Company draft of the Letter of Credit proposed to be provided to the Company before the NTP.

10.5.1.1. Not later than one (1) Month prior to the Scheduled COD or the Revised Scheduled COD (as applicable) of the first Unit, the Procurer shall through a scheduled bank at [Identified Place] open a Letter of Credit in favour of the Company, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- (i) for the first Contract Year, equal to one point one (1.1) times the estimated average Monthly billing based on Normative Availability;
- (ii) for each subsequent Contract Year, equal to one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year plus

M.D.

[Designation of Signatory]

73

M.P Tradeco

[Name of the Company]

the estimated Monthly billing during the current year from any additional Unit(s) expected to be put on COD during the current Contract Year based on Normative Availability.

Provided that if at any time, such Letter of Credit amount falls short of the amounts specified above, otherwise than by reason of drawal of such Letter of Credit by the Company, the Procurer shall restore such shortfall within seven (7) days.

- 10.5.1.2. The Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Company, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.5.1.3. In case of drawal of the Letter of Credit by the Company in accordance with the terms of this Agreement, the amount of the Letter of credit shall be reinstated in the manner specified in this Article 10.5.1.
- 10.5.1.4. If the Procurer fails to pay a Monthly Bill or a Supplementary Bill or part thereof within and including the Due Date, then the Company may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or a Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
 - (i) a copy of the Monthly Bill or Supplementary Bill that has remained unpaid by the Procurer;
 - (ii) a certificate from the Company to the effect that the Bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
 - (iii) calculations of applicable Late Payment Surcharge, if any.

M.D.

[Designation of Signatory]

74

M.P Tradeco

[Name of the Company]

- 10.5.1.5. The Letter of Credit shall be renewed by the Company not later than forty five (45) days prior to its expiry.
- 10.5.1.6. All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer; however, Letter of Credit negotiation charges shall be borne and paid by the Company.

10.6. Disputed Bill

- 10.6.1. If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within thirty (30) days of receiving it, such Bill shall be taken as conclusive.
- 10.6.2. If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- (i) the details of the disputed amount;
 - (ii) its estimate of what the correct amount should be; and
 - (iii) all written material in support of its claim.
- 10.6.3. If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving such notice and if the disputing party has already made the excess payment refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge which shall be applied from the date on which such excess payment was made to the invoicing Party and up to and including the date on which such payment has been received.

M.D.

[Designation of Signatory]

75

M.P Tradeco

[Name of the Company]

10.6.4. If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the disputing Party providing:

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

Upon receipt of notice of disagreement to the Bill Dispute Notice one Director of the Board of Directors of each Party shall meet and make best endeavours to amicably resolve the dispute within fifteen (15) days of receiving such notice of disagreement to the Bill Dispute Notice.

10.6.5. If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 10.6.4, the matter shall be referred to the Appropriate Commission as per Regulation.

10.6.6. Notwithstanding the Bill Dispute Notice issued pursuant to Article 10.6.2 all amount under the Monthly Bill or supplementary Bill shall be paid by the Party which has received the Bill, by the Due Date. The existence of a Dispute relating to a Bill shall not relieve either Party of its obligations under this Agreement and any related payment made shall be without prejudice to the other rights of such Party under this Agreement. A Supplementary Bill with respect to Change in Law, which is disputed by Procurer shall be payable by Procurer to the Company. Any delay or failure to pay such amounts in accordance with the Regulations of the Appropriate Commission shall attract Late Payment Surcharge.

10.6.7. If a Dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to this Article 10.6 in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount incorrectly charged by it from the disputing

M.D.

[Designation of Signatory]

76

M.P Tradeco

[Name of the Company]

Party within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to this Article 10.6 along with interest. Such interest shall accrue on day to day basis for the period between the date of payment of the disputed Bill and receipt of refund in the designated account of the relevant party at a rate equal to the Late Payment Surcharge declared by the Appropriate Commission from time to time.

10.7. Quarterly and Annual Reconciliation

Parties acknowledge that all payments made against Monthly Bills, Provisional Bill and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff Adjustment Payments, Tariff Rebate Payments, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Company and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Company or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff Adjustment Payments for the relevant quarter/Contract Year. Late Payment Surcharge shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.

M.D.

[Designation of Signatory]

77

M.P Tradeco

[Name of the Company]

10.8. Payment of Supplementary Bill

10.8.1. Either Party may raise a Bill on the other Party ("Supplementary Bill") for payment on account of:

- (i) Adjustments required by the Regional Energy Account (if applicable);
- (ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 5; or
- (iii) Change in Law as provided in Article 13

and such Bill shall be paid by the other Party.

10.8.2. Procurer shall remit all amounts due under a Supplementary Bill raised by the Company to the Company's Designated Account by the Due Date and notify the Company of such remittance on the same day. Similarly, the Company shall pay all amounts due under a Supplementary Bill raised by the Procurer by the Due Date to the Procurer's designated bank account and notify the Procurer of such payment on the same day. For such payments by Procurer, rebates as applicable to Monthly Bills shall be payable as per Regulations of the Appropriate Commission.

10.8.3. In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bills as per Article 10.4.2.

10.9. Payment for Start up Power

10.9.1. The Company shall be liable to pay, for the power and energy consumed for start-up of the Power Station and Commissioning, to the distribution Licensee(s) in whose area the Power Station is located or such other entity from whom such power/energy is sourced, at then prevalent rates payable by industrial consumers.

M.D.

[Designation of Signatory]

78

M.P Tradeco

[Name of the Company]

M.D.
M.P Tradeco

[Designation of Signatory]
[Name of the Company]

79

ARTICLE - 11: FORCE MAJEURE

11.1. Definitions

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

11.2. Affected Party

11.2.1. An affected Party means the Procurer or the Company whose performance has been affected by an event of Force Majeure.

11.2.2. Any event of Force Majeure affecting the performance of the Company or affecting the transmission facilities from the Power Station to the Interconnection Point shall be deemed to be an event of Force Majeure affecting the Company only if the event affects and results in interruptible or no power supply to the Procurer.

11.2.3. Any event of Force Majeure affecting the performance of the Company's contractors shall be deemed to be an event of Force Majeure affecting Company only if the Force Majeure event is affecting and resulting in:

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

11.2.4. Similarly, any event of Force Majeure affecting the performance of the Procurer's Contractor for setting up or operating Interconnection Facilities shall be deemed

M.D.

[Designation of Signatory]

80

M.P Tradeco

[Name of the Company]

to be an event of Force Majeure affecting Procurer only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

11.3. Force Majeure

11.3.1. 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:

i. Natural Force Majeure Events

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. Non-Natural Force Majeure Events

1. Direct Non-Natural Force Majeure Events attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government(s) of the Procurer or the Central Government of India) of any material assets or rights of the Company; or

M.D.

[Designation of Signatory]

81

M.P Tradeco

[Name of the Company]

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Company to perform its obligations under the Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

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

2. Direct Non-Natural Force Majeure Events not attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (other than those under the State Government(s) of the Procurer) of any material assets or rights of the Company; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Company to perform its obligations under the Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

M.D.

[Designation of Signatory]

82

M.P Tradeco

[Name of the Company]

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

3. Indirect Non-Natural Force Majeure Events

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or

b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.

c) Industry wide strikes and labor disturbances having a nationwide impact in India.

11.4. Force Majeure Exclusions

11.4.1. 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, Fuel or consumables for the Power Station;

M.D.

[Designation of Signatory]

83

M.P Tradeco

[Name of the Company]

- b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 11.2;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or any other Project Documents.

11.5. Notification of Force Majeure Event

11.5.1. 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

M.D.

[Designation of Signatory]

M.P Tradeco

[Name of the Company]

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.

- 11.5.2. 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.

11.6. Duty to Perform and Duty to Mitigate

- 11.6.1. To the extent not prevented by a Force Majeure Event pursuant to Article **Error! Reference source not found.**, 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.

11.7. Available Relief for a Force Majeure Event

- 11.7.1. Subject to this Article 11:
- (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 Article 4.5;

M.D.

[Designation of Signatory]

85

M.P Tradeco

[Name of the Company]

- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the Company, for the duration of such Natural Force Majeure Event affecting the Company. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Company, provided during such period of Natural Force Majeure Event affecting the Company, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Company to the Procurer;

In case of a Natural Force Majeure Event **affecting the Procurer** no Tariff shall be paid by the Procurer to the Company for the duration of such Natural Force Majeure Event affecting the Procurer;

- (d) If the average Availability of the Power Station is reduced below eighty percent (80%) of Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 36 Months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below eighty percent (80%) of Normative Availability as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurer shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Company, in the form of an increase in Capacity Charge.

M.D.

[Designation of Signatory]

86

M.P Tradeco

[Name of the Company]

Provided payments for such Debt Service shall be limited to the Debt Service proportional to the Contracted Capacity of the Procurer from the Power Station.

Provided such Capacity Charge increase shall be determined by Appropriate Commission the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure Event had not occurred.

Provided that the Procurer will have the above obligation to make payment for the Debt Service only (a) after supply of power from the Power Station affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of Power Station would have resulted in Capacity Charges equal to Debt Service.

- (e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 36 Months, as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average

M.D.

[Designation of Signatory]

87

M.P Tradeco

[Name of the Company]

Availability of the Power Station of the Company continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, the Company may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurer in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event attributable to the Procurer had not occurred.

- (f) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 36 Months, as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Company continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, the Company may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity.

M.D.

[Designation of Signatory]

88

M.P Tradeco

[Name of the Company]

In such a case, the Procurer shall be liable to make payment for Debt Service, subject to a maximum of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event not attributable to the Procurer in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Company in the same economic position as the Company would have been in case the Company had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event not attributable to the Procurer had not occurred.

11.8. Additional Compensation and Procurer's Subrogation

11.8.1. If the Company is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) for which it has received compensation from the Procurer pursuant to this Article 11, including without limitation, payments made which payments would not have been made in the absence of Article 4.7.1, the Procurer shall be fully subrogated to the Company's rights against that person to the extent of the compensation paid by the Procurer to the Company.

Provided that in case the Company has actually received compensation from any person other than the Procurers as well as the Procurer as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), then the Company shall forthwith refund the compensation received by it from the Procurer but only to the extent of the compensation received by the Company from any person other than the Procurer.

M.D.

[Designation of Signatory]

89

M.P Tradeco

[Name of the Company]

M.D.
M.P Tradeco

[Designation of Signatory]
[Name of the Company]

90

ARTICLE - 12: CHANGE IN LAW

12.1. Definitions

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

12.1.1. "Change in Law" means:

The occurrence of any of the following events after the date, which is seven (7) days prior to the execution of this PPA, resulting into any additional recurring/non-recurring expenditure by the Company or any income to the Company:

- (i) 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; or
- (ii) 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;
- (iii) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier; or
- (iv) 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;
- (v) any change in tax or introduction of any tax made applicable for supply of power by the 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 Company, or

M.D.

[Designation of Signatory]

91

M.P Tradeco

[Name of the Company]

- (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission; or
- (iii) any change on account of regulatory measures by the Appropriate Commissions including calculation of Availability.

12.1.2. "Competent Court" means:

The Supreme Court of India or Madhya Pradesh High Court, or any tribunal or any similar judicial or quasi-judicial body in Madhya Pradesh that has jurisdiction to adjudicate upon issues relating to the Power Station.

12.2. Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 12, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 12, the affected Party to the same economic position as if such Change in Law has not occurred and such impact shall be as decided by the Appropriate Commission.

12.3. Notification of Change in Law

- 12.3.1. If the Procurer is affected by a Change in Law in accordance with this Article 12 and the Procurer wishes to claim relief for such a Change in Law under this Article 2, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.
- 12.3.2. Notwithstanding Article 12.3.1, the Procurer shall be obliged to serve a notice to the Procurer under this Article 12.3.2, even if it is beneficially affected by a

M.D.

[Designation of Signatory]

92

M.P Tradeco

[Name of the Company]

Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Procurer has not provided such notice, the Procurer shall have the right to issue such notice to the Procurer.

12.3.3. Any notice served pursuant to this Article 12.3.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and
- (b) the effects on the Procurer.

12.4. **Tariff Adjustment Payment on account of Change in Law**

12.4.1. Subject to provisions mentioned above, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

12.4.2. In case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Company after such change in Tariff shall appropriately reflect the changed Tariff.

M.D.

[Designation of Signatory]

93

M.P Tradeco

[Name of the Company]

**ARTICLE - 13: EVENTS OF DEFAULT, DISPUTE RESOLUTION AND
TERMINATION**

13.1. Company Event of Default

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

- (i) The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under or to be bound by this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Procurer in this regard; or
- (ii) The failure to Commission any Unit by the date falling twelve (12) Months after its Scheduled Commercial Operation Date; or
- (iii) After the commencement of construction of the Power Station, the abandonment by the Company or the Company's Construction contractors of the construction of the Power Station for a continuous period of two (2) Months and such default is not rectified within thirty (30) days from the receipt of first notice from the Procurer in this regard; or
- (iv) After Commercial Operation Date of all the Units of the Power Station, the Company fails to achieve Normative Availability of for a period of twelve (12) consecutive Months or within a non-consecutive period of twelve (12) Months within any continuous aggregate period of thirty six (36) Months, or
- (v) After the Commercial Operation Date the interruption in power supply by the Company for a continuous period of two(2) Months and such default is

M.D.

[Designation of Signatory]

94

M.P Tradeco

[Name of the Company]

not rectified with in thirty(30) days from the receipt of first notice from the Procurer; or

(vi) the Company fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer on the Company or (b) of an amount up to Rupees Fifty (50) lakhs required to be made to Procurer under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or

(vii) if

(a) the Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or

(b) the Company transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

1. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or

2. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(viii) if (a) the 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

M.D.

[Designation of Signatory]

95

M.P Tradeco

[Name of the Company]

or bankruptcy or insolvency order is passed against the Company, or (c) the 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 Company will not be an Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the Company and expressly assumes all obligations of the Company under this Agreement and is in a position to perform them; or

- (ix) Except where due to any Procurer's failure to comply with its material obligations, the Company is in breach of any of its material obligations pursuant to this Agreement and such material breach is not rectified by the Company within thirty (30) days of receipt of first notice in this regard given by the Procurer; or
- (x) The Company fails to renew or replace or provide the Performance Guarantee to the Procurer in accordance with Article 3.4 of this Agreement, or
- (xi) Occurrence of any other event which is specified in this Agreement to be a material breach/default of the Company; or
- (xii) Failure to meet any of the Conditions Subsequent as mentioned in Article 3.1; or
- (xiii) Any direct or indirect change in the shareholding of the Company in contravention of this Agreement
- (xiv) Any of the representations and warranties made by the Company in Schedule 3 of this Agreement; being found to be untrue or inaccurate; or

M.D.

[Designation of Signatory]

96

M.P Tradeco

[Name of the Company]

- (xv) Any other event which have been specified as an event of default or breach by the Company under any of the other provisions in this Agreement

13.2. Procurer Event of Default

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

- (i) The Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Company is unable to recover the amount outstanding to the Company through the Letter of Credit; or,
- (ii) In case of a disputed Monthly Bill or Supplementary Bill, the Procurer fails to make payment of the amount required to be paid as per Article 10.3 for a period of thirty (30) days after the Due Date and the Company is unable to recover the amount outstanding through the Letter of Credit or,
- (iii) Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Company in this regard; or
- (iv) if
 - (a) the Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - (b) any winding up or bankruptcy or insolvency order is passed against the Procurer, or

M.D.

[Designation of Signatory]

97

M.P Tradeco

[Name of the Company]

- (c) the Procurer 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,
- (d) Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity assumes the financial standing to perform the Procurer's obligations under this Agreement; or;
- (v) any representation and warranties made by the Procurer in Schedule 3 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Company shall give a notice to the Procurer in writing of at least thirty (30) days to cure the default and the Procurer fails to rectify the default
- (vi) Occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer

13.3. Procedure for cases of Company Event of Default

- (i) Upon the occurrence and continuation of any Company Event of Default under Article 13.1, the Procurer shall have the right to deliver to the Company a notice of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- (ii) Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply.

M.D.

[Designation of Signatory]

98

M.P Tradeco

[Name of the Company]

- (iii) During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- (iv) Upon the occurrence and continuation of Company Event of Default under Article 13.1 above, and the failure by the Company to cure such default within the applicable cure period specified in this Article, the Procurer shall have the right to terminate this Agreement by notice to the Company in accordance with the procedures set forth herein.
- (v) The Company further agrees that the Availability entitlement of the Procurer for dispatch over any Settlement Period cannot be offered to any third party other than as specifically provided in this Agreement and the Company acknowledges and accepts the Procurer's right to instruct the RLDC / SLDC, or any other concerned authority as the case may be, to not to schedule such power to any third party. The Company further acknowledges and accepts that it has unconditionally and irrevocably authorized the Procurers to notify the RLDC, SLDC or the concerned authority to not to allow the schedule or dispatch of power to third party and any such notification by the Procurer shall be given effect to as if it has been given by the Company and notwithstanding any dispute or issue raised by the Company or any of the Company's Representative or any instruction that may be given by the Company at the relevant time to the contrary.

13.4. Resolution of Disputes

13.4.1. Governing Law

M.D.

[Designation of Signatory]

99

M.P Tradeco

[Name of the Company]

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 Jabalpur.

13.4.2. **Amicable Settlement**

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively “Dispute”) by giving a written notice to the other Party, which shall contain:
 - (i.) a description of the Dispute;
 - (ii.) the grounds for such Dispute; and
 - (iii.) all written material in support of its claim.
- (b) The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 13.4.1(a), furnish:
 - (i) counter-claim and defences, if any, regarding the Dispute; and
 - (ii) all written material in support of its defences and counter-claim.
- (c) Within thirty (30) days of issue of notice by any Party pursuant to Article 13.4.1(a), or Article 13.4.1(b), both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 13.4.3.

13.4.3. **Dispute Resolution**

- (a) Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or

M.D.

[Designation of Signatory]

100

M.P Tradeco

[Name of the Company]

determination of any of such claims could result in change in the Tariff or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.7.1, Article 12.2, or Article 16.1 hereof, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- (b) If the Dispute arises out of or in connection with any claims not covered in Article 13.4.3(a) such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration , in accordance with the process specified in this Article.
- (i) The Arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
 - (ii) The place of arbitration shall be Bhopal, India. The language of the arbitration shall be English.
 - (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
 - (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
 - (v) The provisions of this Clause shall survive the termination of this PPA for any reason whatsoever.

13.4.4. **Parties to Perform Obligations**

M.D.

[Designation of Signatory]

101

M.P Tradeco

[Name of the Company]

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the arbitral tribunal as provided in this Article 13.4, and save as the Appropriate Commission or the arbitral tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

13.5. Termination and consequences of Termination

13.5.1. Notice of Termination

This agreement may be terminated on serving a 30 (thirty) days notice (Notice of Termination) by either Party in case of Event of Default by the other Party pursuant to this Article;

13.5.2. On the expiry of the Notice of Termination, the Party which serves the notice of termination shall be entitled to terminate this Agreement under intimation to the other Party unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party which issues the Notice of Termination.

13.5.3. Termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the Parties, as on the date of the termination, unless waived in writing by the other Party.

13.5.4. In the event this Agreement is terminated by the Procurer in accordance with the aforesaid provisions, then all rights conferred to the Company under and in terms of the Implementation Agreement shall revert back to the GoMP and all facilities provided to or availed by the Company under the Implementation Agreement shall be withdrawn. It is clarified that in the event of termination as above, the remedies provided hereinabove shall be exhaustive and the Procurer and/or the GoMP shall not be entitled to any further remedies.

M.D.

[Designation of Signatory]

102

M.P Tradeco

[Name of the Company]

M.D.
M.P Tradeco

[Designation of Signatory]
[Name of the Company]

103

ARTICLE - 14: LIABILITY AND INDEMNIFICATION

14.1. Indemnity

14.1.1. The Company shall indemnify, defend and hold Procurer harmless against:

- (a) any and all third party claims, actions, suits or proceedings against the Procurer 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 Company of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of:
 - (i) breach by the Company of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the Company, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Company under this Agreement being found to be inaccurate or untrue.

M.D.

[Designation of Signatory]

104

M.P Tradeco

[Name of the Company]

- 14.1.2. Procurer shall indemnify, defend and hold the Company harmless against:
- (a) any and all third party claims, actions, suits or proceedings against the 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 Procurer of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Company, its contractors, servants or agents; and
 - (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Company from third party claims arising by reason of
 - (i) a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 14 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Company, its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Procurer under this Agreement being found to be inaccurate or untrue.

14.2. **Monetary Limitation of Liability**

- 14.2.1. A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 14 for any indemnity claims made in a Contract Year only up to an amount of Rupees One (1) crore.

M.D.

[Designation of Signatory]

105

M.P Tradeco

[Name of the Company]

14.3. **Procedure for claiming Indemnity**

14.3.1. Third party claims

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

- (i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 14.3.1 (b) below; and
- (ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

(b) The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 14.1.1(a) or Article 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the

M.D.

[Designation of Signatory]

106

M.P Tradeco

[Name of the Company]

consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

14.4. **Indemnifiable Losses**

14.4.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 14.4, such event shall constitute a payment default under Article 13.

14.5. **Infringement of Intellectual Property Rights**

14.5.1.

(a) The Company shall, subject to the Procurer compliance with Article 14.5.1(b), indemnify and hold harmless the Procurer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of

M.D.

[Designation of Signatory]

107

M.P Tradeco

[Name of the Company]

whatsoever nature, including attorney's fees and expenses, which the Procurer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the Company.

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the Company.

- (b) If any proceedings are brought or any claim is made against the Procurer arising out of the matters referred to in Article 14.5.1(a), the Procurer shall promptly give the Company a notice thereof, and the Company shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Company shall promptly notify the Procurer of all actions taken in such proceedings or claims.
- (c) If the Company fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 14.5.1(b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the Company. Unless the Company has so failed to notify the Procurer within the twenty eight (28) days period, the Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.

M.D.

[Designation of Signatory]

108

M.P Tradeco

[Name of the Company]

- (d) The Procurer shall, at the Company's request, afford all available assistance to the Company in attending to such proceedings or claim, and shall be reimbursed by the Company for all reasonable expenses incurred in so doing.

14.5.2.

- (a) The Procurer, subject to the Company's compliance with Article 14.5.2(b) shall indemnify and hold harmless the Company and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Company may suffer as a result of any infringement by the Procurer or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered.
- (b) If any proceedings are brought or any claim is made against the Company arising out of the matters referred to in Article 14.5.2(a) the Company shall promptly give the Procurer a notice thereof, and the Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Procurer shall promptly notify the Company of all actions taken in such proceedings or claims.
- (c) If the Procurer fails to notify the Company within twenty-eight (28) days after receipt of such notice from the Company under Article 14.5.2(b) above, that it intends to attend any such proceedings or claim, then the Company shall be free to attend the same on its own behalf at the cost of the Procurer. Unless the Procurer has so failed to notify the Company within the twenty (28) days period, the Company shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

M.D.

[Designation of Signatory]

109

M.P Tradeco

[Name of the Company]

- (d) The Company shall, at the Procurer request, afford all available assistance to the Procurer in attending to such proceedings or claim, and shall be reimbursed by the Procurer for all reasonable expenses incurred in so doing.

14.6. Limitation on Liability

14.6.1. Except as expressly provided in this Agreement, neither the Company nor Procurer 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 the Procurer, the Company or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.6.2. Procurer shall have no recourse against any officer, director or shareholder of the Company or any Affiliate of the Company or any of its officers, directors or shareholders for such claims excluded under this Article. The Company shall have no recourse against any officer, director or shareholder of Procurer, or any Affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

M.D.

[Designation of Signatory]

110

M.P Tradeco

[Name of the Company]

14.7. **Duty to Mitigate**

14.7.1. The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

M.D.

[Designation of Signatory]

111

M.P Tradeco

[Name of the Company]

ARTICLE - 15: ASSIGNMENTS AND CHARGES

15.1. Assignments

- 15.1.1. This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 15.1.2. The Company shall not assign any of its rights or obligations in this Agreement to any Party other than with the consent in writing of the Procurer:
- 15.1.3. The Procurer shall be free to deal with the Contracted Capacity or any part thereof in any manner as the Procurer may in its discretion consider appropriate, including further sale of the Contracted Capacity to any person subject to the condition that the Procurer shall continue to be liable to the Company in so far as the fulfillment of the obligations under this Agreement. The Procurer shall at all times be entitled to assign this Agreement to any other Government of Madhya Pradesh Undertaking or to any distribution Licensee in the State of Madhya Pradesh. Subject to the above the Procurer shall not assign the obligations of the Procurer under this agreement to any party other than with the consent in writing of the Company and such consent shall not be withheld by the Company if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement

15.2. Permitted Charges

- 15.2.1. Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.
- 15.2.2. However, the Company may create any encumbrance over all or part of the receivables, in favour of the Lenders or the Lender's representative on their behalf, as security for:

M.D.

[Designation of Signatory]

112

M.P Tradeco

[Name of the Company]

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

Provided that:

- (a) the Lenders or the Lender's representative on their behalf shall have entered into the Financing Agreements; and
- (b) any encumbrances granted by the Company in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's representative on their behalf agrees unconditionally with the Company acting for itself and as trustee of the Procurer to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the Procurer to claim its right of subrogation. For the purposes of this Article, additional compensation shall mean the compensation that the Company is entitled, whether actually or contingently, to receive from the Procurer as well as compensated by any person other than the Procurer for the same event.

15.2.3. Article 15.2 does not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of supply of power by the Company;
- (b) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Company; or
- (c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Company.

M.D.

[Designation of Signatory]

113

M.P Tradeco

[Name of the Company]

ARTICLE - 16: MISCELLANEOUS PROVISIONS

16.1. Minimum Equity holding/ Equity Lock-In

16.1.1. The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Company.

16.1.2. The aggregate equity share holding of the promoter in the issued and paid up equity share capital of the Company shall not be less than the following:

- (a) Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and

16.2. Amendment

16.2.1. This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.

16.3. Third Party Beneficiaries

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

16.4. Waiver

16.4.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

M.D.

[Designation of Signatory]

114

M.P Tradeco

[Name of the Company]

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

16.5. Entirety

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

16.5.2. Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurer by the Company shall stand superseded and abrogated.

16.6. Confidentiality

16.6.1. The Parties undertake to hold in confidence this Agreement and other Power Station Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties,

16.6.2. Except (i) to their professional advisors; (ii) 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 (iii) disclosures required under Law; without the prior written consent of the other Parties.

16.7. Affirmation

M.D.

[Designation of Signatory]

115

M.P Tradeco

[Name of the Company]

- 16.7.1. The Company and Procurer, each affirm that:
- (i) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
 - (ii) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Company and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

16.8. Severability

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

16.9. Survival

- 16.9.1. Notwithstanding anything to the contrary herein, the provisions of this Agreement, including Article 9 (Application of Insurance), Article 11 (Force Majeure), Article 13 (Events of Default, Dispute Resolution and Termination), Article 16 (Miscellaneous), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or Termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

16.10. Relationship of the Parties

M.D.

[Designation of Signatory]

116

M.P Tradeco

[Name of the Company]

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

16.11. Counterparts

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

16.12. Notices

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

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

<u>Name of Procurer</u>	<u>Name & address of the Procurer</u>
Madhya Pradesh Power Trading Company Limited	The Managing Director, Madhya Pradesh Power Trading Company Limited, Shakti Bhawan, Jabalpur- 482 008 Tel: +91 761 2660909/2702900 Fax No: +91 761 2664749 Email

M.D.

[Designation of Signatory]

117

M.P Tradeco

[Name of the Company]

Name of Company

Name & address of the Company

- 16.12.3. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All Notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 16.12.4. Any Party may by notice of at least fifteen (15) days to the other Parties change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

16.13. Language

- 16.13.1. 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.
- 16.13.2. 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.

16.14. Breach of Obligations

M.D.

[Designation of Signatory]

118

M.P Tradeco

[Name of the Company]

16.14.1. The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement

16.15. Nomination Restriction

16.15.1. Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

16.16. Commercial Acts

16.16.1. The Procurer and the Company unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other Project Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

16.17. Restriction of Shareholders/Owners Liability

16.17.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956.

M.D.

[Designation of Signatory]

119

M.P Tradeco

[Name of the Company]

16.17.2. The provisions of this Article shall supercede any other prior agreement or understanding, whether oral or written, that may be existing between the MPTradeco, Company, shareholders/ owners of the Company, shareholders/ successors of the MPTradeco, regarding the subject matter of this Agreement.

16.18. Taxes and Duties

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

16.18.2. Procurer shall be indemnified and held harmless by the Company against any claims that may be made against Procurer in relation to the matters set out in Article 16.18.1.

16.18.3. Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Company by the Procurer on behalf of the Company or its personnel, provided the Company has consented in writing to Procurer for such work, which consent shall not be unreasonably withheld.

16.19. No Consequential or Indirect Losses

16.19.1. The liability of the Company and the Procurer shall be limited to that explicitly provided in this Agreement.

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

M.D.

[Designation of Signatory]

120

M.P Tradeco

[Name of the Company]

16.20. **Discretion**

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

16.21. **Order of priority in application**

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

- applicable Law, rules and regulations framed thereunder,
- this Agreement

16.22. **Independent Entity**

16.22.1. The Company shall be an independent entity performing its obligations pursuant to the Agreement.

16.22.2. Subject to the provisions of the Agreement, the 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 Company or contractors engaged by the Company in connection with the performance of the Agreement shall be under the complete control of the Company and shall not be deemed to be employees, representatives, contractors of Procurer and nothing contained in the Agreement or in any agreement or contract awarded by the Company shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurer.

M.D.

[Designation of Signatory]

121

M.P Tradeco

[Name of the Company]

16.23. **Fraudulent and Corrupt Practices**

- 16.23.1. The Company and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Company, if it determines that the Company has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the negotiation process. In such an event, the Procurer shall forfeit the Contract Performance Guarantee, without prejudice to any other right or remedy that may be available to the Procurer hereunder or subsistence otherwise.
- 16.23.2. Without prejudice to the rights of the Procurer under Article 16.23.1 hereinabove and the rights and remedies which the Procurer may have under this Agreement, if a the Company is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the negotiation process, or after the execution of the PPA, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Company. Further, in such an event, the Procurer shall forfeit the Contract Performance Guarantee.
- 16.23.3. Further, the Company shall not be eligible to participate in any tender or RFP issued by the Procurer during a period of 2 (two) years from the date such the Company is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

M.D.

[Designation of Signatory]

122

M.P Tradeco

[Name of the Company]

16.23.4. For the purposes of this Article 16.23, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the negotiation process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the negotiation process or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the negotiation process); or (ii) engaging in any manner whatsoever, whether during the negotiation Process or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning the Power Station;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the negotiation process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the negotiation process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Procurer with the objective

M.D.

[Designation of Signatory]

123

M.P Tradeco

[Name of the Company]

of canvassing, lobbying or in any manner influencing or attempting to influence the negotiation process; or (ii) having a conflict of interest; and

- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among prospective the Companys with the objective of restricting or manipulating a full and fair competition in the negotiation process

16.24. **Compliance with Law**

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

M.D.

[Designation of Signatory]

124

M.P Tradeco

[Name of the Company]

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at [...], Madhya Pradesh.

For and on behalf of Company
(insert name of Company)

Witnesses:

- 1.
- 2.

Witnesses:

- 1.
- 2.

For and on behalf of M.P. Power Trading Co. Ltd
Authorised Nominee of Govt. of M.P.
M.P. Power Trading Company Limited,
Block No. 2, Shakti Bhawan, Jabalpur –482 008.

Witnesses:

- 1.
- 2.

For and Behalf of Distribution Companies
Through their authorized representative

M.D.

[Designation of Signatory]

125

M.P Tradeco

[Name of the Company]

1. M.P. Poorv Kshetra Vidyut Vitran Company Limited, Jabalpur

Witness:

(i)

(ii)

2. M.P. Paschim Kshetra Vidyut Vitran Company Limited, Indore.

Witness:

(i)

(ii)

3. M.P. Madhya Kshetra Vidyut Vitran Company Limited, Bhopal

Witness:

(i)

(ii)

M.D.

M.P Tradeco

[Designation of Signatory]

[Name of the Company]

126

SCHEDULE - 1:

Not Used

M.D.

[Designation of Signatory]

127

M.P Tradeco

[Name of the Company]

SCHEDULE - 2: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

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

In consideration of the[the Company] agreeing to undertake the obligations under the PPA and the Procurer, agreeing to execute the Agreement with the Company for purchase of power on long term basis (Bank) (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at[Insert address of Procurer] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [with the respect to Contracted Capacity of the Procurer as per the terms of PPA on behalf of the Company].

This guarantee shall be valid and binding on the Guarantor Bank up to and including[Insert date of validity of CPG] 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 Rs. (Rs. only). Our Guarantee shall remain in force until [Insert the date of validity of the CPG]. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of

M.D.

[Designation of Signatory]

128

M.P Tradeco

[Name of the Company]

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 the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer .

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jabalpur (M.P.)..... 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.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

M.D.

[Designation of Signatory]

129

M.P Tradeco

[Name of the Company]

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

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer 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 the Procurer 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 Rs. crores (Rs. crores only) and it shall remain in force until[Date to be inserted is three (3) months after the Scheduled COD], 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 [Insert name of the Company]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer 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

M.D.

[Designation of Signatory]

130

M.P Tradeco

[Name of the Company]

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.]

M.D.

[Designation of Signatory]

131

M.P Tradeco

[Name of the Company]

SCHEDULE - 3: REPRESENTATION AND WARRANTIES

1.1. Representations and Warranties by the Procurer

The Procurer hereby represents and warrants to and agrees with the Company as follows and acknowledges and confirms that the Company is relying on such representations and warranties in connection with the transactions described in this Agreement:

1.1.1.

- (i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- (ii) This Agreement is enforceable against the Procurer in accordance with its terms;
- (iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- (iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- (v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental

M.D.

[Designation of Signatory]

132

M.P Tradeco

[Name of the Company]

agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

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

1.2. **Representation and Warranties of the Company**

1.2.1. The Company hereby represents and warrants to and agrees with the Procurer as follows and acknowledges and confirms that the Procurer is relying on such representations and warranties in connection with the transactions described in this Agreement:

- (i) The Company has all requisite power and has been duly authorized to execute and consummate this Agreement;
- (ii) This Agreement is enforceable against the Company in accordance with its terms;
- (iii) The consummation of the transactions contemplated by this Agreement on the part of the Company will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Company is a party or to which the Company is bound which violation, default or power has not been waived;
- (iv) The Company is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Company;

M.D.

[Designation of Signatory]

133

M.P Tradeco

[Name of the Company]

- (v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Company's knowledge, threatened in writing against the Company at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- (vi) The Company has neither made any statement nor provided any information, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made are true and accurate and there is no breach of the same.

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

1.2.3. In the event that any of the representations and warranties made by the Company in the Article above not true or are incorrect, the occurrence of such event would amount to a Company Event of Default under this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with the Agreement.

M.D.

[Designation of Signatory]

134

M.P Tradeco

[Name of the Company]

**SCHEDULE - 4: TECHNICAL LIMIT AND CONTRACTED PERFORMANCE
PARAMETERS**

(This schedule has to be filled up jointly by the parties on or before the Effective Date)

M.D.

[Designation of Signatory]

135

M.P Tradeco

[Name of the Company]

SCHEDULE - 5: TARIFF

Tariff for the electricity supplied from the Power StationPower Station shall be determined by the Appropriate Commission according to the extant Regulations of the Appropriate Commission.

M.D.

[Designation of Signatory]

136

M.P Tradeco

[Name of the Company]

SCHEDULE - 6: TARIFF ADJUSTMENT PAYMENT

(As per the Regulations of the Appropriate Commission)

M.D.	<i>[Designation of Signatory]</i>	137
M.P Tradeco	<i>[Name of the Company]</i>	

SCHEDULE - 7:

Not Used

M.D.

[Designation of Signatory]

138

M.P Tradeco

[Name of the Company]

SCHEDULE - 8: DELIVERY POINT AND INTERCONNECTION POINT

1. Interconnection Facilities

Interconnection Facilities shall mean all the facilities, which shall include without limitation, relay and switching equipment, communication, transformers and associated equipment, safety equipment, protection, control and metering devices etc. from the Power Station up to the Delivery Point, to be installed and maintained at the cost of the Company, to enable evacuation of the Contracted Energy from the Power Station, in accordance with this Agreement. Such facility(s) shall be commensurate with the capacity of the entire Power Station

2. Interconnection Point

[the specific interconnection to be defined as agreed between the parties before the Effective Date and to be clearly specified here]

3. Construction of the transmission line from Delivery Point to Interconnection Point

M.D.

[Designation of Signatory]

139

M.P Tradeco

[Name of the Company]