

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF POWER

ON MEDIUM TERM BASIS



VEDANTA LIMITED,  
JHARSUGUDA

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## POWER PURCHASE AGREEMENT

THIS AGREEMENT is entered into on this the ..... day of..... ,  
20.....

### **BETWEEN**

1. Vedanta Limited represented by [Insert name of Vedanta authorised representative] and having its office at Jharsuguda, Odisha (hereinafter referred to as the “**Procurer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### **AND**

2. [Insert name of successful bidder], a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at [To be filled by successful bidder], (hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

### **WHEREAS:**

- (A) The Procurer had resolved to procure \*\*\* MW power at Delivery Point in accordance with the terms and conditions to be set forth in an agreement for procurement of power
- (B) The Procurer had accordingly invited proposals by its Request for Proposal No. CPP/1800/RFP/221217 (hereinafter referred to as “**RFP**”), and had shortlisted certain Bidders including, inter alia, the Supplier.
- (C) The Procurer had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the provisions of the RFP from the Bidders.
- (D) After evaluation of the Bids received, the Procurer had accepted the Bid of the Supplier and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the Supplier requiring, inter alia, the execution of this Power Purchase Agreement within 5 (five) days of the date of issue of LOA.
- (E) In pursuance of the LOA, the Parties have agreed to enter into this Power Purchase Agreement on the terms and conditions set forth hereinafter.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE 1

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 23) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

#### 1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, 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 shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) reference to a “business day” shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Procurer is situated are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- (l) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;



- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “kWh” shall mean kilowatt hour and “kCal” shall mean kilo calories;
- (p) “lakh” shall mean a hundred thousand (100,000) and “crore” shall mean ten million (10,000,000);
- (q) “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;
- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Procurer hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”);
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- (y) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Procurer shall be provided free of cost and in three copies, and if the Procurer is required to return any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### 1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 3 (three) decimal places, with the fourth digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### 1.4. Priority of agreements, clauses and schedules

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

## ARTICLE 2

### 2. GRANT OF PROCUREMENT CONTRACT

#### 2.1. The Procurement Contract

- 2.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Procurer hereby awards to the Supplier the procurement contract set forth herein for supply of contracted capacity of \*\*\* MW of power at Delivery Point to the Procurer (the "Procurement Contract") as per the supply period mentioned in the table below,

<b>Period</b>	<b>Duration</b>	<b>Quantum @ VL ex-bus</b>
01 <sup>st</sup> Jun' 2018 – 31 <sup>st</sup> Aug' 2018	0000 – 2400 Hours / RTC	[250 MW]
01 <sup>st</sup> Sept' 2018 – 31 <sup>st</sup> Aug' 2021	0000 – 2400 Hours / RTC	[500 MW]

The Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine subject to maximum of 2 years.

- 2.1.2. Subject to and in accordance with the provisions of this Agreement, the Procurement Contract hereby awarded shall oblige or entitle (as the case may be) the Supplier to:

- (a) ensure supply of the Contracted Capacity to the Procurer under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;
- (b) to receive an amount equal to Tariff for energy supplied at Delivery Point in accordance with provisions of this Agreement
- (c) perform and fulfil all of the Supplier's obligations under and in accordance with this Agreement;
- (d) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement; and
- (e) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement.

- 2.1.3. At any point during the Contract Period, the Procurer may, with the mutual consent of the Supplier, initiate discussions on entering into a captive arrangement. Upon expression of interest from the Supplier to enter into captive arrangement, the matter shall be mutually discussed between the Parties and such discussions shall have no bearing whatsoever on the obligations of the Supplier under the terms and conditions of this Agreement.

- 2.1.4. Subject to availability of untied capacity with the Supplier and availability of fuel, the Procurer, with the consent of the Supplier, may procure an additional power not more than 500 MW during scheduled/unscheduled maintenance of its captive power plant.
- 2.1.5. The tariff for additional power as mentioned in Clause 2.1.4 shall be mutually agreed between the parties but not more than the tariff as mentioned in this PPA.
- 2.1.6. The Procurer shall make a two (2) month advance request to the Supplier in case it need such additional power clearly specifying the quantum of power required, start and end dates. The Supplier shall make best endeavor to make available power upto 500 MW at the Delivery Point in case the Procurer requests in writing to the Supplier.

## ARTICLE 3

### 3. CONDITIONS PRECEDENT

#### 3.1. Conditions precedent

- 3.1.1. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.1 (the “Conditions Precedent”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 3.1.2 or 3.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 3.1.1.
- 3.1.2. The Conditions Precedent required to be satisfied by the Supplier within a period of 60 (sixty) days from the date of this Agreement or otherwise as specifically mentioned therein, shall be deemed to have been fulfilled when the Supplier shall have:
- (a) provided Performance Security to the Procurer within the time period specified in Clause 8.1.1
  - (b) submitted the evidence of the capacity of the Power Station, the Fuel Supply Agreement for Power Station and the Power Purchase Agreement(s) [In case of Supplier being a Trading Licensee]
  - (c) procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point (Procurer ex-bus) as per applicable laws.

Provided that upon request in writing by the Supplier, the Procurer may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 3.1.2 or grant extension of time, not exceeding 30 (thirty) days at one time, for fulfilment thereof, as the case may be. For the avoidance of doubt, the Procurer may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

- 3.1.3. Upon submission of Performance Security from the Supplier, the Procurer shall be required to satisfy the following Conditions Precedent:
- (a) Provide a Letter of Credit as specified in clause 12.2, no later than a period of 30 days prior to the likely date of Appointed Date.
- 3.1.4. Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 3.1.5. The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

#### 3.2. Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 3.1.2 within the period specified in that Clause and (ii) the delay has not occurred as a result of breach of this Agreement by the Procurer or due to Force Majeure, the Supplier shall pay to the Procurer Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Performance Security, and upon reaching such maximum, the Procurer may, in its sole discretion, terminate the Agreement.

### 3.3. Deemed termination upon delay

Without prejudice to the provisions of Clauses 3.1 and 3.2, and subject to the provisions of Clause 8.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Power Purchase Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Procurer as Damages thereof.

## ARTICLE 4

### 4. OBLIGATIONS OF THE SUPPLIER

#### 4.1. Obligations of the supplier

- 4.1.1. Subject to and on the terms and conditions of this Agreement, the Supplier shall comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2. The Supplier shall comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 4.1.3. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 4.1.4. The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of open access shall be mutually decided by the Procurer and Supplier; For the avoidance of doubt, it is expressly mentioned that it is the obligation of the Supplier under this Agreement to make timely application for open access to the transmission system for supply of power from the generating station to the Delivery Point
  - (b) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
  - (c) procure that all equipment and facilities comprising the Power Station are operated and maintained in accordance with Good Industry Practice
  - (d) support, cooperate with and facilitate the Procurer in the implementation of this Agreement;

#### 4.2. Obligations relating to other Agreements

It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any other agreement shall excuse the Supplier from its obligations or liability hereunder.

#### 4.3. Obligations relating to Change in Ownership

- 4.3.1. The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Procurer

*In case the Supplier is a Trading Licensee* “The provisions of Clause 4.3 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 4.3 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to ..... [name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid]..... The Supplier shall ensure the compliance of the provisions mentioned in this Clause 4.3. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Article 16.1. The Procurer shall have the right to verify the compliance of the provision as mentioned in this Clause 4.3.”

4.3.2. In case the Supplier wishes to sell a part or entire equity holding in the generating station at any time during the Contract Period, the Procurer must be given the first option to buy such stake on mutually agreeable basis.

4.4. **Obligations relating to transmission and wheeling charges**

The Supplier shall be liable for payment of all inter-state and intra-state transmission and wheeling charges payable under Applicable Laws for transmission of electricity up to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission and distribution of electricity upto Delivery Point shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission and distribution, save and except as mentioned in Article 15, shall be borne by the Supplier. The Parties further agree that these charges shall form a part of Pass-through component of Tariff as described in Article 11 and shall be paid on actual basis.

4.5. **Obligations relating to transmission and wheeling losses**

The Supplier shall be liable for the inter-state and intrastate transmission losses and wheeling losses for transmission of electricity upto the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission and distribution of electricity upto Delivery Point shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines and wheeling losses shall be borne by the Supplier. The Parties further agree that these charges shall form a part of Pass-through component of Tariff as described in Article 11 and shall be paid on actual basis.

4.6. **Obligations relating to SLDC and RLDC charges**

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Procurer.

4.7. **Obligation relating to Concessional Fuel**

The Supplier acknowledges, agrees and undertakes not to use any concessional Fuel for production of electricity and supply thereof in pursuance of the provisions of this Agreement.

4.8. **Obligations relating to taxes**

The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cess and all other statutory charges payable in respect of the Contracted Capacity. Electricity Duty shall be borne by the Procurer.

4.9. **Obligations relating to reporting requirements**

All information provided by the Supplier to the SLDC and RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Procurer simultaneously.

4.10. **Obligations related to Substitute Supply**

4.10.1. In case power is supplied from an alternate source under circumstances mentioned in Clause 9.2, the Supplier, with prior consent of the Procurer, shall be obligated to dispatch the full Contracted Capacity from an alternate source at the Tariff in accordance with the provisions of this Agreement.

4.10.2. In case the Supplier fails to arrange the full Contracted Capacity from the alternate source and the Procurer procures the shortfall quantum from any Seller including power exchange and local distribution licensee, then the Supplier shall be liable to pay the excess amount over and above the Tariff that the Procurer has to pay for procuring the shortfall quantum from such Seller.



4.11. Other Obligations

- 4.11.1. The Supplier shall be fully responsible for sourcing of fuel for the Power Station(s) and for procuring access to transmission corridor

## ARTICLE 5

### 5. OBLIGATIONS OF THE PROCURER

#### 5.1. Obligations of the Procurer

- 5.1.1. The Procurer shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Procurer agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for the Procurement Contract; Non-grant of open access shall be mutually decided by the Procurer and Supplier;
  - (b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (c) support, cooperate with and facilitate the Supplier in the implementation of the Procurement Contract in accordance with the provisions of this Agreement and Applicable Laws.

## ARTICLE 6

### 6. REPRESENTATIONS AND WARRANTIES

#### 6.1. Representations and warranties of the Supplier

The Supplier represents and warrants to the Procurer that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, has the financial standing and capacity to fulfil the obligations under the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 4.3; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;
- (l) the Supplier is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Procurer to enter

into this Agreement with {itself/the Supplier} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- (m) it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement;
- (n) it shall at no time use Concessional Fuel for production of electricity and supply thereof to the Procurer under this Agreement;
- (o) it has a valid right to the Station Premises if Supplier is NOT a Trading Licensee, or the Power Purchase Agreement executed between the Supplier and the Developer is valid and shall remain valid during the Contract Period if Supplier is a Trading Licensee;
- (p) no representation or warranty by it contained herein or in any other document furnished by it to the Procurer or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Procurer in connection therewith;
- (r) all information provided by the Supplier in response to the Request for Proposal No. \_\_\_\_\_ or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (s) all undertakings and obligations of the Supplier arising from the Request for Proposal No. \_\_\_\_\_ or otherwise shall be binding on the Supplier as if they form part of this Agreement.

## 6.2. Representations and warranties of the Procurer

The Procurer represents and warrants to the Supplier that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Procurer's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects.

## 6.3. Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any

breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

## ARTICLE 7

### 7. DISCLAIMER

#### 7.1. Disclaimer

- 7.1.1. The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Proposal No. \_\_\_\_\_ and any information provided by the Procurer or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Procurer makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Procurer in this regard.
- 7.1.2. The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above and hereby acknowledges and agrees that the Procurer shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.
- 7.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above shall not vitiate this Agreement, or render it voidable.
- 7.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 7.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Procurer to give any notice pursuant to this Clause 7.1.4 shall not prejudice the disclaimer of the Procurer contained in Clause 7.1.1 and shall not in any manner shift to the Procurer any risks assumed by the Supplier pursuant to this Agreement.
- 7.1.5. Except as otherwise provided in this Agreement, all risks relating to the Procurement Contract shall be borne by the Supplier and the Procurer shall not be liable in any manner for such risks or the consequences thereof.

## ARTICLE 8

### 8. PERFORMANCE SECURITY

#### 8.1. Performance Security

- 8.1.1. The Supplier shall, for the performance of its obligations hereunder, provide to the Procurer no later than 7 (seven) days from the date of communication of the bid being successful, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore) in the form set forth in “Annexure J Format for unconditional and irrevocable bank guarantee for Performance Security” provided as part of Request for Proposal No. \_\_\_\_\_ valid till 90th day from the last day of the Contract Period.
- 8.1.2. Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Earnest Money Deposit (EMD) shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Procurer shall release the EMD to the Supplier.
- 8.1.3. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 7 (seven) days from the date of communication of the bid being successful, the Procurer may encash the EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

#### 8.2. Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Procurer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Procurer shall be entitled to terminate this Agreement in accordance with Article 16. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Procurer shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 16.

#### 8.3. Release of Performance Security

The Performance Security shall remain in force and effect until 90<sup>th</sup> day from the last day of Contract Period.

#### 8.4. References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Procurer, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the EMD or Performance Security, as the case may be.

## ARTICLE 9

### 9. CONTRACTED CAPACITY

#### 9.1. Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall supply to the Procurer the quantum of power (the “**Contracted Capacity**”) as per the table below:

Period	Duration	Quantum @ Procurer ex-bus
01 <sup>st</sup> Jun’ 2018 – 31 <sup>st</sup> Aug’ 2018	0000-2400 Hours (RTC)	**** MW
1 <sup>st</sup> Sep ’2018 to 31 <sup>st</sup> Aug ’2021	0000-2400 hours (RTC)	**** MW

#### 9.2. Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Procurer, which consent the Procurer may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Tariff, be deemed to be supply under and in accordance with the provisions of this Agreement.

The obligations of the Supplier in case of Substitute supply shall be as further specified in clause 4.10.



## ARTICLE 10

### 10. DESPATCH OF CONTRACTED CAPACITY

#### 10.1. Despatch of Contracted Capacity

- 10.1.1. The Procurer shall, in accordance with Applicable Laws, issue instructions to the Supplier for despatch of electricity to the Grid during such period and in such volume as it may specify in its instructions (the “**Despatch**”). Provided that the Procurer shall not Despatch in excess of the Contracted Capacity, unless mutually agreed between the Parties.
- 10.1.2. Pursuant to the provisions of Clause 10.1.1, the Supplier shall plan Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.
- 10.1.3. In the event the Supplier schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Supplier shall pay to the Procurer, as compensation, an amount equivalent to 10 Rs/kWh for the quantum of electricity sold to the Buyer. However, this compensation will not apply when the Procurer directs the Supplier to reduce the quantum of Despatch and, upon prior approval of the Procurer, the Supplier despatches the reduced quantum to a Buyer(s).

#### 10.2. Booking of Transmission Corridor

- 10.2.1. The Supplier shall apply for booking of the open access transmission corridor to nodal RLDC/SLDC. They shall be fully responsible for the timely filing of open access application before the nodal RLDC/SLDC and coordinating with the relevant RLDC/SLDC so as to get the timely consent & booking of the open access corridor. The energy shall be scheduled and dispatched as per the relevant provisions of CERC/OERC regulations for Short/Medium term open access and Procedure for reservation of Transmission Capacity for Short/Medium Term open access customers (Inclusive of all the amendments till date).
- 10.2.2. The Supplier shall apply for booking of advance reservation in such a manner so as to get the maximum quantum from the shortest route. It is therefore required from the Supplier to first apply in MTOA for the applicable period and then apply in STOA for the remaining period of supply which cannot be covered under MTOA application.
- 10.2.3. In case, the Supplier fails to timely apply for corridor, the Procurer shall have the right to procure from Seller and the Supplier shall be liable to compensate the Procurer as specified in Clause 4.10.
- 10.2.4. The Supplier shall apply for booking of transmission corridor for a maximum period of 6 (six) months at a time.

#### 10.3. Revision of schedule/cancellation of open access

Revision of Schedules by the Supplier should be firm and intimated 2 days in advance (except only in case of Forced Outage) so as to allow the Procurer to arrange the revised quantum of power from any third party. The Procurer shall be entitled to receive compensation as per clause 10.4 on account of procurement of power from alternate source.

The Procurer reserves the right to verify the occurrence of events leading to Revision of Schedule and the Supplier shall, at its own cost, be obligated to furnish details as requested by the Procurer.

#### 10.4. Deviation in despatch of Contracted Capacity

- 10.4.1. The Supplier shall ensure that actual scheduling does not deviate by more than 5% (Five Percent) of the Contracted Capacity as per the approved open access on monthly basis. In case, deviation from the Supplier is more than 5% of contracted energy for which open access has been allocated on monthly basis, the Supplier shall pay compensation @ Re.1.00/kWh or the differential ex-bus tariff for the power arranged from any alternate source, whichever is higher, for the quantum of shortfall in excess of permitted deviation of 5% while continuing to pay open access charges as per the contract.
- 10.4.2. In case, deviation from the Procurer is more than 15% of contracted energy for which open access has been allocated on monthly basis, the Procurer shall pay compensation to the Supplier at Re.1.00/kWh for the quantum of shortfall in excess of permitted deviation of 15% and pay for the open access charges to the full extent revised by the Procurer.
- 10.4.3. The compensation shall be calculated based on the energy supplied at the Delivery Point.
- 10.4.4. The indicated percentage limitation of quantum is only to meet any technical problems due to poor PLF or due to shortage of fuel or due to some forced outage in the transmission line and not for utilizing the balance quantum for sale to a Buyer, in which case, the compensation as specified in Clause 10.1.3 shall apply.

## ARTICLE 11

### 11. TARIFF

#### 11.1. Tariff

11.1.1. The Procurer shall pay to the Supplier a tariff comprising of two components, Fixed Component and Pass-Through Component, for supply of electricity upto the delivery point, in accordance with the provisions of this Agreement (the “**Tariff**”).

a. Fixed component: The ex-bus rate comprising of both Capacity charge and Energy charge (inclusive of all taxes, charges, duties except Cross Subsidy Surcharge, Additional Surcharge and Electricity Duty) which shall remain fixed for the entire Contract Period. (the “**Fixed Component**”)

b. Pass-through component: The following components of tariff shall be paid on-actual basis (the “**Pass-through Component**”), as revised from time to time and as applicable during the period of supply of power:

- i. the transmission charges of the network of STU in the state of the generating station if the Power Station is connected to the STU.
- ii. the cost of transmission losses of the network of STU in the state if the generating station if the Power Station is connected to the State Transmission Utility.
- iii. The transmission charges of the network of Central Transmission Utility, if CTU network is used.
- iv. The cost of transmission losses of the network of Central Transmission Utility network, if CTU network is used.
- v. The transmission charges of the network of OPTCL.
- vi. The cost of transmission losses of the network of OPTCL.
- vii. Wheeling charges of distribution network of the Discom
- viii. The cost of losses of distribution network of the Discom
- ix. Charges payable to the State Load Despatch Centre and Regional Load Despatch Centre

11.1.2. The Fixed Component of Tariff equal to \_\_\_\_ Rs/kWh shall remain fixed for the period of contract subject to Article 18.

11.1.3. The Pass-Through Component equal to \_\_\_\_ Rs/kWh as on date of bid submission shall be subject to revision as per terms and conditions of this Agreement and shall be paid on actual basis, as revised from time to time and as applicable during the period of supply of power.

11.1.4. The Tariff shall be inclusive of all taxes, cess, duties and charges except the Cross Subsidy Surcharge and Electricity Duty which shall be borne by the Procurer

#### 11.2. Charges and duties

11.2.1. The transmission charges (POC Injection & Withdrawal charges), transmission losses (POC Injection & Withdrawal losses), Odisha STU Charges & Losses, RLDC/SLDC charges, application/concurrence charges or any other charges covered under Open Access Regulations notified by Central/Odisha Electricity Regulatory Commission (CERC/OERC) and the procedure for Open Access stipulated by the Central/State Transmission Utility (CTU/STU) (as amended up to date) for supply of energy up to the delivery point shall be borne by the Supplier, as applicable.

11.2.2. Cross subsidy Surcharge and Electricity Duty shall be borne by the Procurer

11.2.3. The Procurer shall in no way be liable for any other charges up to delivery point except for the charges of energy delivered at delivery point on the basis of the REA/SEA data of ERPC/Odisha-SLDC as per the latest open access regulations applicable.

### 11.3. Taxes

11.3.1. Any payment to be made by the Procurer shall be subject to any tax deduction at source, if required to be made by the Procurer as per Applicable Laws.

### 11.4. Refund in case of revision

11.4.1. In case the Procurer surrenders the already booked Open Access corridor, the Procurer shall bear the Open Access Charges, to be deducted by ERLDC for such surrender of booked corridor as per the prevailing open access regulations.

11.4.2. The open access charges as payable by the Procurer shall be reimbursed to the Supplier within 7 days of the receipt of the bill raised by the Supplier, if any.

11.4.3. In case, the transmission corridor booked on advance reservation basis, is surrendered/cancelled by the Supplier, then all the transmission charges shall be borne by the Supplier.

## ARTICLE 12

### 12. BILLING AND PAYMENT

#### 12.1. Billing

- 12.1.1. For the energy supply made during the month, the Supplier shall raise monthly bills clearly specifying the Fixed Component and Pass-through Component (the “**Monthly Invoice**”) by the 5th (fifth) day of each month, commencing from the month following the month in which Appointed Date occurs, based on the REA/SEA data (issued by ERPC/ Odisha-SLDC). The amount payable for the supply of energy shall be calculated as follows:

Amount payable as Fixed Component for supply of energy = (Fixed Component in Rs/kWh) x  
(Energy in kWh supplied at the Delivery Point as per  
REA/SEA data)

Amount payable as Pass-through Component for supply of energy = Pass-through component as  
defined in Clause 11.1.1 for the energy supplied at Delivery  
Point as per REA/SEA data to be paid on actual basis

- 12.1.2. The Procurer shall make payments within due date (the “**Payment Due Date**”), i.e. 30 days from the receipt of the Monthly Invoice (excluding the day of receipt of invoice), through email from successful bidder, save and except any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”). In case the 30th day is a holiday, the next working day would be the due date for the payment.
- 12.1.3. The invoice must be mailed on any bank working day before 1700 Hrs, otherwise the date of receipt of invoice shall be considered as the next working day. However, hard copies of the invoice shall invariably be sent to the Procurer through courier.
- 12.1.4. Based on the Procurer’s discretion, the payments shall either be made through RTGS transfer or through issuance of Letter of Credit.
- 12.1.5. In order to accurately determine the Fixed Component and Pass-through Component of Tariff in the Monthly Invoice, the Procurer may request the Supplier to furnish additional information which the Supplier shall be obligated to provide. The Supplier shall with each Monthly Invoice provide the following:
- (a) Detailed calculations of each of the components of the Pass-through Component of Tariff and Fixed Component for sale of electricity in accordance with this Clause 11.1;
  - (b) Notifications and orders of the Appropriate Commissions and notifications of relevant RLDC / SLDC with respect to the computation of charges mentioned under Clauses 11.1;
  - (c) detailed calculations of the per unit charges mentioned under Clauses 11.1;
  - (d) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement;
  - (e) Proof of sale of electricity for the period billed – the Regional Energy Account / State Energy Account prepared by the respective Regional Power Committee. The number of units can be derived from the meters installed at the Point of Inter Connection and at the Delivery Point;
  - (f) Deduction on account of any adjustment of amount on account of reconciliation of old bills;
  - (g) Details of computation of electricity duty applicable on consumption of electricity as captive user in the State, and

(h) the net amount payable under the Monthly Invoice.

## 12.2. Payment Security Mechanism

12.2.1. On submission of Performance Security by the Supplier, the Procurer shall provide no later than a period of 30 (thirty) days prior to the likely date of the Appointed Date, as Payment Security Mechanism, an unconditional, revolving and irrevocable letter of credit (the "Letter of Credit") for an amount equivalent to 31 days of billing (the "**Minimum Monthly Payment**") which may be drawn upon by the Supplier for recovery of payment due against the bills in accordance with the provisions of this Agreement. The Minimum Monthly Payment shall be calculated at 100% Availability as follows:

$$\text{Minimum Monthly Payment} = (\text{Tariff in Rs/kWh}) \times (\text{Contracted Capacity in MW}) \times (24 \text{ hours/day}) \\ \times 31 \text{ days/month}) \times 1000$$

12.2.2. The Letter of Credit shall be substantially in the form specified in "Annexure E Format for Letter of Credit" provided as part of RFP No. CPP/1800/RFP/221217 and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Minimum Monthly Payment, if any, in accordance with the provisions of this Agreement.

12.2.3. In the event of the Procurer's failure to pay the Monthly Invoice within 60 (sixty) days of the date of submission of Monthly Invoice, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank issuing the LC shall, without any reference to the Procurer, pay the amount due upon the Supplier presenting the following documents, namely:

- (a) a copy of the Monthly Invoice which has remained unpaid; and
- (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

12.2.4. The LC shall be valid till the 75th day from the last day of contract. All charges in this regard shall be borne by the Procurer.

12.2.5. In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Procurer shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 12.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Minimum Monthly Payment, except to give effect to such revision once every year.

12.2.6. The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

## 12.3. Recovery from sale of Contracted Capacity

12.3.1. In the event the Supplier is unable to recover its Tariff through the Letter of Credit and if the Tariff or part thereof remains unpaid for a period more than 90 (ninety) days from the date of submission of Monthly Invoice, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Procurer. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Procurer and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Procurer.

12.3.2. The sale of Contracted Capacity pursuant to Clause 12.3.1 shall not extinguish any liability of the Procurer or any claim that the Supplier may have against the Procurer, save and except to the extent of amounts recovered under the provisions of Clause 12.3.1.

12.3.3. Supply of electricity to the Procurer in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Procurer pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement and renews the Letter of Credit.

#### 12.4. Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Procurer to make the Termination Payment within 30 (thirty) days of termination of contract, the Supplier shall have the right to invoke the Letter of Credit for an amount equal to the Minimum Monthly Payment as the Termination Payment.

#### 12.5. Rebate

12.5.1. The Supplier shall allow 2% (Two Percent) rebate on the billed amount of energy charges including trading margin, if the Procurer makes payment of the bill through RTGS within 7 days from the date of Receipt (excluding the day of receipt of bill).

12.5.2. The Supplier shall allow 1% (One Percent) rebate on the billed amount of energy charges including trading margin, if the Procurer makes payment of the bill through RTGS after 7 days but on or before the 30th day from the date of Receipt.

#### 12.6. Penalty

A penalty of 0.75 % per month shall be applied on all payments outstanding after 60 days from the due date of payment. Thereafter penalty shall be calculated on day-to-day basis for each day of delay.

#### 12.7. Disputed Amount

12.7.1. The Procurer shall, within 10 (ten) days of receiving a bill, notify the Supplier of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Supplier shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Procurer may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Procurer shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

12.7.2. If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 22.4.

## ARTICLE 13

### 13. INSURANCE

#### 13.1. Insurance during Contract Period

The Supplier shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Procurer as a consequence of any act or omission of the Supplier during the Contract Period.

#### 13.2. Insurance Cover

Without prejudice to the provisions contained in Clause 13.1, the Supplier shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Procurer or others caused by the Project;
- (c) the Supplier's general liability arising out of the Procurement Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Supplier and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

#### 13.3. Evidence of Insurance Cover

All insurances obtained by the Supplier in accordance with this Article 13 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Procurer, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Procurer.

#### 13.4. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Supplier pursuant to this Article 13 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Procurer, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### 13.5. Supplier's waiver

The Supplier hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Procurer and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Supplier may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Supplier pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.



## ARTICLE 14

### 14. ACCOUNTS AND AUDIT

#### 14.1. Audited accounts

- 14.1.1. The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Procurer), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.
- 14.1.2. The Procurer shall, during the period from signing of this Agreement to the end of Contract Period or Termination of Contract whichever is earlier, have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors.

## ARTICLE 15

### 15. FORCE MAJEURE

#### 15.1. Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 15.2, 15.3 and 15.4 respectively, if it affects the performance by the Procurer or the Supplier claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

#### 15.2. Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);
- (b) strikes or boycotts (other than those involving the Supplier, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 15.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India or to supply Fuel from an overseas Captive Mine, if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Supplier by such contractor;
- (e) Non or part availability of open access, congestion/curtailment of transmission corridor.
- (f) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Procurer;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

#### 15.3. Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operation of the Power Station to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

#### 15.4. Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 18 and its effect, in financial terms, exceeds the sum specified in Clause 18.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

#### 15.5. Duty to report Force Majeure Event

15.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall, within 24 hours of such occurrence, intimate the other Party of such occurrence in writing. This intimation shall be followed by a notice from the Affected Party to the other Party, within a period of 30 days of such occurrence, which shall include particulars such as:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for

relief under this Article 15 with evidence in support thereof;

- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

15.5.2. In case the Affected Party fails to notify the other Party of the occurrence of a Force Majeure event within a period of 30 days as prescribed herein, the Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event.

15.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 15.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

#### 15.6. Effect of Force Majeure Event on the Procurement Contract

15.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 3.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

15.6.2. There shall be no liability on either Party if any force Majeure Event occurs at any time after the Appointed Date, whereupon the Supplier is unable to transmit electricity to the Grid despite making best efforts or it is directed by the Procurer, RLDC or SLDC or any Government Instrumentality to suspend generation or transmission during the subsistence of such Force Majeure Event.

#### 15.7. Allocation of costs arising out of Force Majeure

None of the parties shall be liable to each other on account of any failure or delay caused due to occurrence of a Force Majeure event.

#### 15.8. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 15, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### 15.9. Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other

Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## ARTICLE 16

### 16. TERMINATION

#### 16.1. Termination for Supplier Default

16.1.1. Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Supplier fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Supplier shall be deemed to be in default of this Agreement (the “**Supplier Default**”), unless the default has occurred as a result of any breach of this Agreement by the Procurer or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 8.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 8.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Supplier has failed to make any payment to the Procurer within the period specified in this Agreement;
- (d) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;
- (e) the Supplier creates any Encumbrance in breach of this Agreement;
- (f) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;
- (g) insert this clause if Supplier is a Trading Licensee “the Power Purchase Agreement between the Supplier and the Developer stands expired, cancelled or terminated, for any reason whatsoever;”<sup>1</sup>
- (h) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 10.1.3;
- (i) a Change in Ownership has occurred in breach of the provisions of Clause 4.3;
- (j) uses Concessional Fuel for production and supply thereof to the Procurer during any 3 (three) days in any month;
- (k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier and such transfer causes a Material Adverse Effect;
- (l) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;
- (m) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Procurement Contract;
- (n) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Procurer, a Material Adverse Effect;

- (o) a resolution for winding up of the Supplier is passed;
- (p) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;
  - (iii) each of the Project Agreements remains in full force and effect; and
  - (iv) such amalgamation or reconstruction is approved by the Commission.
- (q) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;
- (r) the Supplier submits to the Procurer any statement, notice or other document, in written or electronic form, which has a material effect on the Procurer's rights, obligations or interests and which is false in material particulars;
- (s) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (t) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
- (u) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Procurer.

16.1.2. Without prejudice to any other rights or remedies which the Procurer may have under this Agreement, upon occurrence of a Supplier Default, the Procurer shall be entitled to terminate this Agreement in 30 (thirty) days by issuing a Termination Notice to the Supplier;

## 16.2. Termination for Procurer Default

16.2.1. In the event that any of the defaults specified below shall have occurred, and the Procurer fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Procurer shall be deemed to be in default of this Agreement (the "**Procurer Default**") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Procurer commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;
- (b) the Procurer has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Letter of Credit, within the period specified in this Agreement; or
- (c) the Procurer repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

16.2.2. Without prejudice to any other rights or remedies which the Supplier may have under this Agreement, upon occurrence of a Procurer Default, the Supplier shall be entitled to terminate this Agreement in 30 (thirty) days by issuing a Termination Notice to the Procurer;

### 16.3. Termination Payment

16.3.1. Upon Termination on account of Supplier or Procurer Default, the defaulting party shall be liable to pay the Open Access charges on account of such termination and charges as computed in accordance with Clause 16.6. .

16.3.2. Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Procurer of its payment obligations in respect thereof hereunder.

16.3.3. The Supplier expressly agrees that Termination Payment under this Article 16 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### 16.4. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 16.3.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

### 16.5. Right to terminate

16.5.1. Either Party will have the right to terminate this Agreement by giving an advance notice in writing to the other party.

16.5.2. The Supplier may terminate this Agreement by giving an advance notice of 90 days to the Procurer. The Procurer may terminate this Agreement, by giving an advance notice of 30 days to the Supplier.

16.5.3. The party serving the termination notice shall be liable to pay the Open Access charges on account of such termination

### 16.6. Termination without notice

16.6.1. If Supplier terminates the agreement without providing 90 days notice or within the 90 days notice period, then it shall pay to Vedanta a compensation @ 5 Rs/kWh for entire 90 days calculated as follows :

5 Rs/kWh x 24 hours x 90 days x Contracted capacity



## ARTICLE 17

### 17. ASSIGNMENT AND CHARGES

#### 17.1. Restrictions on assignment and charges

- 17.1.1. Subject to Clauses 17.2 and 17.3, this Agreement shall not be assigned by the Supplier to any person, save and except with the prior consent in writing of the Procurer, which consent the Procurer shall be entitled to decline without assigning any reason.
- 17.1.2. Subject to the provisions of Clause 17.2, the Supplier shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Supplier is a party, except with prior consent in writing of the Procurer, which consent the Procurer shall be entitled to decline without assigning any reason.

#### 17.2. Permitted assignment and charges

The restraints set forth in Clause 17.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;
- (b) mortgages/pledges/hypothecation of Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security only for indebtedness to its Lenders and/or for working capital arrangements for the Power Station;
- (c) assignment of rights, interest and obligations of the Supplier to or in favour of its as security for financing provided by them; and
- (d) liens or encumbrances required by any Applicable Law.

#### 17.3. Assignment by the Procurer

Notwithstanding anything to the contrary contained in this Agreement, the Procurer may, after giving 60 (sixty) days' notice to the Supplier, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Procurer, capable of fulfilling all of the Procurer's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

#### 17.4. Approvals for assignment

Any assignment under this Article 17 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Procurer to grant its approval to such assignment, save and except as provided herein.

## ARTICLE 18

### 18. CHANGE IN LAW

#### 18.1. Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Normative annual energy payment in any Accounting Year, the Supplier may so notify the Procurer and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may by notice require the Procurer to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Procurer shall pay the amount specified therein; provided that if the Procurer shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 18.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

Provided that any change in transmission charges (POC Injection & Withdrawal charges), transmission losses (POC Injection & Withdrawal losses), Odisha STU Charges & Losses, RLDC/SLDC charges, application/concurrence charges or any other charges covered under Open Access Regulations notified by Central/Odisha Electricity Regulatory Commission (CERC/OERC) and the procedure for Open Access stipulated by the Central/State Transmission Utility (CTU/STU) shall not be covered under Article 18.

#### 18.2. Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Normative annual energy payment in any Accounting Year, the Procurer may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Procurer, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Procurer may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Supplier shall pay the amount specified therein to the Procurer; provided that if the Supplier shall dispute such claim of the Procurer, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 18.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

Provided that any change in transmission charges (POC Injection & Withdrawal charges), transmission losses (POC Injection & Withdrawal losses), Odisha STU Charges & Losses, RLDC/SLDC charges, application/concurrence charges or any other charges covered under Open Access Regulations notified by Central/Odisha Electricity Regulatory Commission (CERC/OERC) and the procedure for Open Access stipulated by the Central/State Transmission Utility (CTU/STU) shall not be covered under Article 18.

### 18.3. Protection of NPV

Pursuant to the provisions of Clauses 18.1 and 18.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

### 18.4. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 18 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

## ARTICLE 19

### 19. LIABILITY AND INDEMNITY

#### 19.1. General indemnity

- 19.1.1. The Supplier shall indemnify, defend, save and hold harmless the Procurer and its officers, servants, agents, Government Instrumentalities and Procurer owned and/or controlled entities/enterprises, (the “**Procurer Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Supplier of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Procurer or sale by the Supplier to any Buyer or from any negligence of the Supplier under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Procurer Indemnified Persons.
- 19.1.2. The Procurer shall indemnify, defend, save and hold harmless the Supplier against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Procurer of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Supplier of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Supplier, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Supplier.

#### 19.2. Indemnity by the Supplier

- 19.2.1. Without limiting the generality of Clause 19.1, the Supplier shall fully indemnify, hold harmless and defend the Procurer and the Procurer Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;
  - (b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier’s contractors, suppliers and representatives; or
  - (c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

19.2.2. Without limiting the generality of the provisions of this Article 19, the Supplier shall fully indemnify, hold harmless and defend the Procurer Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Procurer Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Procurement Contract. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Procurer a licence, at no cost to the Procurer, authorising continued use of the infringing work. If the Supplier is unable to secure such licence within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### 19.3. Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 19 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 19.4. Defence of claims

19.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 19, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

19.4.2. If the Indemnifying Party has exercised its rights under Clause 19.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

19.4.3. If the Indemnifying Party exercises its rights under Clause 19.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 19.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### 19.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 19, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

## ARTICLE 20

### 20. DISPUTE RESOLUTION

#### 20.1. Dispute resolution

- 20.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 20.2.
- 20.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 20.2. Conciliation

- 20.2.1. In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Procurer and Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 20.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 20.3.

#### 20.3. Arbitration

- 20.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 20.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 20.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. All legal proceedings shall be subject to territorial jurisdiction of the local civil courts at New Delhi only.
- 20.3.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 20.3.3. The arbitral tribunal shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 20 shall be final and binding on the Parties as from the date it is made, and the Supplier and the Procurer agree and undertake to carry out such Award without delay.
- 20.3.4. The Supplier and the Procurer agree that an Award may be enforced against the Supplier and/or the Procurer, as the case may be, and their respective assets wherever situated.
- 20.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### 20.4. Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Procurer, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 20.2 and 20.3 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

## ARTICLE 21

### 21. DISCLOSURE

#### 21.1. Disclosure of Specified Documents

21.1.1. The Supplier shall make available for inspection by any person, copies of this Agreement (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Supplier’s Registered Office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

#### 21.2. Disclosure of Documents relating to safety

The Supplier shall make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier’s Registered Office and the Power Station. The Supplier shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

#### 21.3. Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 21.1 and 21.2, but subject to Applicable Laws, the Procurer shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 21.1 and 21.2, or portions thereof, the disclosure of which the Procurer is entitled to withhold under the provisions of the Right to Information Act, 2005.



## ARTICLE 22

### 22. MISCELLANEOUS

#### 22.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and all legal proceedings in connection with this Agreement shall be subject to the territorial jurisdiction of the local civil courts at New Delhi only.

#### 22.2. Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

#### 22.3. Interest

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

#### 22.4. Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

#### 22.5. Waiver

22.5.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

22.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 22.6. Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

#### 22.7. Survival

22.7.1. Termination shall:

- (a) not relieve the Supplier or the Procurer, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 19; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

22.7.2. All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

#### 22.8. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Proposal RFP No: CPP/1800/RFP/221217, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### 22.9. Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### 22.10. No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership 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.

**22.11. Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

**22.12. Successors and assigns**

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

**22.13. Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Procurer; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Procurer.

{Attention:  
Designation:  
Address:  
Fax No:  
Email:}

- (b) in the case of the Procurer, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Procurer Representative or such other person as the Procurer may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Procurer, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

{Name:  
Designation:  
Address:  
Fax No:  
Email:}; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**22.14. Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**22.15. Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

## ARTICLE 23

### 23. DEFINITIONS

#### 23.1. Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**“Act”** means the Electricity Act, 2003;

**“Affected Party”** shall have the meaning as set forth in Clause 15.1;

**“Agreement”** or **“Power Purchase Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**“Applicable Laws”** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

**“Appointed Date”** means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

**“Associate”** or **“Affiliate”** means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**“Availability”** Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to  $\square^*$  kWh per megawatt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be.

**“Bank Rate”** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

**“Base Year”** means the Accounting Year in which the Bid was received;

**“Bid”** means the documents in their entirety comprised in the bid submitted by the Supplier in response to the Request for Proposal RFP No: CPP/1800/RFP/221217 in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all pre-qualified bidders;

**“Bid Date”** means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal RFP No: CPP/1800/RFP/221217;

**“Buyer(s)”** shall mean the third parties buying electricity from the Power Station, in accordance with the provisions of this Agreement and Applicable Laws;

**“CIL”** means Coal India Limited or any subsidiary thereof, and shall include any substitute or successor thereof;

**“Capacity Certificate”** means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

**“Captive Mine”** means a mine, acquired through any form of auction or bidding which specifically allows the owner or allottee, as the case may be, to use the coal for production of electricity and sale thereof to any purchaser; and includes a mine which is owned by a third party that has entered into a long-term agreement with the Supplier for dedicated supply of Fuel for use at the Power Station for a period not less than the Contract Period;]

**“Central Transmission Utility”** or **“CTU”** shall have the meaning as ascribed in the Electricity Act 2003.

**“Change in Law”** means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Procurement Contract;

**“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline, at any time prior to the 1<sup>st</sup> (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Procurer upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

**“Coal Mine/Blocks”** shall mean Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws;

**“Commission”** means the Appropriate Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

**“Concessional Fuel”** shall mean Fuel which is produced or procured by the Supplier through any form of concessional, preferential or captive allocation or sale of such Fuel or the source thereof by a Government Instrumentality or an entity owned or controlled by the Central Government or the State Government, as the case may be, but does not include Fuel, or the source thereof, which is procured through any form of bidding, auction or other means of procurement where the price of Fuel to be paid by the Supplier is determined by market forces;

**“Conditions Precedent”** shall have the meaning as set forth in Clause 3.1.1;

**“Contract Period”** means the period starting on and from the Appointed Date and ending

on the earlier of the 3<sup>rd</sup> (third) anniversary of the Appointed Date and the date of termination of the Agreement;

**“Contracted Capacity”** shall have the meaning as set forth in Clause 9.1;

**“Contractor”** means the person or persons, as the case may be, with whom the Supplier has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

provided that if the cure of any breach by the Supplier requires any reasonable action by the Supplier that must be approved by the Procurer hereunder, the applicable Cure Period shall be extended by the period taken by the Procurer to accord their approval;

**“Damages”** shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;

**“Delivery Point”** means Vedanta Limited’s CPP-1800 ex-bus connected to 400 kV OPTCL network of Odisha-STU;

**“Despatch”** shall have the meaning as set forth in Clause 10.1.1;

**“Developer”** shall mean the owner of the Power Station from which the Supplier shall supply the Power to the Procurer;]

**“Discom”** shall mean WESCO or Western Electricity Supply Company of Odisha, or any substitute thereof, which is the distribution licensee in the area of Vedanta Limited.

**“Dispute”** shall have the meaning as set forth in Clause 20.1.1;

**“Disputed Amounts”** shall have the meaning as set forth in Clause 12.1.2;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes as set forth in Article 20;

**“Document”** or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**“Earnest Money Deposit”** means the security provided by the Supplier to the Procurer along with the Bid in accordance with the RFP, and which is to remain in force until substituted by the Performance Security;

**“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Supplier, and any interest-free funds advanced by any shareholder of the Supplier for meeting such equity component;

**“Fixed Component”** shall have the meaning as set forth in Clause 11.1.1;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 15.1;

**“Forced outage”** means the shutdown condition of a Power Station, transmission line or distribution line when the generating unit is unavailable to produce or despatch power due to unexpected breakdown.

**“Fuel”** means the source of energy used in generation of electricity at the Power Station;

**“Fuel Supply Agreement”** means the agreement entered into between the Supplier and a supplier of Fuel and includes any arrangement for purchase of Fuel at spot prices;

**“GOI”** means the Government of India;

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

**“Government”** means the Government of India or the Government of the State, as the case may be;

**“Government Instrumentality”** means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

**“Grid”** means the high voltage backbone system of inter-connected transmission lines and sub-stations;

**“Grid Code”** means the Indian Electricity Grid Code 2010 or any substitute thereof;

**“Incentive”** means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 19;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 19;

**“Indirect Political Event”** shall have the meaning as set forth in Clause 15.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 13, and includes all insurances required to be taken out by the Supplier under Clause 13.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“LOA”** or **“Letter of Award”** means the letter of award referred to in Recital (D);

**“Letter of Credit”** shall have the meaning as set forth in Clause 12.2.1;

**“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**“Minimum Monthly Payment”** shall have the meaning as set forth in Clause 12.2.1;

**“Monthly Invoice”** shall have the meaning as set forth in Clause 12.1.1;

**“Non-Availability”** means any partial or total lack of Availability for any other reason;

**“Non-Political Event”** shall have the meaning as set forth in Clause 15.2;

**“OPTCL”** or **“Odisha Power Transmission Corporation Limited”** shall mean the state transmission utility of Odisha which is engaged in intra-state transmission of power in Odisha, or any substitute thereof.

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

**“Pass-through Component”** shall have the meaning as set forth in Clause 11.1.1;

**“Payment Due Date”** shall have the meaning as set forth in Clause 12.1.2;

**“Performance Security”** shall have the meaning as set forth in Clause 8.1;

**“Point of Grid Connection”** means the point of interconnection at which the electricity generated by the Power Station is transferred to the Grid;

**“Political Event”** shall have the meaning as set forth in Clause 15.4;

**“Power Purchase Agreement”** shall mean the back to back arrangement for supply of power between the Supplier and the Developer from the Power Station;

**“Power Station”** means the generating station or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities;

**“Procurement Contract”** shall have the meaning as set forth in Clause 2.1;

**“Procurer”** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

**“Procurer Representative”** means such person or persons as may be authorised in writing by the Procurer to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Procurer under this Agreement;

**“Project”** means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Power Station;

**“Project Agreements”** means this Agreement, Fuel Supply Agreement, O&M contract and any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

**“Project Assets”** means all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Station Premises in the form of licence or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;
- [(c) rights over Captive Mines;]
- (d) all rights of the Supplier under the Project Agreements;



- (e) financial assets, such as receivables, security deposits etc.;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Power Station;

“**RLDC**” means the Regional load Despatch Centre as specified in the Act;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Request for Proposal**” or “**RFP**” shall have the meaning as defined in Recital (B).

“**Revenues**” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Procurer in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Procurer for and in relation to any capital expenditure for creation of assets;

“**SLDC**” means the State Load Despatch Centre as specified in the Act;

“**Secured Obligations**” means:

- (a) obligations of the Procurer for payment of Tariff and Incentives under and in accordance with this Agreement; and
- (b) obligation of the Procurer to make Termination Payment under and in accordance with this Agreement upon termination thereof;

“**Seller**” means a person other than the Parties to this Agreement from which the Procurer procures power when the Supplier fails to meet its obligations under the provisions of this Agreement including (but not exclusively) traders, power exchange and local distribution licensee.

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in the rules and regulations made under the Act;

“**State**” means the State or the Union Territory, as the case may be, in which the headquarters of the Procurer is situated and “**State Government**” means the government of that State or Union Territory;

“**State Transmission Utility**” or “**STU**” shall have the meaning as ascribed in the Electricity Act 2003.

“**Station Premises**” shall mean and include the site, real estate, assets, equipment, facilities and amenities comprising the Power Station;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force

“**Supplier**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Supplier Default**” shall have the meaning as set forth in Clause 16.1.1;

“**Tariff**” shall have the meaning as set forth in Clause 11.1.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on

the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement and the Procurement Contract hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

“**Trading Licensee**” shall mean the Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder.

“**Unit**” means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity independently of other units at the Power Station;

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
THE PROCURER by:

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the .... day of 20....hereunto affixed in the presence of .... Director, who has signed these presents in token thereof and .... Procurer Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)  
(Name)  
(Designation)  
(Address) (Fax  
No.) (e-mail  
address)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

1.

2.