

**STANDARD**  
**AUTHORIZATION AGREEMENT**

**FOR**

**DEVELOPMENT AND OPERATION OF INTER-STATE TRANSMISSION  
SYSTEM**

**FOR TRANSMISSION OF ELECTRICITY THROUGH TARIFF BASED  
COMPETITIVE BIDDING**

**BETWEEN THE**  
.....  
**[Insert Name of Nodal Agency]**

**AND**

**DESIGNATED ISTS CUSTOMERS (DICs)**

.....2017

### **AUTHORIZATION AGREEMENT**

This Authorization Agreement (hereinafter referred to as “Agreement” or “the Agreement” or “this Agreement”) is made on the ..... [Insert Day] of ....., [Insert Month] of Two Thousand and .....[Insert Year] by and between the persons whose names and registered offices are set out in **Schedule 1** including their successors and permitted assigns.

#### WHEREAS

- A. Ministry of Power, Government of India has issued directions to the Designated ISTS Customers (hereinafter referred to as “DIC” individually and “DICs” collectively) for authorising Nodal Agency for acting as counterparty on their behalf for the purpose of discharging its duties in terms of the Bidding Guidelines and those mentioned herein.
  
- B. In accordance with the Standard Bidding Guidelines, all the existing DICs have to authorise the Nodal Agency to act on their behalf including executing Implementation Services Agreement (hereinafter referred to as the “ISA”). Further, any new DIC shall also execute a Supplementary Agreement as per Schedule 2 of this Agreement authorising the Nodal Agency to act on its behalf including executing ISA.

- C. The Bidding guidelines envisage that the Nodal Agency shall carry out its responsibilities and duties during the construction, development and operational phase of the project and shall monitor the progress of the project with due support from the Central Electricity Authority (hereinafter referred to as “CEA”).
- D. The Nodal Agency shall be entitled to recover its expenses from the DICs for performing the obligations and activities under the ISA and as per the Bidding Guidelines and provisions of this Agreement.
- E. Further, in accordance with the Bidding Guidelines and this Agreement, the Nodal Agency shall be completely indemnified and held harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind, including any tax liability, interest, costs, fees or expenses (including, without limitation, reasonable attorney’s fees and expenses) suffered, incurred or paid, directly or indirectly, as a result of, in connection with, or arising out of the Nodal Agency’s obligations of acting as the nodal agency and in its responsibility arising out of this Agreement and as per the Bidding Guidelines.
- F. In case of inconsistency between the terms & conditions of this Agreement and the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 {hereinafter referred to as “POC Regulations”} the conditions stipulated in the POC Regulations by the Commission shall prevail.

## Articles

### 1 Definitions and Interpretations

#### 1.1 Definitions

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

1.1.2 The words/expressions when used in this Agreement shall have the respective meanings as specified below:

**“Act”** or **“Electricity Act”** or **“Electricity Act 2003”** shall mean the Electricity Act, 2003 and any amendments made to the same or any succeeding enactment thereof;

**“Bill”** shall mean any bill raised by the Nodal Agency on the DICs to recover the expenses in fulfilling the obligations as per Article 5.1 of this Agreement and in accordance with the Billing and Collection Procedure as may be specified by Commission from time to time;

**“Bulk Power Transmission Agreement”** or **“BPTA”** shall mean the agreement between the ISTS Licensees and DICs of the ISTS under the pre-existing arrangements for ISTS development and operations;

**“Business Day”** shall mean a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State in which the Nodal Agency’s registered office is located and the concerned DICs are located;

**“CEA”** shall mean the Central Electricity Authority constituted under Section 70 of the Electricity Act;

**“Commission”** or **“CERC”** shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of Section 76 of the Electricity Act, 2003 or its successors and assigns;

**“Competent Court of Law”** shall mean the Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in

India that has jurisdiction to adjudicate upon issues relating to the Project;

**“Consultation Period”** shall mean the period of sixty (60) days or such longer period as the Parties may agree, commencing from the date of issue of Nodal Agency’s Preliminary Termination Notice, as provided in Article 7.2.1 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

**“Construction Period”** shall mean the period from (and including) the Effective Date of the Implementation & Service Agreement up to (but not including) the COD of the Element of the Project in relation to an Element and up to (but not including) the COD of the Project in relation to the Project;

**“CTU”** or **“Central Transmission Utility”** shall mean the Power Grid Corporation of India Limited notified as the CTU by the Central Government under Section 38 of the Electricity Act, 2003, or any other entity that may be notified by the Central Government from time to time;

**“Day”** shall mean a day starting at 0000 hours and ending at 2400 hours;

**“Designated ISTS Customers”** or **“DICs”** shall have the meaning as ascribed in the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulation 2010 and as amended or modified from time to time;

**“Dispute”** shall mean any dispute or difference of any kind between the Nodal Agency and the DICs, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 8.1;

**“Effective Date”** for the purposes of this Agreement, shall have the same meaning as per Article 3.1.1 and 3.1.2 of this Agreement;

**“Event of Default”** shall mean the events as defined in Article 7 of this Agreement;

**“Financial Year”** shall mean a period of twelve months at midnight Indian Standard Time (IST) between 1st April & 31st March;

**“Force Majeure”** and **“Force Majeure Event”** shall have the meaning assigned thereto in Article 6.3;

**“GOI”** shall mean Government of India;

**“Implementation and Service Agreement” or “ISA”** shall mean agreement executed by Nodal Agency on behalf of DICs with the TSP in accordance with Standard Bidding Guidelines for development of ISTS;

**“Implementing Agency”** shall mean the agency designated by the Commission to undertake the computation of allocation of transmission charges and losses at various nodes/zones for the application period along with other functions mandated under Sharing Regulations or as may be assigned by the Commission from time to time;

**“Indian Governmental Instrumentality”** shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or both, any political sub-division of any of them including any court or Commission or tribunal or judicial or quasi-judicial body in India but excluding the CTU, TSP, Nodal Agency and the Designated ISTS Customers;

**“Indian Electricity Grid Code” or “Grid Code” or “IEGC”** shall mean the Grid Code specified by the Central Commission under Clause (h) of sub-section (1) of Section 79 of the Electricity Act;

**“Inter-State Generating Station” or “ISGS”** shall mean a Central/other generating station in which two or more states have shares and whose scheduling is to be coordinated by the RLDC;

**“Inter-State Transmission System” or “ISTS”** shall mean Inter-State Transmission System and shall include

- i) Any system for the conveyance of electricity by means of a main transmission line from the territory of one State to another State
- ii) The conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such interstate transmission of energy
- iii) The transmission of electricity within the territory of State on a system built, owned, operated, maintained or controlled by CTU.

**“Inter-State Transmission System Licensee” or “ISTS Licensee”** shall mean the person having been awarded a Transmission License by the CERC under Section 14 of the Act;

**“Law” or “Laws”** in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Commission;

**“Month”** shall mean a period of thirty (30) days from (and excluding) the date of the event;

**“Nodal Agency”** means .....**[Insert name of Nodal Agency** on behalf of the Designated ISTS Customers (DICs) of the inter State transmission system which has executed the Implementation and Service Agreement (ISA).The role of .....**[Insert name of the Nodal Agency]** acting as a Nodal Agency shall be transferred to the CTU once CTU gets separated from PGCIL and becomes an independent entity.

**“Notification”** shall mean any notification, issued in the Gazette of India;

**“Operating Period”** for any Element of the Project shall mean the period from (and including) the COD of such Element of the Project, up to (and including) the Expiry Date and for the Project, shall mean the period from (and including) the COD of the Project, up to (and including) the Expiry Date;

**“Preliminary Termination Notice”** shall mean Nodal Agency’s Preliminary Termination Notice as defined in Article 7.2.1 of this Agreement;

**“Project”** shall mean development, construction, commissioning and operations of ISTS element, system, or network as the case may be.

**“Prudent Utility Practices”** shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric transmission utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of the Project and which practices, methods and standards shall be adjusted as necessary, to take account of:

- (i) operation, repair and maintenance guidelines given by the manufacturers to be incorporated in the Project,
- (ii) the requirements of Law, and
- (iii) the physical conditions at the Site;
- (iv) the safety of operating personnel and human beings;

**"Regional Load Despatch Centre (RLDC)"** means the Centre established under sub-section (1) of Section 27 of the Act;

**"Sharing Regulations"** shall mean the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and as amended from time to time;

**"Standard Bidding Guidelines" or "Bidding Guidelines"** shall mean the "Tariff Based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" issued by Government of India, Ministry of Power dated 17.4.2006 under Section 63 of the Electricity Act and as amended from time to time

**"STU" or "State Transmission Utility"** shall be the Board or the Government company, specified as such by the State Government under sub-section (1) of Section 39 of the Electricity Act 2003;

**"Supplementary Agreement"** shall mean an agreement to be executed by Nodal Agency and New DICs as per Schedule 2 of this Agreement.

**"Termination Notice"** shall mean a Nodal Agency's Termination Notice given by the Nodal Agency to the DIC pursuant to the provisions of Article 7.2.4 of this Agreement for the termination of this Agreement;

**"Term of Agreement"** for the purposes of this Agreement shall have the meaning ascribed thereto in Article 3.1.3 of this Agreement;

**"Transmission Service Agreement" or "TSA"** shall be the agreement executed between the relevant parties pursuant to Regulation 2 (u) of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulation 2010 and as amended from time to time;

**“Transmission Services Provider”** shall mean the person executing the ISA with Nodal Agency as per the Bidding guidelines for implementation of the Project.

**“Unforeseen Event”** shall mean an event, situation or similar circumstances not contemplated or referred to in this Agreement, which could not have been foreseen by a prudent and diligent person, and the impact of which shall destroy the sub-stratum and economic foundation of the Project.

## 1.2 Interpretation:

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

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

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

**"indebtedness"** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether in present or future, actual or contingent;

**"person"** shall have the meaning as defined in Section 2 (49) of the Act;

**"winding-up", "dissolution", "insolvency", or "reorganization"** in the context of a company or corporation shall have the same meaning as defined in the Companies Act, 1956/ Companies Act, 2013 (as the case may be).

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

1.2.2 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.

1.2.3 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.

- 1.2.4 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.5 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part.
- 1.2.6 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.7 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement.

## **2 PARTIES TO THE AGREEMENT**

### **2.1 Existing DICs**

- 2.1.1 The DICs as mentioned in the Schedule 1 of this Agreement, enter into this Agreement and bind themselves to the terms of this Agreement as on the date of signing of this Agreement.
- 2.1.2 In the event of any conflict between the existing Bulk Power Transmission Agreements (BPTA) or Transmission Service Agreement (TSA) and this Agreement, the terms of this Agreement shall prevail.
- 2.1.3 An ISGS who is not a signatory to a BPTA or TSA too may enter into this Agreement and bind itself to the terms of this Agreement

### **2.2 New DICs**

- 2.2.1 This Agreement shall be signed by all new DICs intending to connect to and/or use the Inter-State Transmission System (ISTS).
- 2.2.2 Any new DIC may become a party to this Agreement subject to and in accordance with the provisions of this Agreement by way of execution of Supplementary Agreement, as annexed at Schedule 2, by such DICs and the Nodal Agency.
- 2.2.3 Upon execution of the Supplementary Agreement by both Nodal Agency and the new DICs in accordance with Article 2.2.2 of this Agreement, the new DICs shall become a Party to this Agreement.

### **2.3 Authorisation**

Each DIC hereby irrevocably and unconditionally authorizes Nodal Agency to execute on behalf of such Party any Supplementary Agreement duly executed by the new DIC, as the case may be, and to thereby admit the new DIC, as the case may be, as a Party to this Agreement. Agreements as such executed, shall be deemed to have been signed by all the existing Parties of this Agreement. A copy of such Supplementary Agreement shall be sent by the Nodal Agency to all the DICs.

### **3 EFFECTIVENESS AND TERM OF AGREEMENT**

#### **3.1 Effective Date**

- 3.1.1 This Agreement shall be effective from the date of signing of this Agreement.
- 3.1.2 Any new DIC shall be Party to this Agreement from the date of signing of the Supplementary Agreement, as executed between the Nodal Agency and the new DIC, as the case may be.
- 3.1.3 The Agreement shall remain operative till the same is renewed/replaced/modified.

### **4 NODAL AGENCY'S AND DIC'S OBLIGATION**

#### **4.1 Nodal Agency's Obligation**

The Nodal Agency shall be responsible to ensure development and operation of the Project by carrying out the following activities.

- 4.1.1 Execute ISA with TSP.
- 4.1.2 To collect contract performance guarantee (CPG) from selected bidder as per Article 3 of ISA and refund CPG after COD has been achieved in terms of Article 6.5.1 of the ISA.
- 4.1.3 To monitor timely completion of the conditions subsequent by the TSP in accordance with Article 3.1.3 of the ISA
- 4.1.4 Monitor progress of works, project milestones as per ISA and ensure such works are carried out as per the prevalent regulations.
- 4.1.5 To coordinate the availability of the Interconnection Facilities to enable the TSP to connect the Project;
- 4.1.6 To provide assistance to arbitrators as they may require for performance of their duties as per the ISA and make representations on behalf of DICs during dispute resolution and arbitration proceedings.
- 4.1.7 To levy liquidated damages on TSP for failure to achieve project milestones and COD as per timelines specified in ISA.
- 4.1.8 To monitor the Project after COD to ensure operational availability and ensure it is maintained and operated by TSP in accordance with Article 7.1 of the ISA.

4.1.9 To ensure that Insurance cover has been taken by TSP in accordance with Article 9.1 and Article 9.2 of the ISA.

4.1.10 To examine claims of Change in Law by TSP as per Article 12.3 of the ISA.

4.1.11 Any other obligations under ISA and Bidding Guidelines.

## **4.2 DIC's Obligation**

4.2.1 To support Nodal Agency in discharging its duties and functions under this Agreement and ISA as and when required.

## **5 BILLING AND COLLECTION**

### **5.1 Billing and Collection Mechanism**

5.1.1 The Nodal Agency shall Bill to the DICs its expenses incurred towards fulfilment of its obligations under this Agreement and ISA as per the detailed "Billing and Collection Procedure" as approved by the Commission and such "Billing and Collection Procedure" shall be construed as part of this Agreement.

5.1.2 The Nodal Agency shall raise Bills and collect in accordance with the detailed "Billing and Collection Procedure".

### **5.2 Payment by DICs**

The Payment to be done by DICs shall be governed as per the detailed "Billing and Collection Procedure" as approved by the Commission.

## **6 FORCE MAJEURE AND UNFORESEEN EVENT**

The following terms shall have the meanings given hereunder.

6.1 An “Affected Party” means any of the DICs or the Nodal Agency whose performance has been adversely affected by an event of Force Majeure.

6.2 An “Unforeseen Event” shall mean an event, situation or similar circumstances not contemplated or referred to in this Agreement, which could not have been foreseen by a prudent and diligent person, and the impact of which shall destroy the sub-stratum and economic foundation of the Project.

6.3 A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevent or unavoidably delay an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

6.3.1 Natural Force Majeure Events:

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

6.3.2 Non-Natural Force Majeure Events:

a) Direct Non–Natural Force Majeure Events

(i) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Affected Party; or

(ii) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Affected Party to perform their obligations under the Agreement including the Standard Bidding Documents.

b) Indirect Non - Natural Force Majeure Events

- (i) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- (ii) radio active contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or
- (iii) industry-wide strikes and labour disturbances, having a nationwide impact in India.

#### **6.4 Force Majeure Exclusions**

- 6.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- 6.4.2 Strikes or labour disturbance at the facilities of the Affected Party; Insufficiency of finances or funds or the Agreement becoming onerous to perform; and
- 6.4.3 Non-performance caused by, or connected with, the Affected Party's: negligent or intentional acts, errors or omissions; failure to comply with an Indian Law; or breach of, or default under this Agreement or any Project Documents.

#### **6.5 Notification of Force Majeure Event**

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

notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

6.5.2 Provided that, such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

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

## **6.6 Duty to perform and duty to mitigate**

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

## **6.7 Available Relief for a Force Majeure Event**

Subject to this Article 6,

6.7.1 No Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

6.7.2 Each Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.

6.7.3 For so long as the DIC is claiming relief due to any Force Majeure Event under this Agreement, the Nodal Agency may, from time to time on one

(1) day notice, inspect the DICs and the DIC shall provide the Nodal Agency's personnel with access to carry out such inspections, subject to the Nodal Agency's personnel complying with all reasonable safety precautions and standard.

## **6.8 Relief for Unforeseen Event**

6.8.1 Upon occurrence of an Unforeseen Event, the Party affected by the Unforeseen Event shall have the right to refer the same to the Commission along with documentary evidence of the occurrence of the Unforeseen Event.

6.8.2 The Commission shall decide whether:

- a. An Unforeseen Event has occurred;
- b. The effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- c. The Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part.

6.8.3 If the Commission is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and if necessary revise the Tariff.

## **7 EVENTS OF DEFAULT AND TERMINATION**

### **7.1 Event of Default of a DIC**

7.1.1 The occurrence and continuation of any of the following events shall constitute a DIC event of default, unless any such DIC event of default occurs as a result of Force Majeure Event.

7.1.2 A DIC fails to comply with the prevailing regulations including the Indian Electricity Grid Code or is in material breach of this Agreement and such material breach is not rectified by the said DIC within thirty (30) days of receipt of notice in this regard from the Nodal Agency;

7.1.3 Any of the Representation and Warranties made by the DIC in Article 10 of this Agreement is found to be untrue and/or inaccurate; or

7.1.4 If,

- a) A DIC becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days; or
- b) Any winding up or bankruptcy or insolvency order is passed against a DIC;  
or
- c) A DIC goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a DIC Event of Default where such dissolution or liquidation of such DIC is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement, similar to such DIC and expressly assumes all obligations of such DIC under this Agreement and is in a position to perform them.

## **7.2 Cessation of DIC being Party to this Agreement**

- 7.2.1 Upon the occurrence and continuance of a DIC Event of Default under Article 7.1, the Nodal Agency may serve notice on the concerned DIC (“Nodal Agency’s Preliminary Termination Notice”), with a copy to the CERC, which shall specify in reasonable detail, the circumstances giving rise to such Notice.
- 7.2.2 Following the issue of such notice, as mentioned in Article 7.2.1, the Consultation Period shall apply and Nodal Agency and the concerned DIC shall discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 7.2.3 During the Consultation Period, the DIC shall, save as otherwise provided in this Agreement, continue to perform its obligations under this Agreement.
- 7.2.4 Following the expiry of the Consultation Period, unless the Nodal Agency and the concerned DIC shall have otherwise agreed to the contrary or the circumstances giving rise to such notice as mentioned in Article 7.2.1 shall have ceased to exist or shall have been remedied, the concerned DIC shall cease to be a Party to this Agreement and the Nodal Agency shall issue a written notice (“Termination Notice”) of thirty (30) days to this effect with a copy to the Commission and Implementing Agency. The concerned DIC shall cease to be a Party to this Agreement on the date of expiry of the Termination Notice.

## **8 GOVERNING LAW AND DISPUTE RESOLUTION MECHANISM**

### **8.1 Governing Law:**

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

## **9 ASSIGNMENT AND CHARGES**

### **9.1 Assignments:**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except as provided in Article 9.2

### **9.2 Permitted Charges**

Neither the DICs nor the Nodal Agency can relinquish or transfer its rights and obligations, without prior approval of the Commission or Appropriate Authority.

## **10 REPRESENTATION AND WARRANTIES**

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

10.2 It has all requisite powers and has been duly authorized to execute and consummate this Agreement;

10.3 This Agreement is enforceable against it, in accordance with its terms;

10.4 The consummation of the transactions contemplated by this Agreement on the part of the DICs will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the DIC is a Party or to which the DIC is bound which violation, default or power has not been waived;

10.5 The DIC is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the DIC;

10.6 There are no actions, suits, claims, proceedings or investigations pending or, to the best of the DIC's knowledge, threatened in writing against the

DIC at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

10.7 The DIC makes all the representations and warranties above to be valid as on the Effective Date of this Agreement.

## **11 LANGUAGE**

### **11.1 Language:**

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

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

**12 SEVERABILITY**

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

**13 NO CONSEQUENTIAL OR INDIRECT LOSSES**

13.1 The liability of the DIC shall be limited to that explicitly provided in this Agreement.

13.2 Provided that, notwithstanding anything contained in this Agreement, under no event shall the Nodal Agency or the DIC claim from one another any indirect or consequential losses or damages.

**14 INDEMNIFICATION BY THE DIC'S****14.1 Indemnification**

The DICs agree to indemnify and hold the Nodal Agency harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind including any tax liability, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Losses"), suffered, incurred or paid, directly, as a result of, in connection with or arising out of exercise it's obligations pursuant to and in accordance with this Agreement along with the bidding guidelines.

**14.2 Indemnity to Survive Termination**

The obligation of the DICs under Clause 13 shall survive the termination of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORISED REPRESENTATIVE AS OF THE DATE AND PLACE AS HEREIN AFTER APPEARING

WITNESS:

Signature:  
Name:  
Designation:  
Address:

For and on behalf of  
[Insert Name of Nodal  
Agency] at \_\_\_\_[Place]  
on \_\_\_\_\_[Date]

Signature:  
Name:  
Designation:  
Address:

Signature:  
Name:  
Designation:  
Address:

For and on behalf of  
[Insert Name of DIC]  
at \_\_\_\_\_ [Place]  
on \_\_\_\_\_ [Date]

Signature:  
Name:  
Designation:  
Address:

**Schedule 1**

1. Parties to the Agreement [to be amended from time to time]

1.1 Nodal Agency: .....[Insert the name of Nodal Agency].

1.2 List of Designated ISTS Customers

<b>S. No.</b>	<b>Name</b>	<b>Category (ISGS/STU/SEB/Bulk Consumers)</b>	<b>Address of Registered Office</b>	<b>Telephone/Mobile No./e-mail/FAX</b>

Note: Any addition or deletion in this list after the signing of this Agreement shall be duly notified to the Parties to this Agreement

**Schedule 2**

**SUPPLEMENTARY AGREEMENT**

BETWEEN

.....[Insert Name of Nodal Agency]

AND

[Insert name of the new Designated ISTS Customer]

**THIS SUPPLEMENTARY AGREEMENT entered** into on .....  
[Insert day] of .....[Insert month] in .....  
[Insert year] by and between the .....[Insert Name of Nodal Agency]  
(hereinafter referred to as “Nodal Agency”, which expression shall unless  
repugnant to the context or meaning thereof include its successors, and  
permitted assigns) as Party of the first part,

**AND**

..... [Insert name of the new Designated ISTS Customer] having its  
registered office at..... [Insert address of the new Designated ISTS  
Customer] (which expression shall unless repugnant to the context or meaning  
thereof include its successors, and permitted assigns) as Party of the second  
part.

**WHEREAS:**

- A. Nodal Agency has executed the Authorization Agreement with all the Designated ISTS Customers, as listed out in Schedule 1 of this Agreement.
- B. The new Designated ISTS Customer has been granted long term access or medium term open access to the ISTS by the Central Electricity Regulatory Commission (CERC).

**NOW THEREFORE THIS AGREEMENT WITNESSETH as under:**

The new Designated ISTS Customer and its long term access or medium term open access details are as described below:

Name of the new Designated ISTS Customer	Details of Long Term Access/ Medium Tem Open Access	Scheduled date/period of Long Term Access/ Medium Term Open Access

- 2) The new Designated ISTS Customer agrees to fulfill the terms and conditions laid down in the Authorisation Agreement in accordance with the terms of the same and the provisions of this Supplementary Agreement.
- 3) All terms and conditions of the Authorisation Agreement between the Nodal Agency and the Designated ISTS Customers (as listed out in Schedule 1 of the Authorisation Agreement) shall apply, *mutatis mutandis* without any change, to the new Designated ISTS Customer.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THESE PRESENTS THROUGH THEIR AUTHORISED REPRESENTATIVES**

**WITNESS:**

1. Signature: For & on behalf of Nodal Agency

Name: .....

Designation: .....

2. Signature: For and on behalf of new

Name: ..... Designated ISTS Customer)

Designation: .....