

STANDARD
IMPLEMENTATION AGREEMENT

FOR

DEVELOPMENT AND OPERATION OF INTER-STATE TRANSMISSION SYSTEM

FOR TRANSMISSION OF ELECTRICITY THROUGH TARIFF BASED
COMPETITIVE BIDDING

BETWEEN THE

.....

[Insert Name of Transmission Services Provider]

AND

[Insert Name of Upstream/Downstream Transmission System Developer or
Associated Generating Station Developer]

.....2017

Draft Version 1.1 | May 2017

IMPLEMENTATION AGREEMENT

This IMPLEMENTATION AGREEMENT (hereinafter referred to as “IA” or “Agreement” or “the Agreement” or “this Agreement”) is made on the[Insert Day] of[Insert Month] Two Thousand and[Insert Year] at [Insert Location].

Between:

.....[Insert Special Purpose Vehicle Name executing the Project (SPV)], a company incorporated under the Companies Act, 2013, having its registered office at[Insert Address], (hereinafter referred to as “TSP” or “SPV” which expression shall unless repugnant to the context or meaning thereof mean and include its successors and permitted assigns) as Party of the one part;

AND

.....[Insert Name of the Transmission System developer developing Upstream or Downstream Transmission Project /Associated Generating Station developer as applicable] a company incorporated under the Companies Act ____ [Insert relevant Act], having its registered office at[Insert Address] (hereinafter referred to as “Developer” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as Party of the other part;

WHEREAS,

- A. The Ministry of Power, Government of India has notified the revised Standard Bidding Guidelines and as per the revised Bidding Guidelines an Implementation Agreement is to be executed by the SPV executing the Project and the Developer developing upstream or downstream transmission project and/or generating station associated with the Project.
- B. In accordance with the Bidding Guidelines, the Bid Process Coordinator (hereinafter referred to as BPC) had initiated a competitive e-reverse bidding process through issue of RFQ and RFP for selecting a Successful Bidder to build, own, operate and transfer the Project comprising of the Elements mentioned in Schedule 1.
- C. The BPC has incorporated the SPV to implement, operate and maintain the Transmission System/Project as per the license issued by CERC.
- D. The Implementation Agreement covers various modalities in case of delay in achieving COD either by the SPV or by the Developer. Further, the IA shall also include provisions for realignment of SCOD, and sharing of impact of delay in achieving SCOD by the Parties executing the IA.
- E. The terms and conditions stipulated in the Transmission License issued by the Commission in the name of SPV shall be applicable to this Agreement and the TSP agrees to comply with these terms and conditions.
- F. Further, the Successful Bidder of the Project shall execute Implementation and Service Agreement (ISA) with the Nodal Agency as per the Bidding Guidelines.
- G. In case of inconsistency between the License terms & conditions, conditions of ISA, and the conditions of this Agreement, the conditions stipulated in the License followed by ISA and then this Agreement in that order shall prevail.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SETFORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

SECTION 1

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.

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;

“Adjudicator” shall mean as defined under Article 11.3 of this Agreement;

“Affiliate” shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with

a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **“control”** means ownership by one entity of at least twenty six percent (26%) of the voting rights of the other company;

“Annual Fixed Charges” shall mean the yearly fixed charges of a generating station as approved under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act. ;

“Annual Transmission Charges” shall mean yearly transmission charges of a Transmission System as approved under Section 62 of the Act or adopted by the Appropriate Commission under Section 63 of the Act.;

“Appropriate Commission” shall mean either the State Electricity Regulatory Commission or the Central Electricity Regulatory Commission under whose jurisdiction the Project falls.

“Arbitration Tribunal” shall mean the tribunal constituted under Article 11.4.4 of this Agreement;

“Associated Generating Station” shall mean generating station for which the Project has been identified by Ministry of Power, Government of India to be implemented for evacuation of power from such generating station.

“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 13th April 2006 under Section – 63 of the Electricity Act and as amended from time to time;

“Bid Process Coordinator” or **“BPC”** shall mean a person or its authorized representative as notified by the Government of India, responsible for carrying out the process for selection of Transmission Service Provider;

“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 TSP is located;

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

“Commercial Operation Date” or **“COD”** shall mean the date on which the Project has been declared under commercial operation;

Provided that the COD shall not be a date prior to the Scheduled COD as per Schedule 1, unless mutually agreed to by all Party(ies).

“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 a SPV’s Preliminary Notice or a Developer’s Preliminary Notice, as provided in Article 8.3.1 and 8.4.1 of this Agreement, for consultation between the Parties, to mitigate the consequence of the relevant event having regard to all the circumstances;

“Consents, Clearances and Permits” shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any Indian Governmental Instrumentality for the development, execution and operation of Project including without any limitation for the construction, ownership, operation and maintenance of the Transmission Lines and/or sub-stations or any generating station;

“Construction Period” shall mean the period from (and including) the Effective Date of the Implementation and 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;

“Contractors” shall mean the engineering, procurement, construction, operation & maintenance contractors, surveyors, advisors, consultants, designers, suppliers to the SPV or Developer and each of their respective sub-contractors (and each of their respective successors and permitted assigns) in their respective capacities as such;

“Central Transmission Utility” or “CTU” shall mean any government company, which the central government may notify under sub-section (1) of Section 38 of the Electricity Act 2003;

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

“Developer’s Preliminary Notice” shall mean a notice issued by the Developer pursuant to the provisions of Article 8.4.1 of this Agreement;

“Dispute” shall mean any dispute or difference of any kind between the SPV and the Developer, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement as provided in Article 11.2.1;

“Downstream System” shall mean the immediately following transmission system(s) (being developed by a person) to the Project being developed by SPV and as identified by CEA.

“Effective Date” for the purposes of this Agreement, shall have the same meaning as per Article 2.1 of this Agreement;

“Element” or “Phase” of Transmission System shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) or each bay of Sub-station or switching station or HVDC terminal or inverter station of the Project, including ICTs, Reactors, SVC, FSC, etc. forming part of the ISTS, which will be owned, operated and maintained by the concerned ISTS Licensee, and which has a separate Scheduled COD as per Schedule 1 of this Agreement and has a separate percentage for recovery of Transmission Charges on achieving COD;

“Event of Default” shall mean the events as defined in Article 8 of this Agreement;

“Expiry Date” shall be the date as per Schedule 1 of this Agreement;

“Financing Agreements” shall mean the agreements pursuant to which the SPV or Developer is to finance the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time;

“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;

“GOI” shall mean Government of India;

“Grid Code” / “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;

“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;

“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, SPV, TSP and the Designated ISTS Customers;

“Interconnection Facilities” shall mean the facilities as may be set up for transmission of electricity through the use of the Project, on either one or

both side of generating station's / CTU's / STU's / ISTS Licensee's / Designated ISTS Customer's substations (as the case may be) which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;

"ISTS Licensee" shall be the TSP or Developer as the case may be under this Agreement, consequent to having been awarded a Transmission License by the CERC and shall be referred to as the TSP or Developer or the ISTS Licensee, as the context may require in this Agreement;

"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;

"Lenders" means the banks, financial institutions, multilateral funding agencies, non banking financial companies registered with the Reserve Bank of India (RBI), insurance companies registered with the Insurance Regulatory & Development Authority (IRDA), pension funds regulated by the Pension Fund Regulatory & Development Authority (PFRDA), mutual funds registered with Securities & Exchange Board of India (SEBI), etc., including their successors and assigns, who have agreed on or before COD of the Project to provide the SPV or the Developer with the debt financing described in the capital structure schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned;

Provided that, such assignment or transfer shall not relieve any Party of its obligations to the other Party under this Agreement in any manner and shall also does not lead to an increase in the liability of either Party;

"Lenders' Representative" shall mean the person notified by the Lender(s) in writing as being the representative of the Lender(s) or the Security Trustee and such person as may from time to time be replaced by

the Lender(s) pursuant to the Financing Agreements by written notice to the TSP;

“Liquidated Damages” shall mean as defined under Article 4 of this Agreement;

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

“Monthly Fixed Charges” for any unit or generating station, after COD of the unit or station, shall mean the amount of Annual Fixed Charges for the relevant Contract Year divided by number of months of the year for which such tariff has been determined;

“Monthly Transmission Charges” for any Element(s) or of the Project shall mean the amount of Annual Transmission Charges for the relevant Contract Year divided by number of months of the year for which such tariff pertains to;

“Nodal Agency” means**[Insert name of the respective Bid Process Coordinator]** notified by the Central Government to act as Nodal Agency on behalf of the Designated ISTS Customers (DICs) of the inter State transmission system and has executed the Implementation and Service Agreement (ISA). The role of**[Insert name of the respective Bid Process Coordinator]** acting as a Nodal Agency shall transferred to the CTU when it is separated from PGCIL.

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

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

(a) rights over the Site for substations, ROW for transmission lines;

(b) tangible assets such as civil works and equipment, plant and machinery including foundations, embankments, pavements, electrical systems,

communication systems, relief centres, administrative offices and Sub-stations;

(c) project facilities situated on the Site;

(d) all rights of the Parties 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 Transmission System or Generating Station in case the Developer is setting up a Generating Station;”

“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;

“RLDC” shall mean the relevant Regional Load Dispatch Centre as defined in the Electricity Act, 2003, in the region(s) in which the Project is located;

“Scheduled COD” or “SCOD” in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 1 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 1 as against such Project, or such date as may be mutually agreed among the Parties as per this Agreement;

“Selected Bid” shall mean the Non-Financial Bid and the Final Offer of the Selected Bidder submitted during e-reverse bidding;

“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;

“Site” in relation to a substation, switching station or HVDC terminal or inverter station, shall mean the land and other places upon which such station / terminal is to be established;

“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;

“Successful Bidder” or **“Selected Bidder”** shall mean the Bidder selected pursuant to the RFP and who has acquired one hundred percent (100%) equity shares of [Insert name of SPV], along with all its related assets and liabilities, which will be responsible as the TSP to establish the Project on build, own, operate and transfer basis as per the terms of the ISA and other RFP Project Documents;

“SPV’s Preliminary Notice” shall mean a notice issued by the holding company of SPV pursuant to the provisions of Article 8.3.1 of this Agreement;

“Term of Agreement” for the purposes of this Agreement shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

“Transmission Charges” shall mean the Final Offer of the Selected Bidder during the e-reverse bidding and adopted by the Commission, payable to the SPV by the DICs, as per the provisions of ISA.

“Transmission License” shall mean the license granted by the Commission in terms of the relevant regulations for grant of such license issued under the Electricity Act;

“Transmission Lines” shall mean all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works;

“Transmission System/Project” shall mean [Insert Names of the Projects along with the SPV and Developer], as detailed in Schedule 1 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 System” shall mean a line with associated sub-stations or a group of lines inter-connected together along with associated sub-stations and the term includes equipment associated with transmission lines and sub-stations;

“Upstream System” shall mean the immediately preceding transmission system(s) (being developed by a person) to the Project being developed by SPV and as identified by CEA.

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;

“Rupee”, **“Rupees”** and **“Rs.”** shall denote lawful currency of India;

“crore” shall mean a reference to ten million (10,000,000) and a **“lakh”** shall mean a reference to one tenth of a million (1,00,000);

"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 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days.

1.2.8 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement.

2 EFFECTIVENESS AND TERM OF THE AGREEMENT

2.1 Effective Date

2.1.1 This Agreement shall be effective from the date of Transfer of SPV to the Selected Bidder.

2.2 Term of the Agreement

This Agreement shall continue to be effective, in relation to each Phase, until the Expiry Date as per Article 2.3, when it shall automatically terminate.

2.3 Expiry Date

The Agreement shall expire once the Transmission System/Project of SPV and Developer have achieved COD as per Schedule 1 of this Agreement.

2.4 Survival

2.4.1 The expiry of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement including but not limited to those specifically provided in this Agreement nor shall it affect any continuing obligations which this Agreement provides either expressly or by necessary implication, which are to survive its expiry.

3 DEVELOPMENT AND CONSTRUCTION OF PROJECT BY THE PARTIES

3.1 SPV's obligations in development and construction of the Transmission Project

3.1.1 Subject to the terms and conditions of this Agreement, SPV at its own cost and expense shall observe, comply with, perform, undertake and be responsible;

- (a) To comply with the provisions of this Agreement
- (b) To arrange for funds and build, own, operate and commission the Project as per the detailed scope of work set out in Schedule 1 of this Agreement and achieve COD not later than SCOD.
- (c) To procure and maintain in full force and effect the Consents, Clearances and Permits required by it pursuant to this Agreement and in accordance with Law.
- (d) To submit quarterly status report towards planned and actual work execution in the Agreed Form to CEA and Nodal Agency.
- (e) To adhere to the safety standards prescribed by various authorities.

3.2 Developer's obligations in development and construction of its project

3.2.1 Subject to the terms and conditions of this Agreement, Developer at its own cost and expense shall observe, comply with, perform, undertake and be responsible;

- (a) To comply with the provisions of this Agreement
- (b) To arrange for funds and build, own, operate and commission the project as per the detailed scope of work and achieve COD not later than SCOD.
- (c) To procure and maintain in full force and effect the Consents, Clearances and Permits required by it pursuant to this Agreement and in accordance with Law.
- (d) To submit quarterly status report towards actual work execution in the Agreed Form to CEA and Nodal Agency.
- (e) To adhere to the Safety Standards prescribed by various authorities.

3.3 Commencement and Completion Time

- 3.3.1 The Parties shall take all necessary steps to commence work on their respective projects and proceed with their implementation in order to achieve COD by SCOD as per Schedule 1 of this Agreement.
- 3.3.2 The Parties may also mutually agree for early commissioning of their projects provided that the SPV is allowed early commissioning of the Project by competent authority.
- 3.3.3 Under no circumstances shall the SCOD be postponed unless expressly provided for under Article 3.4 of this Agreement.

3.4 Extension of Time

- 3.4.1 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 6, the Scheduled COD shall be extended, by a 'day for day' basis, for a maximum period of one hundred and eighty (180) days.
- 3.4.2 If the Parties have not agreed, within thirty (30) days after the Affected Party's performance has ceased to be affected by the relevant circumstance, on how long the Scheduled COD should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 11.

4 Liquidated Damages

4.1 Liquidated Damages Payable due to delay on account of SPV

4.1.1 If SPV fails to achieve COD of the Project or any of the Phase of the Project by SCOD and the Developer has achieved COD or is ready to achieve COD but is unable to do so due to SPV's failure to achieve its COD by SCOD for the reasons other than Force Majeure, then the SPV subject to Article 4.1.2 shall pay to the Developer, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project of the SPV [in case where no Elements have been defined, on the Project as a whole] / Project, for each day of delay as Liquidated Damages for such delay and not as penalty, without prejudice to any rights of the Nodal Agency under the ISA.

4.1.2 In case the SPV has executed IA with only one Developer, the SPV shall pay the Liquidated Damages collected as per Article 4.1.1 as per the following principles;

(a) In case the Developer is implementing transmission project under TBCB route and has achieved COD or is ready to achieve COD but is unable to do so due to SPV's failure to achieve COD, the Liquidated Damages shall be payable to the Developer equivalent to

- Minimum of the 3.33% of the Monthly Transmission Charge applicable for the Element of the Project that the Developer is implementing or the Element of the Project that SPV is implementing [in case where no Elements have been defined, to be on the Project as a whole] / Project, for each day of delay as liquidated damages. Such liquidated damages shall be paid for only such Element(s) of the Project that has been affected due to SPV's failure to achieve COD within the timelines specified.

Provided that in case of various elements forming part of the Project, and not all Elements have been affected due to delay, the SPV shall pro-rata allocate the Liquidated Damages on the these element(s) of the Project based on the percentage of quoted transmission charges provided at the time of bidding.

- 4.1.3 In case the Developer is implementing transmission project other than TBCB route, the SPV shall pay on the Liquidated Damages to the Developer for such affected Elements of the Project that have been affected due to SPV's failure to achieve COD in the manner and amount as computed under Article 4.1.2(a) upon such impact being approved by Appropriate Commission.
- 4.1.4 In case the SPV's Project is associated with evacuation of power from associated generating station being set up under TBCB Route and SPV fails to achieve COD by SCOD and the generating station has achieved COD or is unable to achieve COD due to SPV's failure to achieve COD, and the SPV is unable to make alternative arrangements for evacuation of such power, the SPV shall pay the Liquidated Damages to the Developer which would be minimum of the following;
- (a) 3.33% of monthly fixed charges applicable for the generating station, for each day of delay as Liquidated Damages for such delay and not as penalty; or
 - (b) The amount arrived and payable on the basis of Article 4.1.1 of this Agreement.

4.1.5 In case the SPV's Project is associated with evacuation of power from associated generating station being set up other than TBCB Route and SPV fails to achieve COD by SCOD and the generating unit/station has achieved COD or is unable to achieve COD due to SPV's failure to achieve COD, and the SPV is unable to make alternative arrangements for evacuation of such power, the Nodal Agency shall pay the Liquidated Damages collected from SPV to the Developer which would be minimum of the following;

- (a) 3.33% of monthly fixed charges of the generating unit/station as approved by the Appropriate Commission, for each day to the generating station as Liquidated Damages; or
- (b) The amount arrived and payable on the basis of Article 4.1.1 of this Agreement.

4.1.6 The SPV's maximum liability under this Article 4.1 shall be limited to the amount of Liquidated Damages calculated in accordance with Article 4.1.1 and 4.1.2 for and up to six (6) months of delay for the Element or the Project.

4.1.7 In case two or more Implementation Agreement are executed by the SPV, and due to failure of SPV to achieve COD by SCOD, two or more Projects who have either achieved COD or are unable to achieve COD due to SPV failure to achieve COD, the amount payable by SPV as per Article 4.1.1 shall be allocated among various affected projects as per following Principles;

- (a) The Liquidated Damages shall be pro-rata allocated among various projects on the basis of their Annual Transmission Charges for the affected Element/Project for the first year in case of transmission projects and Annual Fixed Charge for the first year corresponding to generating unit/station affected in case of associated generating stations.
- (b) The Transmission Charges for Projects under TBCB route shall be equal to the total Transmission charges as per the bid and as adopted by the Commission for the first year. For Projects being developed other than through the TBCB route, the transmission charges shall be equal to as approved by the Appropriate Commission for the First Year.
- (c) In case of Associated Generating Station developed under TBCB route the Annual Fixed Charges as per bid and as adopted by the Appropriate

Commission for the first year shall be considered. In case the generating station is being developed other than through the TBCB route, the Annual Fixed Charges as determined by the Appropriate Commission for the first year shall be considered.

Provided that in case the SPV arranges for alternative option for evacuation of power from Associated Generating Station, Liquidated Damages shall not be payable to such Developer and the same shall not be considered for computing pro-rata Liquidated Damages to other Developers.

4.2 Liquidated Damages Payable due to delay on account of Developer

- 4.2.1 In case the SPV has executed IA with a Developer developing transmission project and the Developer has failed to achieve COD by SCOD due to which SPV is unable to achieve COD or has achieved COD by some alternate means, the Developer shall pay the SPV Liquidated Damages for each day of delay in the manner and amount as per Article 4.1.1 in case the Developer is developing Transmission System/Project other than TBCB route and as per Article 4.1.2 in case the Developer is developing Transmission System/Project under TBCB route.
- 4.2.2 In case the SPV has executed IA with a Developer developing generating station and the SPV is unable to achieve COD due to failure on the part of Developer to achieve COD by SCOD, or has achieved COD due to alternative means, the Developer shall pay the SPV Liquidated Damages for each day of delay in the manner and amount as per Article 4.1.1 of this Agreement.
- 4.2.3 In case the SPV is unable to achieve COD due to failure on the part of two or more Developers with whom SPV has executed the IA, the SPV shall collect and Developer shall pay Liquidated Damages in the manner as per Article 4.1.1 and 4.1.2 in proportion to the first year of Annual Transmission Charges in case the Developer is involved in development of transmission project and Annual Fixed Charges in case the Developer is developing generating station as the case may be.
- 4.2.4 The maximum Liquidated Damages payable except in case of Article 4.2.2 to the SPV shall not exceed the amount as determined in accordance with Article 4.1.6 of this Agreement.

5 Commissioning and Commercial Operation of the Project

5.1 Commissioning of the Project

5.1.1 Either Party shall give the other Party at least sixty (60) days advance written notice of the date on which it intends to commission a Phase of the Project which shall not be a date earlier than the SCOD agreed by the Parties unless the same has been mutually agreed or allowed under this Agreement.

5.1.2 Either Party shall notify the other Party as soon as it believes that any Phase of the Project has been completed and ready to be connected with the Interconnection Facilities in accordance with this Agreement.

5.2 Commercial Operation

5.2.1 A Phase of the Project shall be declared Commissioned and the Commercial Operation Date (COD) shall be achieved upon fulfilment of following conditions;

(a) In case of Transmission Project being developed under TBCB mode the conditions for COD as laid out in the ISA have been fulfilled.

(b) In case of Transmission Project being developed under any other mode except for TBCB the conditions for COD as laid out by the State/Central Commission have been fulfilled.

(c) In case of Generating Station, on acceptance of COD by CEA.

6 Force Majeure

An “Affected Party” means any of the Parties to this Agreement whose performance has been adversely affected by an event of Force Majeure.

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

6.1 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;

6.2 Non-Natural Force Majeure Events:

6.2.1 Direct Non–Natural Force Majeure Events

- (a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Affected Party; or
- (b) 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 this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or
- (c) Any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project,

provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

6.2.2 Indirect Non - Natural Force Majeure Events

- (a) Act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- (b) Radioactive 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
- (c) Industry-wide strikes and labour disturbances, having a nationwide impact in India.

6.3 Force Majeure Exclusions

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

- (a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;
- (b) Delay in the performance of any Contractors or their agents;
- (c) Non-performance resulting from normal wear and tear typically experienced in such projects;
- (d) Strikes or labour disturbance at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and
- (f) Non-performance caused by, or connected with, the Affected Party's:
 - (i) negligent or intentional acts, errors or omissions;

- (ii) failure to comply with an Indian Law; or
- (iii) breach of, or default under this Agreement or any Project Documents.

6.4 Notification of Force Majeure Event

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

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

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

6.5 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.

6.6 Available Relief for a Force Majeure Event

Subject to this Article 6,

- (a) No Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) Each Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under Articles 3.1 and 3.2, of this Agreement.

For so long as the Affected Party is claiming relief due to any Force Majeure Event under this Agreement, the other Party may, from time to time on one (1) day notice, inspect the Project and the SPV shall provide the other Party's personnel including its representatives with access to the Project to carry out such inspections, subject to the other Party's personnel complying with all reasonable safety precautions and standard.

6.7 Remedy to Continuation of Force Majeure

- 6.7.1 In case Parties could not reach an agreement pursuant to Article 3.4 of this Agreement and the Force Majeure Event or its effects continue to be present, either Party may approach CERC for further course of action as per the Electricity Act, 2003.
- 6.7.2 Notwithstanding any other provision of this Agreement, an SPV Preliminary Notice, Developer Preliminary Notice, or a notice under Article 13.5 shall be deemed to have been validly served on the service of any such notice.

7 Representation and Warranties

7.1 Representations and Warranties of the SPV

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

- a) It has all requisite power to enter into and to execute and consummate this Agreement;
- b) This Agreement is enforceable against it in accordance with its terms;
- c) The consummation of the transactions contemplated by this Agreement on the part of SPV 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 SPV is a Party or to which SPV is bound, which violation, default or power has not been waived;
- d) SPV is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against SPV;
- e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of SPVs knowledge, threatened in writing against SPV 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 execute the Transmission System/ Project or to comply with its obligations under this Agreement.
- f) The evaluation report(s), specifications, drawings and other technical documents as provided to the Developer pursuant to this Agreement, are in accordance with Prudent Utility Practices.

7.2 Representations and Warranties of the Developer

The Developer hereby represents and warrants to and agrees with SPV as follows and acknowledges and confirms that SPV is relying on such representations and warranties in connections with the-transactions described in this Agreement;

- (a) It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of the Developer 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 Developer is a Party or to which the Developer is bound which violation, default or power has not been waived;
- (d) The Developer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Developer;
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Developer's knowledge, threatened in writing against the Developer 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 agency or authority, which materially adversely affect its ability to execute the project or to comply with its obligations under this Agreement.

7.2.1 Both Parties agree and make all the representations and warranties above to be valid as on the Effective Date of this Agreement.

8 Events of Default

8.1 Developer's Events of Default

The occurrence and continuation of any of the following events shall constitute a Developer's Event of default, unless any such Event of Default occurs as a result of a breach by SPV of its obligation under this Agreement, a SPV's Event of Default, or a Force Majeure Event;

- (a) After having taken up the construction of the Transmission System/Project, the abandonment by the Developer or the Developer's Contractors of the construction of the Transmission System/Project provided that the Developer and the Developer's contractors shall not be deemed to have abandoned construction of the Transmission System/Project if and for so long as it is using its diligent efforts to restart such construction;
- (b) If the Developer:
 - (i) assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights in contravention of the provision of this Agreement; or
 - (ii) transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement;
- (c) The transfer, pursuant to law, of either:
 - (i) the rights and/or obligations of the Developer under, this Agreement; or
 - (ii) all or a substantial portion of the assets or undertakings of the Developer, except where such transfer ;
 - (1) does not affect the ability of the transferee to perform, and such transferee has the financial and technical capability to perform, its obligations under this Agreement;
 - (2) is to a transferee who assumes such obligations under the Transmission System / Project and this Agreement remains effective with respect to the transferee.
- (d) The dissolution, pursuant to law, of the Developer except for the purpose of a merger, consolidation or re-organization that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;

- (e) Revocation of Transmission License of Developer;
- (f) In case the Developer is setting up a transmission system under TBCB mode, SPV shall have the Right to Terminate this Agreement in case the Nodal Agency has terminated the ISA executed with the Developer or the Commission has rejected/revoked the Transmission License of the Developer.
- (g) In case the Developer is setting up a transmission system under any other mode except TBCB, SPV shall have the Right to Terminate this Agreement in case the approval to execute such project has been withdrawn by the approving authority.
- (h) In case the Developer is setting up a generating station, SPV shall have the Right to Terminate this Agreement in case the approval for the project has been withdrawn by the competent authority.

8.2 SPV's Events of Default

The occurrence and continuation of any of the following events shall constitute SPV's Event of Default, unless any such SPV's Event of Default occurs as a result of breach by the Developer of its obligations under this Agreement, a Developer's Event of Default, or a Force Majeure Event;

- (a) After having taken up the construction of the Transmission System/Project, the abandonment by the SPV or the SPV's Contractors of the construction of the Transmission System/Project provided that the SPV and the SPV's contractors shall not be deemed to have abandoned construction of the Transmission System/Project if and for so long as it is using its diligent efforts to restart such construction;
- (b) The dissolution, pursuant to Law, of SPV of all or a substantial portion of the assets, unless such dissolution is in connection with the reorganization or re-structuring of the power sector and provided that (i) SPV's successor under this Agreement expressly assumes the obligations of SPV under this Agreement; or (ii) SPV's successor is either an owner or operator of a substantial portion of the transmission system for India; or (iii) SPV's

successor is otherwise capable of performing the obligations of SPV under this Agreement;

- (c) The transfer pursuant to Law of either the rights and/or obligations of SPV hereunder or all or a substantial of the assets or undertakings of SPV, provided such transferee agrees to be bound by terms and conditions of this Agreement.
- (d) Revocation of Transmission License of the SPV;
- (e) The Nodal Agency has terminated the ISA executed with the TSP or the Commission has rejected/revoked the Transmission License of the Developer.
- (f) If SPV transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement.

8.3 Procedure upon Developer Events of Default

8.3.1 Upon the occurrence of a Developer's Event of Default, SPV may serve notice on Developer of its intention to terminate this Agreement (an "SPV Preliminary Notice") which notice shall specify in reasonable detail, the circumstances giving rise to such SPV Preliminary Notice.

8.3.2 Following the giving of an SPV Preliminary Notice, the Consultation Period shall apply during which the Parties shall consult for a period of up to two (2) months (or such, longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances.

Provided further that during such period, the Developer shall not remove any equipment or any part of the Transmission System/ Project, without the prior written consent of SPV.

8.3.3 During any Notice Period, both Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

8.3.4 Following the expiry of the Notice Period and unless the Parties shall have otherwise agreed or the circumstances giving rise to SPV Preliminary Notice shall have ceased to exist or shall have been remedied, SPV may approach CERC for further course of action as per the Electricity Act, 2003.

8.4 Procedure upon SPV Events of Default

8.4.1 Upon the occurrence of an SPV's Event of default, the Developer may serve notice on SPV of its intention to terminate this Agreement (a "Developer Preliminary Notice") which notice shall specify in reasonable detail the circumstance giving rise to such Developer Preliminary Notice.

8.4.2 Following the giving of a Developer Preliminary Notice, the Consultation Period shall apply during which the Parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances,

8.4.3 During any Notice Period, both Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

8.4.4 Following the expiry of the Notice Period and unless the Parties shall have otherwise agreed or the circumstances giving rise to the Developer Preliminary Notice shall have ceased to exist or shall have been remedied, Developer may approach CERC for further course of action as per the Electricity Act, 2003.

9 Liability and Indemnification

9.1 Limitation of Liability

- 9.1.1 Notwithstanding any other term or provision of this Agreement, the aggregate liability which each of the Parties shall have for all claims made under this Article shall not exceed the limit fixed as per the terms of this Agreement.
- 9.1.2 Except as expressly provided in this Agreement, neither the SPV nor the Developer nor their respective officers, directors, agents, employees or Affiliates (including, officers, directors, agents or employees of such Affiliates), shall be liable or responsible to the other Party or its Affiliates including its officers, directors, agents, employees, successors, insurers or permitted assigns for incidental, indirect or consequential, punitive or exemplary damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of transmission capacity or equipment used therefor, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the SPV, the Developer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 9.1.3 The SPV shall have no recourse against any officer, director or shareholder of the Developer or any Affiliate of the Developer or any of its officers, directors or shareholders for such claims excluded under this Article. The Developer shall also have no recourse against any officer, director or shareholder of the SPV, or any Affiliate of the SPV or Nodal Agency or any of its officers, directors or shareholders for such claims excluded under this Article.

9.2 Indemnification by SPV

- 9.2.1 The SPV shall indemnify, defend and hold the Developer harmless against:
- (a) any and all third party claims, actions, suits or proceedings against the Developer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the SPV of any of its obligations under this Agreement, except to the extent that any

such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or non-fulfilment of statutory duty on the part of Developer; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Developer from third party claims arising by reason of:

(i) a breach by the SPV of any of its obligations under this Agreement, (provided that this Article shall not apply to such breaches by the SPV, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or non-fulfilment of statutory duty on the part of the Developer, or

(ii) any of the representations and warranties of the SPV under this Agreement being found to be inaccurate or untrue.

9.2.2 The Developer shall indemnify, defend and hold the SPV harmless against:

(a) any and all third party claims, actions, suits or proceedings against the SPV, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of any material breach by the Developer of any of their obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the SPV, its Contractors, servants or agents; and

(b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ("Indemnifiable Losses") actually suffered or incurred by the SPV from third party claims arising by reason of:

(c) any material breach by the Nodal Agency of any of its obligations under this Agreement (provided that, this Article 9 shall not apply to such breaches by the Developer, for which specific remedies have been provided for under this Agreement), except to the extent that any such Indemnifiable Losses have

arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the SPV, its Contractors, servants or agents or

(d) any of the representations and warranties of the Developer under this Agreement being found to be inaccurate or untrue.

9.3 Patent Indemnity

9.3.1 The Developer shall, subject to the SPV's compliance with Article 9.3.2, indemnify and hold harmless the SPV and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the SPV may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Project by the Developer.

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

9.3.2 The SPV, subject to the Developer's compliance with Article 9.3.1 shall indemnify and hold harmless the SPV and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Developer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Project by the Developer.

9.4 Monetary Limitation of Liability

9.4.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 9 for any indemnity claims made in a Contract Year only up to an amount as per Article 4.1.6 of this Agreement.

9.5 Procedure to Claim Indemnity

9.5.1 Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Articles 9.1 or 9.2 the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Articles 9.1 or 9.2 in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice.

Provided however that, if:

- (i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 9.5.3 below; and
- (ii) the claim amount is not required to be paid/deposited to such third party pending the resolution of the Dispute,
- (iii) the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

9.5.2 The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Articles 9.1 or 9.2 and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

9.6 Duty to Mitigate

The party entitled to the benefit of an indemnity under this Article 9 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

10 Assignments and Charges

10.1 Assignments

Both the Parties shall at all times have the right to assign its rights, benefits and obligations under this Agreement and also convey, transfer and vest all the shares together with all beneficial interest in the shares to any entity or entities as Government of India / Nodal Agency may from time to time direct as a part of re-organization or restructuring of electricity industry provided that such successor entities expressly assume the obligations of the Party under this Agreement and are either an owner or operator of a substantial portion of the transmission system of India and are capable of performing the obligations of the concerned Party under this Agreement.

Subject to Article 10.2, this Agreement shall not be assigned by the Developer other than by mutual agreement between the parties.

10.2 Permitted Charges

10.2.1 Notwithstanding Article 10.1, the Developer may create any encumbrance over all or part of the Security Package or the other assets of the Transmission System / Project in favour of the Lenders or the Lender's representative as security for:

- (a) Amounts payable under the Financing Agreements; and
- (b) Any other amounts agreed by the parties.

Provided that:

- (a) The Lenders or the Lender's Representative shall have entered into the Financing Agreements; and

- (b) Any encumbrance granted by the Developer in accordance with this Article 10.2.1 shall contain provision pursuant to which the Lenders or the Lender's Representative agrees unconditionally with the Developer to release such encumbrances upon payment by the Developer to the Lenders of all amounts due under the Financing Agreements.

10.2.2 Article 10.2.1 does not apply to

- (a) Liens arising by operation of Law (or by an agreement evidencing the same) in the ordinary course of the Developer carrying out the Transmission System/Project;
- (b) Pledges of goods, the related documents of title and / or other related documents arising or created in the ordinary course of the Developer carrying out the Transmission System/Project; and
- (c) Security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the Developer carrying out the Transmission System/Project.

11 Governing Law and Disputes

11.1 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.

11.2 Settlement of Disputes:

- 11.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement, including its existence or validity or whether during the execution of the Project or after its completion and whether prior to or after the abandonment of the Project or breach of the Agreement by giving a written notice to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

11.2.2 The other Party shall, within thirty (30) days of issue of notice issued under Article 11.2.1, furnish:

- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

11.2.3 Within thirty (30) days of issue of notice by the Party pursuant to Article 11.2.1, if the other Party does not furnish any counter claim or defense under Article 11.2.2, or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 11.2.3, the Dispute shall be referred for dispute resolution in accordance with Article 11.3 and 11.4 of this Agreement

11.3 Adjudicator

The following provisions shall apply between the Parties in respect of any difference or dispute, which has not been resolved by mutual consultation as provided in Article 11.2.3;

- (a) The Parties shall appoint by mutual agreement an Adjudicator, in relation to technical matters, the Adjudicator shall be an Independent Engineer and in relation to financial matters, the Adjudicator shall be a financial expert of repute in their respective fields;
- (b) The Parties shall finalise the points of such disputes or differences or the terms of reference before referring such disputes or differences to the Adjudicator;
- (c) The Adjudicator will resolve or settle such disputes or differences as per reasonable standards within sixty (60) days of such disputes or differences

being referred to him and convey his recommendations in writing to both the Parties;

- (d) The Adjudicator shall, subject to paragraph (e) below, determine which Party bears the costs (or a portion of the costs) of settling or determining such dispute or difference; and
- (e) If the Adjudicator settles or determines a dispute or differences in a manner entirely consistent with a Party's initial position on such dispute or difference, the Adjudicator shall determine that the other Party bears the costs of settling or determining the dispute or difference.

11.4 Arbitration

11.4.1 If either Party is dissatisfied with the Adjudicator's recommendation, or if the Adjudicator fails to give a recommendation within sixty (60) days of a dispute or difference being referred to him or if the Parties fail to appoint an Adjudicator or to finalise the terms of reference within sixty (60) days of the dispute or difference having first arisen, then either Party may within sixty (60) days of occurrence of either of the foregoing events give written notice to the other Party of its intention to refer the dispute or difference for arbitration, as herein provided.

11.4.2 Where neither Party has given notice of intention to commence arbitration of a dispute or difference within the period stated in Article 11.4.1, then the related recommendation of Adjudicator, if any, shall become final and binding.

11.4.3 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Article 11.4.1 shall be finally settled by Arbitration, which Arbitration award shall be final and binding upon the Parties. Arbitration may be commenced prior to or after completion of the Transmission System/Project.

11.4.4 Any dispute submitted by a Party to Arbitration shall be heard by an Arbitration Tribunal composed of three arbitrators, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended or re-enacted from time to time.

11.4.5 Notwithstanding anything provided in this Agreement to the contrary, any matter which is, by or under Electricity Act, 2003, directed to be determined by arbitration shall be determined in accordance with Section 158 of the Electricity Act, 2003, and the Rules and Regulations thereunder.

11.5 Parties to Perform Obligations:

Notwithstanding the existence of any Dispute and difference referred to the Commission or the Arbitration Tribunal as provided in Article 11.4.4 and save as the Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

12 Confidentiality

12.1 Confidential Information

Subject to Article 12.2, both Parties shall at all times during the continuance of this Agreement:

- (a) Use their reasonable endeavours to keep all information regarding the terms and conditions of this Agreement and any data or information acquired under or pursuant to this Agreement confidential and accordingly neither Party shall disclose the same to any other person; and
- (b) Not use any document or other information obtained by them respectively by virtue of this Agreement concerning the other's undertaking for any purpose other than performance of the Party's obligations and exercise of its rights under this Agreement.

Provided that the provisions of this Article shall not apply to information, which at the time of disclosure was in the public domain other than by breach of the foregoing obligations of confidentiality.

12.2 Disclosure of Confidential Information

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

12.2.2 Either Party shall be entitled to disclose the terms and conditions of this Agreement and any data or information acquired by it under or pursuant to this Agreement without the prior written consent of the other Party if such disclosure is made in good faith;

13 Miscellaneous Provisions

13.1 Language

13.1.1 All agreements, all correspondences and communications as to be given 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 that language.

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

13.2 Amendment

13.2.1 This agreement shall not be amended except by written agreement between the Parties.

13.2.2 This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns.

13.3 Entirety

This Agreement along with its sections, schedules and appendices is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement.

13.4 Successors and Assigns

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

13.5 Notices

13.5.1 Save as otherwise expressly provided in this Agreement, all notices or other communications which are required or permitted under this Agreement shall be in writing and sufficient if delivered personally or sent by registered or certified mail, fax, addressed as follows:

If to the SPV: [Insert Address with Contact Person]

If to the Developer: [Insert Address with Contact Person]

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

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

13.6 Compliance with Law

Despite anything contained in this Agreement if any provisions of this Agreement shall be in deviation of, inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003 as amended or re-enacted from time to time, such

provisions shall be deemed to be amended to the extent required to bring it into compliance with the relevant provisions of the Electricity Act, 2003 as amended and re-enacted from time to time.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR REPRESENTATIVE/DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

WITNESS:

Signature:
Name:
Designation:
Address:

For and on behalf of
[Insert Name of SPV]
at _____[Place]
on _____ [Date]

Signature:
Name:
Designation:
Address:

Signature:
Name:
Designation:
Address:

For and on behalf of
[Insert Name of Developer]
at _____[Place]
on _____ [Date]

Signature:
Name:
Designation:
Address:

SCHEDULE 1

Scheduled COD:

Expiry Date: