


Power purchase agreement - 19-08-2013

DB Power Limited

208 MW, 15 years, 01-02-2014 to 30.09.2028

CE/PPP/TANGEDCO/ Case 1 Bidding
19/08/2013

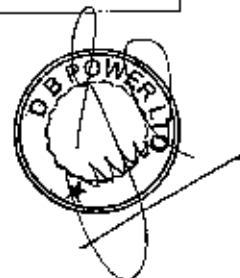

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF 208 MW RTC POWER
THROUGH 'LONG TERM'
Under Case – I Bidding Procedure
THROUGH
TARIFF BASED COMPETITIVE BIDDING PROCESS
(As per Guidelines issued by the Government of India for Determination of Tariff
by Bidding Process for Procurement of Power by Distribution Licensees)
FOR MEETING THE BASE LOAD REQUIREMENTS
Between
TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION
LIMITED
(PROCURER)
And
DB POWER LIMITED
JANJGIR-CHAMPA DISTRICT/CHHATTISGARH STATE
(SELLER)
Fuel type : Domestic coal –Linkage based
Date of signing : 19.08.2013

Page 1


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Power Purchase Agreement – 19-08-2013

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INDEX

Sl.No	SECTION	CONTENTS	PAGE NO.
1.	ARTICLE 1	DEFINITIONS AND INTERPRETATION	8
2.	ARTICLE 2	TERM OF AGREEMENT	22
3.	ARTICLE 3	CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER	23
4.	ARTICLE 4	SUPPLY OF POWER	28
5.	ARTICLE 5	CAPACITY, AVAILABILITY AND DISPATCH	37
6.	ARTICLE 6	METERING	40
7.	ARTICLE 7	INSURANCES	41
8.	ARTICLE 8	BILLING AND PAYMENT	42
9.	ARTICLE 9	FORCE MAJEURE	52
10.	ARTICLE 10	CHANGE IN LAW	58
11.	ARTICLE 11	EVENTS OF DEFAULT AND TERMINATION	61
12.	ARTICLE 12	LIABILITY AND INDEMNIFICATION	67
13.	ARTICLE 13	ASSIGNMENTS AND CHARGES	72
14.	ARTICLE 14	GOVERNING LAW AND DISPUTE RESOLUTION	74
15.	ARTICLE 15	MISCELLANEOUS PROVISIONS	76
1.	SCHEDULE 1	NAMES AND DETAILS OF THE PROCURER	84
2.	SCHEDULE 2	CALCULATION OF 'X' DAYS	85
3.	SCHEDULE 3	AVAILABILITY FACTORS	86
4.	SCHEDULE 4	TARIFF	87
5.	SCHEDULE 5	DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER	92
6.	SCHEDULE 6	ESCALATION INDEX	94
7.	SCHEDULE 7	REPRESENTATION AND WARRANTIES	95
8.	SCHEDULE 8	QUOTED TARIFF	97
9.	SCHEDULE 9	FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE	99
10.	SCHEDULE 10	DOCUMENTS OF SELECTED BID	102
11.	SCHEDULE 11	LIST OF BANKS	128
12.	SCHEDULE 12	SUBSTITUTION RIGHTS OF THE LENDERS	130



Power Purchase Agreement - 19-08-2013

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17381
16/08/2013
TAMILNADU

DB POWER LTD
Chennai

AP 763483

M.S. Chandramouli
M.S. CHANDRAMOULI,
STAMP VENDOR,
LIC No: 9034 / 86 / B1
NEW No: 161, T.H. ROAD,
TRIPPLICANE, CHENNAI-600 005

THIS AGREEMENT IS MADE ON THE 19TH DAY OF AUGUST 2013

Between

TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

and

DB POWER LIMITED

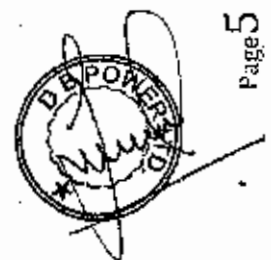
The "Procurer" and the "Seller" are individually referred as "Party" and collectively to as the "Parties")

Whereas:

A. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurer, had initiated a competitive bidding process through issue of RFP for procurement of power for long term under Case-1 bidding procedure for meeting the Procurer's base load power requirements.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
44, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



Page 5

Power Purchase Agreement - 19-08-2013

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Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



- B. Pursuant to the said bidding process, **DB Power Limited** has been selected by the Procurer as the Seller for sale and supply of electricity in bulk to the Procurer, for the Aggregate Contracted Capacity (as defined hereunder) of **208 MW**, in accordance with the terms of this Agreement.
- C. The Seller has provided to the Procurer, Contract Performance Guarantee as per format specified in Schedule 9 of this Agreement.
- D. Deleted
- E. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the Seller to the Procurer.
- F. The Procurer agree, on the terms and subject to the conditions of this Agreement, to procure power up to the Aggregate Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- G. The Procurer has further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.
- H. All the other RFP Documents have been executed by the Procurer and the Seller simultaneously with the signing of this Agreement.
- I. Deleted.

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



1. ARTICLE 1: DEFINITIONS AND INTERPRETATION**1.1 Definitions**

The terms 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 Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
"Affiliate"	shall mean a company that either directly or indirectly i. controls or ii. is controlled by or iii. is under common control with a Bidding Company and "control" means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
"Aggregate Contracted Capacity"	with respect to the Seller, shall mean the aggregate capacity in 208 MW contracted with the Procurer for supply at the Interconnection Point from the Power Station's Net Capacity;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Assessed Capacity"	in relation to the Power Station, shall mean the result of the most recent capacity assessment carried out by the Control Centre or the Seller in accordance with Article 5.5 of this Agreement;
"Availability Based Tariff" or "ABT"	shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
"Availability Factor" or "Availability"	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Aggregate Contracted Capacity);
"Available Capacity"	shall have the meaning ascribed thereto in ABT;
"Bid"	shall mean Non-Financial Bid and Financial Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;

"Bid Deadline"	shall mean the last date and time for submission of the Bid in response to the RFP ; 06.03.2013 @ 2.00 P.M
"Bidding Company"	shall refer to such single company that has submitted the Bid in accordance with the provisions of the RFP;
"Bidding Guidelines" or "Competitive Bidding Guidelines"	shall mean the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees", issued by Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 on January 19, 2005 and as amended from time to time till the Bid Deadline;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State of Tamil Nadu in which the Procurer's registered office is located;
"Capacity Charge(s)"	shall have meaning ascribed thereto in Schedule 4;
"Capital Cost"	<p>shall mean the lower of the following:</p> <p>(a) actual capital cost of the Power Station on a relevant date which shall not be later than the Delivery Date, as certified by the auditors appointed jointly by the Seller and Procurer; or</p> <p>(b) total cost of the Power Station as set forth in the Financing Agreements,</p> <p>Provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurer or Insurers or third parties;</p> <p>Provided further that the Capital Cost in relation to an unit shall be the total cost of the Power Station allocated in proportion to the Aggregate Contracted Capacity;</p>
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Performance Guarantee"	shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurer from a bank mentioned in Schedule 11 of this Agreement in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement and RFP;
"Contract Year"	shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31; Provided that: i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement; And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement;
"Contracted Capacity"	shall mean the Aggregate Contracted Capacity; 208 MW
"Control Centre"	shall mean the RLDC and/or SLDC or such other load control centre designated by the Procurer from time to time through which the Procurer shall issue Dispatch Instructions to the Seller for supply of power;
"Debt Service"	shall mean the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the

	selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon of the date of Notice to Proceed);
"Declared Capacity"	shall mean the Power Station's Net Capacity at the relevant time at the Interconnection Point (expressed in MW) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;
"Delivery Date"	shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurer;
"Delivery Point"	shall mean the STU Interface(s) as specified in Schedule 1 of this Agreement;
"Direct Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Dispatch Instruction"	shall mean any instruction issued by the Procurer through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Dispute"	shall mean any dispute or difference of any kind between the Procurer and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by Procurer;
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Charge" or "Energy Charges"	shall have the meaning ascribed to this term under Schedule 4 of this Agreement;
"Event of Default"	shall mean the events as defined in Article 11 of this Agreement;
"Expiry Date"	shall mean the date which is the 30.09.2028 (15 th) anniversary of the Delivery Date;
"Financial Closure"	shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;

"Financing Agreements"	shall mean the agreements pursuant to which the Seller has sought financing for the Power Station 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, but without in anyway increasing the liabilities of the Procurer;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Fuel"	shall mean the primary fuel used to generate electricity namely domestic coal (Linkage);
"Fuel Supply Agreement(s)"	shall mean the agreement entered into between the Seller and the fuel supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station. In case the transportation of the Fuel is not the responsibility of the fuel supplier, the Fuel Supply Agreement shall also include the separate agreement between the Seller and the fuel transporter for the transportation of Fuel in addition to the agreement between the Seller and the fuel supplier for the supply of the Fuel;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state of Tamil Nadu, Chhattisgarh, Madhya Pradesh, Maharashtra and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer;
"Indirect Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Injection Point"	shall mean the POWER GRID CORP. INDIA LTD'S SUBSTATION at KOTRA, Chhattisgarh as specified by the Successful Bidder in Format 4.10 of the Selected Bid (Schedule 10 of this Agreement);
"Installed Capacity"	shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the Seller in accordance with Article 7 of this Agreement;
"Interconnection"	shall mean the facilities on the Procurer's side of the Delivery Point for receiving and metering the electrical output in accordance with

Facilities"	this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;
"Interconnection Point"	shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the Interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);
"Invoice" or "Bill"	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 8.3.5 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any Interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Lender(s)"	shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Station to provide the Seller 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 the Seller of its obligations to the Procurer under this Agreement in any manner and does not lead to an increase in the liability of the Procurer at any given point of time;
"Lender's Representative"	shall mean the person notified by the Lenders in writing as being the representative of the Lenders and such person may from time to time be replaced by the Lenders pursuant to the Financing Agreements by written notice to the Seller;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 8.4.11 of this Agreement;



"Letter of Intent" or "LOI"	shall mean the letter issued by the Procurer to the Successful Bidder for supply of power pursuant to the RFP;
"Meters" or "Metering System"	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Minimum Off take Guarantee"	shall mean guaranteed off take of 65 percent (65%) of the Aggregate Contracted Capacity for the Procurer, as the case may be, during a Contract Year.
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;
"Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Normative Availability"	shall mean Eighty Five percent (85%) Availability of the Aggregate Contracted Capacity at the Interconnection Point on Contract Year basis.
"Notice to Proceed" or "NTP"	shall mean the date on which the Seller shall fulfill the conditions as contained in Article 3.1.1 of this Agreement in accordance with the provisions of this Agreement;
"Operating Period";	shall mean the period commencing from the Delivery Date, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Parent Company" or "Parent"	shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Mechanism"	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
"Power Station"	shall mean the DB POWER LIMITED's Power generation facility of installed capacity of 1200 MW, located at BARADARHA, JANJIR-CHAMPA DISTRICT IN CHHATTISGARH STATE ; This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke; bay/s

	for transmission system in the switchyard, dam, intake, water conductor system, and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Power Station's Net Capacity"	shall mean 1200 MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time; In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall be 1128 MW (1200 MW-6% of Auxiliary Consumption), being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Provisional Bill"	shall mean the bill raised by the Seller as ascribed thereto in Article 8.3.6 of this Agreement;
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station; b) the requirements of Indian Law; and the physical conditions at the site of the Power Station;
"Quoted Capacity Charges"	shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges;
"Quoted Non Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Energy Charges"	shall mean the sum total of Quoted Non Escalable Energy Charges Quoted Escalable Energy Charge, Quoted Non Escalable inland transportation Charges and Quoted Escalable Inland transportation Charges;

Power Purchase Agreement -- 19-08-2013

"Quoted Non Escalable Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Escalable Energy Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Non Escalable Inland Transportation Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Escalable Inland Transportation Charges"	shall have the meaning as ascribed thereto in Schedule 8 of this Agreement;
"Quoted Tariff "	shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 8.3.6 of this Agreement;
"Receivables"	shall have the meaning as ascribed thereto in Article 8.4.11 of this Agreement;
"Regional Energy Accounts" or "REA"	shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Revised Scheduled Delivery Date"	shall have the meaning ascribed thereto in Article 4.1 of this Agreement;
"RFP"	shall mean the Request For Proposal document along with all formats dated 21.12.2012 issued by the Procurer and shall include any modifications, amendments or alterations and clarifications thereto;
"RFP Documents"	shall mean the following documents entered into in respect of the procurement of power, by the Parties to the respective agreements: a) PPA;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees" or "Rs."	shall mean Indian rupees, the lawful currency of India;



"SBIPLR"	shall mean the prime lending rate per annum as fixed from time to time by the State Bank of India. In the absence of such rate, SBIPLR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
"Scheduled Delivery Date"	shall have the meaning ascribed thereto in Article 4.1 of this Agreement;
"Scheduled Energy" or "Scheduled Generation"	Shall mean scheduled generation as defined in the ABT;
"Scheduled Outage"	shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code;
"Selected Bid"	shall mean the Bid of the Successful Bidder as accepted by the Procurer, copy of which is attached herewith and marked as Schedule 10 of this Agreement;
"Selectee"	shall mean a new company (i) proposed by the Lenders pursuant to Schedule 12 hereof and approved by the Procurer (ii) or proposed by the Procurer in accordance with Schedule 12 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule;
"SERC"	shall mean the Electricity Regulatory Commission of TAMILNADU State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"Settlement Period"	shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"STU Interface"	shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer's State, and at which the Procurer agree to receive power up to the Requisitioned Capacity;

Page 17



Director (Distribution)
Tamil Nadu Generation &
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Tender No.03/PPLT/2012



"Substitution Notice "	shall have the same meaning as ascribed to in Clause 12.3 of Schedule 12 of this Agreement;
"Successful Bidder"	shall mean the Bidder selected by the Procurer pursuant to the RFP for supply of power by itself or through the Project Company to the Procurer as per the terms of PPA and other RFP Documents, and to whom a LOI has been issued;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;
"Tariff"	shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 and Clause 7.2.3 of Schedule 7 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.2 of this Agreement;
"Total Debt Amount"	<p>shall mean the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its telegraphic transfer rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders</p> <p>(a) the principal amount of the debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Power Station according to the Capital Structure Schedule which remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any debt repayments which could have been made out of the Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing Agreements; and</p> <p>(b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in Clause 4.2.1 of Schedule 4 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised.</p>

"Transmission Service Agreement"	shall mean the agreements(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;
"Ultimate Parent Company"	shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company;
"Unscheduled Interchange" or "UI"	shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time; In case the Power Station and the Procurer being within the same state, the Unscheduled Interchange shall be regulated by the respective SERC regulations;
"Unscheduled Outage"	shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wheeling Charges" or "Transmission Charges"	shall mean the charges to be paid by the Seller and reimbursed by the Procurer as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the charges for the STU network or charges of STU system operation or SLDC Charges, if any);

1.2 Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any


 Director (Distribution)
 Tamil Nadu Generation &
 Distribution Corporation Ltd.
 144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012

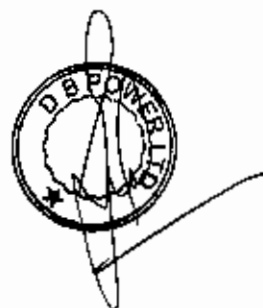


other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1(vi) of Schedule 7 hereof.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



2 ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date (19.08.2013)*

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

2.2 *Term of Agreement*

- 2.2.1 This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least (180) days prior to the expiry date, subject to approval of the Hon'ble Tamil Nadu Electricity Regulatory Commission.

2.3 *Early Termination*

- 2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either the Procurer or the Seller exercises a right to terminate, pursuant to Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 or Clause 7.2.3 of Schedule 7 of this Agreement; or
- ii. in such other circumstances as the Seller and the Procurer may agree, in writing.

2.4 *Survival*

- 2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk on or before the scheduled delivery date, unless such completion is affected by any Force Majeure event or due to the Procurer's failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurer

a) Deleted

b) The Seller shall have obtained all the necessary permission for the long term open access for the intrastate transmission system from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and shall have executed all necessary agreements for such transmission access and provided a copy of the same to the Procurer;

c) The Seller shall have obtained the necessary permission for long term open access for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer;

d) The Seller shall have acquired and taken the possession of the balance area of land out of the total land requirement as mentioned in the proposal filed before the competent authority at the RFP stage;


The Seller shall submit the letter of possession and equivalent documents for such area of land as mentioned above to the Procurer.

e) The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an Irrevocable NTP and shall have submitted a letter to this effect to the Procurer;

f) The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer as per the terms of this Agreement.;

g) The Seller shall have sent a written notice to the Procurer indicating the Aggregate Contracted Capacity and total Installed Capacity for each unit and for the Power Station as a whole expressed in MW;

h) The Seller shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPL/T/2012



- i) The Seller is permitted to apply for Open Access under Medium Term Open Access in case Long Term Open Access is granted from a day later than the Scheduled Delivery date.

3.2 Satisfaction of conditions subsequent by the Procurer

- 3.2.1 The Procurer agrees and undertake to duly perform and complete the following activities at the Procurer's own cost and risk within Six (6) Months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their obligations under Article 3.1.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:
 - a) The Procurer shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.
 - b) Deleted
 - c) The Procurer shall have obtained the order of the TNERC for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.

3.3 Joint responsibilities of the Procurer and the Seller

- 3.3.1 The Procurer and the Seller shall have jointly agreed on the specific date for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurer. Such mutually agreed date shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.
- 3.3.2 This date shall be mutually agreed upon and shall be the Revised Scheduled Delivery Date for the respective quantum of power.

3.4 Consequences of non-fulfillment of conditions subsequent

- 3.4.1 If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, even within three (3) Month after the time specified under Article 3.1, otherwise than for the reasons directly attributable to the Procurer or Force Majeure event in terms of Article 3.4.3, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurer additional Contract Performance Guarantee from any of the banks listed in Schedule 11 of this Agreement, of Rupees Three Crores and Twelve Lakhs (Rs.3.12 Crores) which has been provided to the Procurer within two (2) Business Days of expiry of every such week. Such additional Contract Performance Guarantee shall initially be valid till the Scheduled Delivery Date, and the Procurer shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such additional

Contract Performance Guarantee, in accordance with the provisions of this Agreement. However, upon satisfaction of the conditions subsequent by the Seller, the additional Contract Performance Guarantee shall be returned by the Procurer.

3.4.2 Subject to Article 3.4.3, if:

- (i) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of **three (3) Months** after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof; or
- (ii) the Seller furnishes additional Contract Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of **six (6) Months** beyond the period specified in Article 3.1 above,


The Procurer shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period ("Termination Date").

If the Procurer elects to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer on the Termination Date an amount of Rupees Eighty Three Crores and Twenty Lakhs (Rs.83.20 Crores) only as liquidated damages.

The Procurer shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurer is unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer within ten (10) days from the Termination Date.

For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

- 3.4.3 in case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of **ten (10) months**, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



- 3.4.4 Similarly, in case of inability of the Procurer to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of Ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.
- 3.4.5 In case of inability of the Procurer to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurer as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurer to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer. If the Seller elects to terminate this Agreement, the Procurer shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurer shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.
- 3.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

3.5 Contract Performance Guarantee

- 3.5.1 The Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contract Capacity within the time specified in this Agreement.
- 3.5.2 The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.
- 3.5.3 If the Seller fails to commence supply of power on the respective Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date specified in this Agreement, subject to conditions mentioned in Article 4.7.1, the Procurer shall have the right to encash the Contract Performance Guarantee and appropriate in

their favour as liquidated damages an amount specified in Article 4.8.1, without prejudice to the other rights of the Procurer under this Agreement.

3.6 Reduction in the amount of Contract Performance Guarantee


- 3.6.1 On successful supply of power as per the terms of this Agreement for a duration of Five (5) years from the Delivery Date and provided that there has been no Seller Event of Default in the immediately preceding thirty-six (36) Months, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees Thirty one Crores and Twenty Lakhs (Rs.31.20 Crores). The Seller shall thereafter provide such reduced Contract Performance Guarantee to the Procurer in lieu of the Contract Performance Guarantee, of an amount of Rupees Sixty Two Crores and Forty Lakhs Only (Rs.62.40 Crores). Such reduced Contract Performance Guarantee shall be initially valid for a period, which is the lower of five (5) years or the balance Term of this Agreement.

3.7 Renewal of Contract Performance Guarantee

- 3.7.1 The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.
- 3.7.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.
- 3.7.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer shall have the right to encash the then existing Contract Performance Guarantee.

3.8 Return of Contract Performance Guarantee

- 3.8.1 The Procurer shall return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees Eighty Crores and Twenty Lakhs Only (Rs.83.20 Crores), or (ii) termination of this Agreement by any Party under Article 3.4.3, 3.4.4 or Article 3.4.5 of this Agreement.
- 3.8.2 Subject to the provisions of Article 3.8.1, the Procurer shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- 3.8.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



4 ARTICLE 4 : SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurer

- 4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is 01.02.2014. However, the Seller and the Procurer may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date as specified in Article 3.3 of this Agreement.
- 4.1.2 The Seller shall give the Procurer and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

4.2 Seller's Obligations

- 4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:
- a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
 - b) the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurer not later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer's scheduling and dispatch requirements throughout the Term of this Agreement;
 - c) obtaining all the necessary permissions for the long term open access for the Intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and execute all necessary agreements for such transmission access and provide a copy of the same to the Procurer;
 - d) obtaining open access for transmission of Aggregated Contracted Capacity of power from the Injection Point to the Delivery Point;
 - e) Owning the Power Station throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted under Article 13.
 - f) Procuring electricity at the Power Station (including construction, commissioning and start-up power) and to comply in a timely manner all formalities for getting such a supply of electricity
 - g) providing on a timely basis, all relevant information to the Procurer which may be required for receiving power at the Delivery Point; and

- h) fulfilling all obligations undertaken by the Seller under this Agreement.
- i) execution of the Fuel Supply Agreement and providing the copy of the same to the Procurer prior to the Scheduled Delivery Date.

4.3 Procurer's Obligations

4.3.1 Subject to the terms and conditions of this Agreement, the Procurer shall:

- a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;
- b) be responsible for payment of the Transmission Charges (from the Injection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurer. The Procurer shall reimburse any of the above charges, if paid by the Seller;
- c) Deleted
- d) Deleted
- e) make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity; and
- f) fulfill all obligations undertaken by the Procurer under this Agreement.

4.4 Purchase and sale of Available Capacity and Scheduled Energy

- 4.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer, and the Procurer undertakes to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy.
- 4.4.2 Unless otherwise instructed by the Procurer, the Seller shall sell all the Available Capacity up to the Contracted Capacity to the Procurer pursuant to Dispatch Instructions given by the Procurer.

4.5 Right to contracted capacity and scheduled Energy

- 4.5.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy.
- 4.5.2 a) Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date as the case may be and any capacity which is in excess of the quantum of power

agreed to be supplied under this Agreement from each such Revised Scheduled Delivery Date.

b) Further notwithstanding Article 4.5.1, the Seller shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if:

- i) there is a part of Available Capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part; and
- ii) Deleted

4.5.3 If the Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to the Contracted Capacity, the Seller shall be entitled to sell such Available Capacity not scheduled by the Procurer, to any person without losing the right to receive the Capacity Charges from the Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller and the Procurer. In the event, the Seller sells such Available Capacity to any direct or Indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Procurer. During this period, the Seller will continue to receive the Capacity Charges from the Procurer.

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

4.5.5 Upon the Procurer intimating to the Seller of its intention and willingness to avail of the part or whole of the Available Capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and any third party, commence supply of such capacity to the Procurer from the later of two (2) days from receipt of notice in this regard from the Procurer or the time for commencement of supply specified in such notice subject to the provisions regarding scheduling as per IEGC.

4.6 *Alternative Source of Power Supply*

4.6.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurer up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer at the same Tariff as per the terms of this Agreement and subject to provisions of Article 4.6.2. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection

Point to the Delivery Point, the Seller would be liable to bear such additional charges.

- 4.6.2 The Seller shall be permitted to supply power to the Procurer from any alternative source for a maximum continuous duration of six (6) Months or a maximum non continuous period of twelve (12) months during the Operating Period, excluding any period of supply from alternative generation source that the Seller avails prior to the commencement of supply from the generation source named in this Agreement as provided for in Article 4.8.

4.7 *Extensions of Time*

- 4.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, due to:

- a) any Procurer Event of Default; or
- b) Force Majeure Events affecting the Procurer, or
- c) Force Majeure Events affecting the Seller,

the Revised Scheduled Delivery Date, Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer, or till such time such Event of Default is rectified by the Procurer.

- 4.7.2 In case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than six (6) months or the date on which the Seller elects to terminate this Agreement, whichever is later.

- 4.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of six (6) months any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

- 4.7.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date, Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

- 4.7.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.



4.8 Liquidated Damages for delay in commencement of supply of power to Procurer

- 4.8.1 If the Seller is unable to commence supply of power to the Procurer by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 4.7.1, the Seller shall pay to Procurer liquidated damages as per this Article 4.8.1.

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurer liquidated damages as per this Article 4.8.1.

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

The sum total of the liquidated damages payable by the Seller to the Procurer shall be calculated as follows:

$$SLDb = [CC * d * DR1], \quad \text{if } d \leq 60$$

$$SLDb = [CC * 60 * DR1] + [CC * (d - 60) * DR2], \quad \text{if } d > 60$$

where:

- a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer actually commences from the generation source as provided in this Agreement;
- b) "CC" is the Contracted Capacity;
- c) "d" is the number of days in the period beginning with the day after the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and



including the day on which supply of power to the Procurer actually commences from the generation source as provided in this Agreement;

- d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is more than 60 days.

- 4.8.2 The Seller's maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to six (6) months of delay for commencement of supply of power from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

Provided that in case of failure of the Seller to start supply of power to Procurer even after expiry of six (6) months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall be considered as a Seller Event of Default and provisions of Article 11 shall apply.

- 4.8.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurer within ten (10) days of the earlier of:

- a) the date on which the Seller commences supply of power to the Procurer, or
b) expiry of the six (6) months period mentioned in Article 4.8.2.

- 4.8.4 If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.3, the Procurer shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurer under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurer.

- 4.8.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 11 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

- 4.8.6 Deleted.

- 4.9 *Liquidated Damages for delay due to Procurer Event of Default or Indirect Non Natural Force Majeure Events or Natural Force Majeure Event (affecting the Procurer)*

- 4.9.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled

Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) provided such Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Aggregated Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

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

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

For the avoidance of doubt, it is specified that the charges payable under this Article 4.9.1 shall be paid by the Procurer in proportion to their then Contracted Capacity.

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


4.10.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

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

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

For the avoidance of doubt, it is specified that the charges payable under this Article 4.10.1 shall be paid by the Procurer in proportion to their then Contracted Capacity.

4.11 In every case referred to in Article 4.9.1 and 4.10.1 hereinabove, the Seller shall undertake to commence supply of the Contracted Capacity, relevant to such


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.,
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



date, to the Procurer as soon as reasonably practicable (and in no event later than two (2) Weeks or such longer period as mutually agreed between the Seller and "the Procurer" after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable). If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

- a) the Seller shall repay to the Procurer, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and
- b) If the Seller fails to provide supply of power to Procurer by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.8.

4.12 Limit on amounts payable due to default

4.12.1 The Parties expressly agree that the Procurer's only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 12), suffered by the Seller by reason of the Procurer's failure to meet its obligations under Article 4.3.1 shall be to pay the Seller the amounts specified in Article 4.9 and Article 11.

4.12.2 Similarly, Seller's only liability for any loss suffered by the Procurer of any kind or description whatsoever (except claims for indemnity under Article 12), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, shall be as per Article 4.8 and Article 11.

4.13 Transmission Losses

4.13.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurer, and power lost on account of transmission loss would be to the account of the Procurer.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1 *Obligation to Supply the Contracted Capacity*

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

5.2 *Allocation of Generation Capacity*

5.2.1 The Seller shall provide 18.44 percent (18.44%) of the Power Station's Net Capacity to the Procurer as per the terms of this Agreement.

5.3 *Availability*

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

5.3.2 In case the Aggregate Contracted Capacity is a part of the Power Station's Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the available capacity to the Procurer for dispatch shall be reduced proportionately. However if the declared capacity exceeds the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the excess capacity will be at the disposal of the Seller.


5.4 *Scheduling and Dispatch*

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

5.4.2 The Seller further agrees that the Availability entitlement of the Procurer for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Articles 4.5.2. If the Seller wilfully offers the power meant for dispatch to the Procurer to any third party without complying with the conditions specified in Article 4.5.2, the Seller agrees to and acknowledges the Procurer's right to instruct the RLDC / SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.

5.5 *Demonstration of Power Station's Net Capacity*

5.5.1 The Procurer may from time to time during the Operating Period, but only if the Available Capacity with respect to the procurer has not been one hundred percent (100%) of the Aggregate Contracted Capacity even for one continuous period of at least three (3) hours during any last three (3) continuous months, request the relevant Control Centre to assess the Power Station's Net Capacity.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



Such capacity assessment of the Power Station, by the Control Centre at the request of the procurer shall not be done more than once in a continuous period of six (6) Months.

- 5.5.2 If the Power Station's Net Capacity after such capacity assessment is determined to be less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, then the provisions of Article 5.6.1 shall apply and the Seller shall have a right to demonstrate to the satisfaction of the Control Centre the Power Station's Net Capacity only after a period of six (6) Months from the date of such assessment..
- 5.5.3 If the Seller wishes to take any unit of the Power Station or the Power Station, out of service for repair before any assessment by the Control Centre, it shall inform the Control Centre in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurer requiring the Control Centre to conduct the assessment, shall defer such assessment until such unit or the Power Station is returned to service following that maintenance outage.

5.6 Derating

- 5.6.1 Based on the assessment carried out by the Control Centre, if the Power Station's Assessed Capacity is less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the Seller shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Assessed Capacity, in which case:
- The Power Station's Net Capacity shall be reduced to its most recent Assessed Capacity and Quoted Capacity Charges for the Aggregate Contracted Capacity shall be paid with respect to such reduced Power Station's Net Capacity until the next assessment by the concerned Control Centre.
 - Further, the Quoted Non-Escalable Capacity Charge shall be reduced by the following:
$$\text{Rs. } 0.25/\text{kwh} \times [1 - (\text{Assessed Capacity of the Power Station})/(\text{Power Station's Net Capacity})];$$
 - the Aggregate Contracted Capacity of the Procurer shall be reduced proportionately, and the Availability Factor shall be calculated by reference to the reduced Aggregate Contracted Capacity, in each case with effect from date on which the Procurer first requested the Control Centre to assess the Power Station's Net Capacity.
 - the Capital Cost shall be reduced in proportion to the reduction in the Aggregate Contracted Capacity as a result of that derating.

- 5.6.2 If at the end of subsequent demonstration of the Power Station's Net Capacity by the Seller at the end of the six Month period referred to in Article 5.5.2, the Assessed Capacity comes out to be still less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the consequences mentioned in Article 5.6.1 shall apply on such Assessed Capacity for a period of at least one year from such date of demonstration of the Power Station's Net Capacity after which the Seller shall once again have the right to demonstrate the Power Station's Net Capacity. The consequences mentioned in Article 5.6.1 shall be modified based on the most recent Assessed Capacity of the Power Station.
- 5.6.3 If the Control Centre is unable to assess the Power Station's Net Capacity because of events or circumstances beyond the Seller's reasonable control, the Control Centre shall reschedule an assessment as soon as reasonably practicable.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



6 ARTICLE 6: METERING

6.1 Meters

- 6.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.



**Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.**



7 ARTICLE 7: INSURANCES

7.1 Insurance

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

7.2 Application of Insurance Proceeds

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

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

7.3 Effect on liability of the Procurer

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



8 ARTICLE 8: BILLING AND PAYMENT

8.1 General

- 8.1.1 From the commencement of supply of power, Procurer shall pay the Seller the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 8 and Schedule 4. All Tariff Payments by the Procurer shall be in Indian Rupees.

Provided however, if the Procurer avails of any Infirm Power from the Power Station, then Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned for such Contract Year), for any Infirm Power generated by any unit of the Power Station. The quantum of Infirm Power generated shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 as amended from time to time.

8.2 Delivery and Content of Monthly Bills/Provisional Bills

- 8.2.1 The Seller shall issue to "the Procurer" a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

- 8.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and REA for the relevant Month for Monthly Bill and RLDC's daily energy account for Provisional Bill;
- ii. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
- iii. supporting data, documents and calculations in accordance with this Agreement.




8.3 Payment of Monthly Bills

- 8.3.1 The Procurer shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.3.4 below.
- 8.3.2 All payments made by the Procurer shall be appropriated by the Seller in the following order of priority:
- i) towards Late Payment Surcharge, if any;
 - ii) towards the earlier unpaid Monthly Bill(s), if any; and
 - iii) towards the then current Monthly Bill.
- 8.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:
- i) deductions required by the Law; and
 - ii) amounts claimed by the Procurer from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rupees Five Crores and Twenty Lakhs (Rs.5.20 Crores) only, except under sub Article (i) above.

- 8.3.4 The Seller shall open a bank account at Chennai (the Seller's Designated Account) for all Tariff Payments to be made by Procurer to the Seller, and notify Procurer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Procurer shall also designate a bank account at Chennai (the Procurer's Designated Account) for payments to be made by the Seller (including Supplementary Bills) to Procurer and notify the Seller of the details of such account ninety (90) Days before the Scheduled Delivery Date. The Procurer and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller's Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- 8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate equal to SBI-PLR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



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

- a) The Provisional Bill shall be raised by the Seller on the last Business Day of the Month where the Capacity Charges shall be based on the Declared Capacity for the entire Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.

"An additional rebate of Rs.0.02/unit of scheduled energy as per the provisional bill shall be payable in the first five (5) contract years starting from scheduled delivery date, provided one hundred(100%) percent of the provisional bill is credited to the seller's account within five days from the date of issuance of provisional bill"

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

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

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

- e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to the Procurer who credits one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to



Seller's account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.

- f) In the event only part amount of Provisional Bill is credited to the Seller's account, within first five (5) days and the balance amount is credited to the Seller's account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Seller's account;
- g) The above Rebate will be allowed only to the Procurer who credits to the Seller's account the full Monthly Bill.
- h) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;
- i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.


8.4 Payment Mechanism

Adequate payment security shall be made available to the bidders. The payment security may constitute.

1. All payments payable to the seller under invoice shall be paid through RTGS within due date.

2. Stand by Letter of Credit(LC) /Bank guarantee.

- 8.4.1 Subject to Article 8.4.2 an amount payable under an invoice shall be paid on or before the due date by direct payment as notified in RFP.
- 8.4.2 Where in respect of any amount both the amount payable by the procurer to the seller pursuant to a monthly tariff invoice or a supplementary invoice and an amount payable by the seller to the procurer pursuant to the procurer invoice or otherwise pursuant to this agreement, the two amounts may at the election of the procurer in question, set off against each other and the balance only shall be paid by the procurer to the seller or by the seller to the procurer as the case may be.
- 8.4.3 Any payment properly due from one party to the another pursuant to this agreement and remaining unpaid after the due date shall bear interest from the date the payment was due, such interest to accrue from day to day at a rate equal to SBIPLR for the time being and from time to time, from the due date until the amount due is actually received by the payee.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



- 8.4.4 Save as otherwise provided in Article 8.4.2 or 8.4.3, all net payments owing by one party under this agreement to other parties shall be made free of any restriction or condition and without deduction or withholding (except to the extent as required by Law) on account of any other amount owing whether by way of set-off or otherwise, but the making of payment shall be without prejudice to other rights of the person doing so.
- 8.4.5 Deleted
- 8.4.6 Deleted
- 8.4.7 Deleted
- 8.4.8 Deleted
- 8.4.9 Deleted
- 8.4.10 Deleted
- 8.4.11 **Stand by Letter Of Credit**
- 8.4.11.1 The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills Stand by Letter of credit opened and maintained by the Procurer. The Procurer shall provide stand by letter of credit to the Seller one (1) month before the scheduled delivery date (when actual power flows.)
- 8.4.11.2 The Procurer shall open a Stand by Letter of Credit through a scheduled bank at Chennai, India in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this agreement. The Stand by Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:
- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.
- The Procurer shall cause the scheduled bank issuing the Stand by Letter of Credit to intimate the Seller, in writing regarding establishing of such Stand by Letter of Credit.
- Provided that the Seller shall not draw upon such Stand by Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a

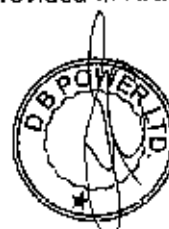
Month.

Provided further that if at any time, such Stand by Letter of Credit amount falls short of the amount specified in Article 8.4.11.2 otherwise than by reason of drawal of such Stand by Letter of Credit by the Seller, the Procurer shall restore such shortfall within seven (7) days.

- 8.4.11.3 If the Stand by Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Stand by Letter of Credit occurs, the Stand by Letter of Credit shall be reinstated to the requisite amount specified in this Agreement.
- 8.4.11.4 If the Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 8.6.7, the Seller may draw upon the Stand by Letter of Credit, and accordingly the bank shall pay without instructions from the Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 8.4.3 by presenting to the scheduled bank issuing the Stand by Letter of Credit, the following documents:
- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer beyond the due date;
 - ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
 - iii) Calculations of applicable Late Payment Surcharge, if any.
- 8.4.11.5 The Procurer shall ensure that the Stand by Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.
- 8.4.11.6 All costs relating to opening and maintenance of the Stand by Letter of Credit shall be borne by the Procurer; however, Stand by Letter of Credit negotiation charges shall be borne and paid by the Seller.
- 8.4.11.7 Where necessary, the Stand by Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurer and the Seller.
- 8.5 Third Party Sales on Default**
- 8.5.1 Upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the Payment Mechanism provided in Article


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPI.T/2012



8.4 of this Agreement, the Seller shall follow the steps as enumerated in Articles 8.5.2 and 8.5.5.

- 8.5.2 On the occurrence of the event mentioned in Article 8.5.1 and after giving a notice of at least seven (7) days to the Procurer, the Seller shall have the right to offer twenty five (25) per cent of the Contracted Capacity pertaining to Procurer ("Default Electricity") for sale to third-parties.
- 8.5.3 Deleted
- 8.5.4 Deleted
- 8.5.5 If the Standby Letter is not fully restored by the Procurer within thirty (30) days of the non-payment by the Procurer of an Invoice by its Due Date, the provisions of Article 8.5.2 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity.
- 8.5.6 In the case of Article 8.5.5, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Energy Charges.
- 8.5.7 In case of third party sales as permitted by this Article 8.5, the adjustment of the surplus revenue over Energy Charge (applicable to the Procurer) attributable to the procurer, shall be adjusted as under :
- a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the Procurer towards the Seller; and
 - b) the surplus if any above the Tariff shall be retained by the Seller.
- 8.5.8 The liability of the Procurer towards making Capacity Charge payments to the Seller even for Default Electricity sold to third parties or remaining unsold during such periods will remain unaffected.


Provided such Capacity Charge payment liability shall cease on the date which occurs on the expiry of a period of Six (6) months from the date of occurrence of a Procurer Event of Default under Article 11.2.1 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

- 8.5.9 Sales to any person or Party, under Article 8.5, shall cease and regular supply of power to the Procurer in accordance with the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:
- a) the day on which the Procurer pays the amount due to the Seller and renews the Standby Letter of Credit. or

- b) the date being "x" days from the date on which the Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

8.6 Disputed Bill

- 8.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.
- 8.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, Issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i) the details of the disputed amount;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its claim.
- 8.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice Issued pursuant to Article 8.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the Invoicing Party, make the payment there under, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the Invoicing Party and up to and including the date on which such payment has been received as refund.
- 8.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- i) reasons for its disagreement;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its counter-claim.
- 8.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.6.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 8.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 14.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



- 8.6.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 14 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to Interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.
- 8.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 8.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.6.5 or settled by Dispute resolution mechanism along with Interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the Invoicing Party or the date on which such payment was originally due, as may be applicable.
- 8.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

8.7 Quarterly and Annual Reconciliation

- 8.7.1 The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 8.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

8.8 Payment of Supplementary Bill

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

- i) Adjustments required by the Regional Energy Account (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

8.8.2 The Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Standby Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to Procurer's designated bank account and notify such Procurer of such payment on the same day. For such payments by the Procurer, Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.

8.9 The copies of all notices which are required to be sent as per the provisions of this Article 8, shall be sent by either Party to the other Party.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



9 ARTICLE 9 : FORCE MAJEURE

9.1 Definitions

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

9.2 Affected Party

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

9.2.2 Deleted

9.2.3 An event of Force Majeure affecting the CTU/ STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

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

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

9.2.5 Similarly, any event of Force Majeure affecting the performance of the Procurer's contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

9.3 Force Majeure

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

Any restriction imposed by PGCIL in scheduling of power due to breakdown of transmission /grid constraint shall be treated as force Majeure without any liability on either side (Non availability of open access is treated as Force Majeure)



i. Natural Force Majeure Events

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

ii. Non-Natural Force Majeure Events

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

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

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


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

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

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

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

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



the action to be unlawful, unreasonable and discriminatory and strikes the same down.

3. Indirect Non-Natural Force Majeure Events

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

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

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

9.4 Force Majeure Exclusions

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

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;
- b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbance at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or any other RFP Documents.

9.5 Notification of Force Majeure Event

9.5.1 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.

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd



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

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

9.6 Duty to Perform and Duty to Mitigate

- 9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.7 Available Relief for a Force Majeure Event

- 9.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the Seller, for the duration of such Natural Force Majeure Event affecting the Seller. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the Seller, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer;

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

- (d) If the average Availability of the Power Station is reduced below "eighty percent (80%) of Normative Availability" for over two (2) consecutive months or for any non consecutive period of four (4) months both within any

continuous period of 12 months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below "eighty percent (80%) of Normative Availability" as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurer shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Seller, in the form of an increase in Capacity Charge.

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

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

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

- (e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 12 months, as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Seller continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, the Seller may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurer in the form of an increase in Capacity Charge.



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

- (f) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of twelve (12) Months, as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the *Seller* continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, the *Seller* may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment for Debt Service, subject to a maximum of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event not attributable to the Procurer in the form of an Increase in Capacity Charge.


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

- (g) Deleted

9.8 Additional Compensation and Procurer's Subrogation

- 9.8.1 If the *Seller* is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) for which it has received compensation from the Procurer pursuant to this Article 9, including without limitation, payments made which payments would not have been made in the absence of Article 4.9.1, the Procurer shall be fully subrogated to the *Seller's* rights against that person to the extent of the compensation paid by the Procurer to the *Seller*.

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



10 ARTICLE 10: CHANGE IN LAW

10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any Income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

10.2 Application and Principles for computing impact of Change in Law


10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law

10.3.1 During Construction Period

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)


Director (Distribution)
Tamil Nadu Generation and Distribution Corporation Limited



For every cumulative increase/ decrease of "Each rupees one Crore twenty five Lakhs (Rs.1.25 Crores) in the capital cost" during the Construction Period, the increase/ decrease in Non Escalable Capacity Charges shall be "an amount equal to zero point two six seven percent (0.267%) of the non escalable" Capacity Charges. In case of Dispute, Article 14 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease "exceeds amount of Rupees one Crore twenty five Lakhs (1.25 Crores)"

10.3.2 During Operating Period

The compensation for any decrease in revenue or Increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Standby Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.

10.4 Notification of Change in Law

10.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

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

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



10.5 Tariff Adjustment Payment on account of Change in Law

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or

(ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



11 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

11.1 Seller Event of Default

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

- (i) the failure to commence supply of power to the Procurer up to the Contracted Capacity, relevant to the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, by the end of 6 months, or
- (ii) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of "two (2) Months" and such default is not rectified within "thirty (30) Days" from the receipt of first notice from the Procurer in this regard, or
- (iii) After the Delivery Date, the Seller fails to achieve Normative Availability for a period of "twelve"(12)" consecutive or non-consecutive Months within any continuous period of thirty six (36) Months";
- (iv) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer on the Seller or (b) of an amount up to Rupees Five (5) Crore required to be made to Procurer under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or
- (v) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation and submission of the Contract Performance Guarantee;

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days, or

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



- b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
- (i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
- (ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (vii) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,
- Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to meet the Qualification Requirements in terms of the RFQ till six (6) months after commencement of supply of power by the Seller, and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or
- (viii) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Procurer in this regard; or
- (ix) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by "the Procurer".
- (x) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- (xi) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or
- (xii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

11.2 Procurer Event of Default

- 11.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller

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

Director (Distribution)
Tamil Nadu Generation and Distribution Corporation Limited



of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of Procurer:

- (i) Procurer fails to meet any of its obligations, as specified in Article 4.3; or
- (ii) Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Standby Letter of Credit; or
- (iii) the Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the Procurer is in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer and the Seller are Parties, and such material breach is not rectified by the Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer; or
- (v) any representation and warranties made by the Procurer in Schedule 7 of this Agreement, being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or
- (vi) if
 - a Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - any winding up or bankruptcy or insolvency order is passed against the Procurer, or
 - a Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurer or such Procurer and expressly assumes all obligations of Procurer or such Procurer under this Agreement and is in a position to perform them; or;


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



- (vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer.

11.3 Procedure for cases of Seller Event of Default

11.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 11.1, "the Procurer" shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission, of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

11.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

11.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission.

11.3.5 Deleted

11.4 Termination for Procurer Event of Default

11.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 11.2.1(ii), the Seller shall follow the remedies provided under Article 8.5.2 or Article 8.5.5, as the case may be.

11.4.2 Without in any manner affecting the rights of the Seller under Article 11.4.1, on the occurrence of any Procurer Event of Default specified in Article 11.2 the Seller shall have the right to deliver to the Procurer, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

11.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.



11.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

11.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer committing Procurer Event of Default to any third party of the Seller's choice.

Provided such Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period upto the Expiry Date, subject to "maximum of twelve (12) months from the eighth day after the expiry of the Consultation Period.

Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurer.

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer. Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate and thereafter, the Procurer shall have no further Capacity Charge liability towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to the Procurer even before the expiry of such period provided on such termination, the future Capacity Charge liability of the Procurer shall cease immediately.

11.5 Termination due to Force Majeure

11.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, subject to the terms and


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 082.

Tender No.03/PPLT/2012



Power Purchase Agreement - 19-08-2013

conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 3.8.



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



12 ARTICLE 12: LIABILITY AND INDEMNIFICATION


12.1 Indemnity

12.1.1 The Seller shall indemnify, defend and hold Procurer harmless against:

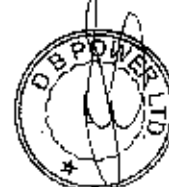
- a) any and all third party claims, actions, suits or proceedings against the Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of:
 - (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

12.1.2 Procurer shall indemnify, defend and hold the Seller harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, 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 Seller from third party claims arising by reason of
 - (i) a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



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

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

12.2 Monetary Limitation of Liability

12.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount of Rupees works out to 6 (six) months monthly tariff of 100% contracted quantum.

12.3 Procedure for claiming Indemnity

12.3.1 Third party claims

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

- i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 12.3.1 (b) below; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

- b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its

obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

12.4 Indemnifiable Losses

12.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 12.4, such event shall constitute a payment default under Article 11.

12.5 Infringement of Intellectual Property Rights

12.5.1

- a) The Seller shall, subject to the Procurer compliance with Article 12.5.1 b), indemnify and hold harmless the Procurer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the Seller.

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

- b) If any proceedings are brought or any claim is made against the Procurer arising out of the matters referred to in Article 12.5.1 (a), the Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Procurer of all actions taken in such proceedings or claims.
- c) If the Seller fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 12.5.1 b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Procurer within the twenty eight (28)

Page 69


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPT.T/2012



days period, the Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.

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

12.5.2

- a) The Procurer, subject to the Seller's compliance with Article 12.5.2(b) shall indemnify and hold harmless the Seller 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 Seller may suffer as a result of any infringement by the Procurer or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered.
- b) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 12.5.2 (a) the Seller shall promptly give the Procurer a notice thereof, and the Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.
- c) If the Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 12.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer. Unless the Procurer has so failed to notify the Seller within the twenty Eight (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- d) The Seller shall, at the Procurer request, afford all available assistance to the Procurer in attending to such proceedings or claim, and shall be reimbursed by the Procurer for all reasonable expenses incurred in so doing.

12.6 Limitation on Liability

- 12.6.1 Except as expressly provided in this Agreement, neither the Seller nor Procurer nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any

increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

12.7 Duty to Mitigate

- 12.7.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



13 ARTICLE 13: ASSIGNMENTS AND CHARGES

13.1 Assignments

- 13.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- (a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and
 - (b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.
- 13.1.2 Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 12 of this Agreement.

13.2 Permitted Charges

- 13.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.
- 13.2.2 However, the Seller may create any encumbrance over all or part of the Receivables, Payment Mechanism or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

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

Provided that:

- I the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements and agreed upon in writing to the provisions of Schedule 12 of this Agreement; and
- II any encumbrances granted by the Seller in accordance with this Article 13.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurer to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the Procurer to claim its right of

subrogation. For the purposes of this Article, additional compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurer as well as compensated by any person other than the Procurer for the same event.

13.2.3 Article 13.1.2 does not apply to :

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



14 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.1 Governing Law

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

14.2 Amicable Settlement and Dispute Resolution

14.2.1 Amicable Settlement

14.2.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute 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.

14.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1.1, furnish:

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

14.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1.1 if the other Party does not furnish any counter claim or defence under Article 14.2.1.2 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 14.2.1.3, the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

14.3 Dispute Resolution

14.3.1 Dispute Resolution by the Appropriate Commission

14.3.1.1 a) where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff shall be submitted to adjudication by the Appropriate Commission. Appeal against

the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

b) Where SERC is appropriate commission, all disputes between the procurer and the seller shall be referred to SERC

14.3.1.2 Deleted .

14.3.2 Dispute Resolution through Arbitration

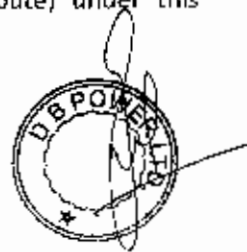
14.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1 a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

- i) The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
- ii) The place of arbitration shall be Chennai/India. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

14.4 Parties to Perform Obligations

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



15 ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Deleted

15.2 Minimum Equity holding/ Equity Lock-In

15.2.1 The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder.

15.2.2 The aggregate equity share holding of the successful bidder in the issued and paid up equity share capital of the Seller shall not be less than the following:

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

b) Twenty-six (26%) for a period of three (3) years thereafter.

15.2.3 All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the other remaining investors hold the minimum equity specified in Article 15.2.2.

15.2.4 Deleted

15.2.5 In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

15.2.6 All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurer.

15.2.7 For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)


Director (Distribution)
Tamil Nadu Generation &



specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%), (i.e., $30\% \times 50\%$)

15.2.8 The provisions as contained in this Article 15.2 shall override the terms of the Consortium agreement submitted as part of the Bid.

15.2.9 Deleted

15.3 Amendment

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

15.4 Third Party Beneficiaries

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

15.5 Waiver

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

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

15.6 Entirety

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

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

15.7 Confidentiality

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


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation
144, Anna Salai, Chennai - 600 002.

Tender No.03/PPLJ/2012



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

without the prior written consent of the other Parties.

15.7.2 Notwithstanding the provisions under Article 15.7.1, the Seller agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

15.8 Affirmation

15.8.1 The Seller and Procurer, both affirm that:

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

15.9 Severability

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

15.10 Relationship of the Parties

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

15.11 Counterparts

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



15.12 Notices

- 15.12.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.
- 15.12.2 If to the Seller, all notices or other communications which are required must be delivered personally, by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : M/s. DB Power Limited, 3rd Floor, Express Towers,
Nariman Point, Mumbai-400 021.
Attention : Mr.Devendra Khandelwal
Email : k.devendra@dainikbhaskargroup.com
Fax. No. : 022-3930 6008
Telephone No. : 022-3930 6023

If to the Procurer, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below:

Address : Tamil Nadu Generation and Distribution Corporation Ltd
6th floor, Eastern Wing, 144, Anna Salai,
Chennai -600 002.
Attention : Chief Engineer/Private Power Projects,
Email : ceipp@tnebnet.org
Fax. No. : 044 -2852 0441
Telephone No. : 044-2852 0441


- 15.12.3 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

- 15.12.4 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.

15.13 Language

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

- 15.13.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



agreements, correspondence, communications or documents shall prevail in matters of interpretation.

15.14 Breach of Obligations

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

15.15 Nomination Restriction

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

15.16 Commercial Acts

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

15.17 Restriction of Shareholders / Owners' Liability

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

15.18 Taxes and Duties

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

15.18.2 Procurer shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer in relation to the matters set out in Article 15.18.1.

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



15.19 No Consequential or Indirect Losses

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

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

15.20 Discretion

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

15.21 Order of priority in application

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

- applicable Law, rules and regulations framed there under,
- this Agreement


15.22 Independent Entity

15.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

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

15.23 Fraudulent and Corrupt Practices

15.23.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurer hereunder or subsistence otherwise.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



15.23.2 Without prejudice to the rights of the Procurer under Article 15.23.1 hereinabove and the rights and remedies which the Procurer may have under this Agreement, if a Seller is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurer shall forfeit the Contract Performance Guarantee.

15.23.3 Further, the Seller shall not be eligible to participate in any tender or RFP issued by the Procurer during a period of 2 (two) years from the date such Seller is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

15.23.4 For the purposes of this Article 15.23, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning the Project;

(b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bid process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Procurer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

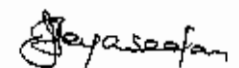


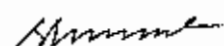
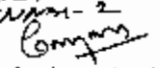



(e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

15.24 Compliance with Law

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

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of Procurer Thiru T.Jayaseelan Director/Distribution TamilNadu Generation and Distribution corporation Ltd 144, Anna salai, Chennai-600 002 Tamil Nadu, INDIA Phone No:044-2851 6362	For and on behalf of Seller Thiru. Girish Agarwal, Managing Director, DB Power Limited Block 1A, 5 th Floor, Corporate Block, DB City Park, DB City, Arera Hills, Opp MP Nagar, Zone-I, Bhopal -462016
Name, Designation and Address	Name, Designation and Address
 Director (Distribution) Tamil Nadu Generation & Distribution Corporation Ltd. 144, Anna Salai, Chennai-600 002.	 Signature with seal 
Witness 1.  (S. THIRUNAVUKKARASU SUPERINTENDING ENGINEER POWER PURCHASE, TANGEDCO CHENNAI-2 2.  (M. HEMALATHA) EXECUTIVE ENGINEER, POWER PURCHASE, TANGEDCO CHENNAI-2.	Witness 1.  (C.D.P. Khandelwal) SENIOR GM Finance DB Power Ltd 3rd Floor, Express Towers 2. Nariman Point, Mumbai -400021 Shethi (SHATHISHI, P.V.) ANALYST, DB POWER LTD, EXPRESS TOWERS, NARIMAN POINT, MUMBAI-400 021.

1 SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER

Sl. No.	Name of the Procurer	Address of the Registered Office of Procurer	Law under which incorporated	Contracted Capacity (MW)	Delivery Point
1	TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LIMITED	144, ANNA SALAI CHENNAI -600 002.	-	208 MW	TANGEDCO PERIPHERY



Director (Distribution)
Tamil Nadu Generation & Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



2 SCHEDULE 2: CALCULATION OF 'X' DAYS

(Refer Article 8.5.9)

	Number of times a Notice has been Issued under Article 8.5.2 to the Procurer prior to present occurrence			
	1 st time	2 nd time	3 rd time	4 th time and onwards
1 st time	x = 20 days	x = 25 days	x = 40 days	x = 60 days
2 nd time	x = 20 days	x = 30 days	x = 45 days	x = 65 days
3 rd time	x = 20 days	x = 35 days	x = 50 days	x = 70 days
4 th time	x = 20 days	x = 40 days	x = 55 days	x = 75 days
5 th time	x = 20 days	x = 45 days	x = 60 days	x = 90 days



 Director (Distribution)
 Tamil Nadu Generation &
 Distribution Corporation Ltd.
 144, Anna Salai, Chennai-600 002.



3 SCHEDULE 3: AVAILABILITY FACTORS

3.1 The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a) Availability declaration and calculation of Availability or Availability Factor;
- b) Requirement for spinning reserves;
- c) Procedure for revision of Availability;
- d) Consequences of failure to demonstrate capacity or misdeclarations of capacity;
- e) Scheduling and Dispatch; and
- f) Other matters which may be related to Availability or Availability Factor.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



4 SCHEDULE 4: TARIFF

4.1 General

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Tariff shall be paid in two parts comprising of Capacity Charge and Energy Charge as mentioned in Schedule 8 of this Agreement.
- iii) For the purpose of payments, the Tariff will be Quoted Tariff as specified in Schedule 8, duly escalated as provided in Schedule 6 for the applicable Contract Year.
- iv) The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond (85%) as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Seller as provided in this Schedule.

4.2 Monthly Tariff Payment

4.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Capacity Charge payment in accordance with Clause 4.2.2 of Schedule 4;
- ii) Monthly Energy Charge for Scheduled Energy in accordance with Clause 4.2.3 of Schedule 4;
- iii) Incentive determined in accordance with Clause 4.2.4 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);
- iv) Penalty determined in accordance with Clause 4.2.5 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);

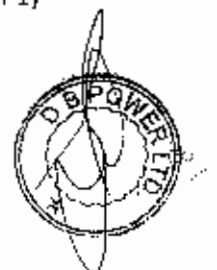
4.2.2 Monthly Capacity Charge Payment

4.2.2.1 The Monthly Capacity Charge payment for any Month m in a Contract Year n shall be calculated as below:

If $CAA \geq NA$,

$$FCm = \sum_j (NA * AFCyn * CC * L * Ncontract / 24) - \sum C(m-1)$$

Else:



$$FCm = \sum_j (AFCyn * AA * CC * L * Ncontract / 24) - \sum C(m-1)$$

where:


- a) FCm is the Capacity Charge payment for the Month m (in Rupees)
- b) \sum_j is the summation of all the relevant values separately for each Settlement Period from the start of the Contract Year "n" in which Month "m" occurs up to and including Month "m"
- c) AFCyn is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges AEFCyn and b) Payable Non Escalable Capacity Charges ANEFCyn for the Month "m" in the Contract Year "n" (in Rs/ kWh) in which such month "m" occurs and computed as mentioned hereunder;
- d) AEFCyn is the Payable Escalable Capacity Charges for Month "m" in the Contract Year "n", expressed in Rs/ kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 8 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$$AEFCyn = QAEFCyn * p/q$$

where,

- i. QAEFCyn is the Quoted Escalable Capacity Charges (in Rs/ kWh) shall be taken as at the end of the previous Contract Year (n-1);
- ii. p is the Escalation Index as per Schedule 6 at the beginning of the Month "m" (expressed as a number);
- iii. q is the Escalation Index as per Schedule 6 (expressed as a number);
- e) ANEFCyn is the Payable Non Escalable Capacity Charges for the Month "m", expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such Month "m" occurs, as provided in Schedule 8;
- f) CAA is the cumulative Availability, as per REA, from the first day of the Contract Year "n" in which Month "m" occurs up to and including Month "m" (expressed in percentage);
- g) AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage;
- h) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)


 Director (Distribution)
 Tamil Nadu Generation &
 Distribution Corporation Limited



- i) L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);
- j) Ncontract is the number of hours of power supply in a day, contracted as per the PPA (24 in the case of base load and seasonal load requirement);
- k) NA is Normative Availability; and
- l) $\sum C(m-1)$ is the cumulative Capacity Charge payable from the first day of the Contract Year "n" in which Month "m" occurs up to and including Month "m-1" but not including Month "m", (in Rupees).

Provided, no Monthly Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to Seller's failure to operate it as per the provisions of Grid Code and such Settlement Period shall not be considered during calculation of Monthly Capacity Charge payment.

4.2.3 Monthly Energy Charges

4.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined as detailed hereunder:

4.2.3.2 The Monthly Energy Charges (in Rupees) for Month "m" shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

where:

- a) MEP_m is the Monthly Energy Charges for Month m (in Rs.);
- b) AEO_m is the Scheduled Energy for the Month m (in kWh); and
- c) MEP_n is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP_n is the sum of the following: (i) Payable Escalable Energy Charges ($MEEP_n$), (ii) Payable Escalable Inland Transportation Charges ($MEITP_n$), (iii) Payable Non Escalable Energy Charges ($MNEEP_n$) and (iv) Payable Non Escalable Inland Transportation Charges ($MNEITP_n$) for the Contract Year "n" in which Month "m" occurs and computed as mentioned hereunder:

where:

$$MEEP_n = QMEEP_n * p(EE)/q(EE)$$

$$MEITP_n = QMEITP_n * p(ET)/q(ET)$$

where:



- a) QMEEP_n for the first Contract Year in which month "m" occurs is the Quoted Escalable Energy Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) QMEITP_n for the first Contract Year in which month "m" occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- c) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month "m" (expressed as a number);
- d) q(EE) is the Escalation Index as per Schedule 6 (expressed as a number);
- e) p(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 at the beginning of Month "m" (expressed as a number);
- f) q(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number);
- g) MNEEP_n is the Payable Non Escalable Energy Charges of the Contract Year "n" in which Month "m" occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year "n" in which Month "m" occurs, as provided in Schedule 8; and
- h) MNEITP_n is the Payable Non Escalable Inland Transportation Charges of the Contract Year "n" in which Month "m" occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year "n" in which Month "m" occurs, as provided in Schedule 8.

4.2.4 Contract Year Energy Incentive Payment

- 4.2.4.1 If and to the extent the Availability in a Contract Year exceeds Normative Availability, an incentive at the rate of forty percent (40%) of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 8 subject to a maximum of twenty five (25) paisa /kWh, shall be allowed on the energy (in kWh) corresponding to the Availability in excess of Eighty Five (85%).

4.2.5 Contract Year Penalty for Availability below Eighty (80%) during the Contract Year

- 4.2.5.1 In case the Availability for a Contract Year is less than Eighty percent (80%), the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between Eighty (80%), and Availability during such Contract Year.

4.3 Deviation from the Schedule

- 4.3.1 Variation between Scheduled Energy and actual energy at the Interconnection

Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

4.4 Transmission/Wheeling Charges and RLDC/ SLDC Charges

4.4.1 The payment of POC and Non POC Charges to the CTU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer.

4.4.2 Deleted

4.5 Penalty and rights relating to minimum guaranteed quantity of Fuel

4.5.1 In case Seller has to pay penalty to the fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year, Availability of the Power Station of the Seller is greater than the Minimum Off take Guarantee but the Procurer have not scheduled energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amounts, on the Procurer:

- i) penalty paid to the fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or
- ii) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) made by the Procurer for all the months in that Contract Year multiplied by $(1 - X/Y)$ where:

X is the Scheduled Energy during the Contract Year (in kWh); and

Y is the Scheduled Energy corresponding to Minimum Off take Guarantee for the Procurer during the Contract Year (in kWh).


4.6 Tariff for the period prior to date of commencement of supply of power

4.6.1 The Tariff for the period prior to date of commencement of supply of power shall be the Quoted Tariff of the first Contract Year with escalation for relevant period only for energy charge.

4.7 Settlement of Bills

4.7.1 The penalty of actual Availability shortfall during the Contract Year, deviation from the schedule, Transmission Charges and RLDC/ SLDC Charges, and penalty to be paid to fuel supplier will be settled as detailed in Clauses 4.2.2, 4.2.5, 4.3, 4.4 and 4.5 of this Schedule.

4.7.2 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002. Tender No.03/PPLF/2012



5 SCHEDULE 5: Details of Generation Source and Supply of Power

DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.13 Details of the generation source and the primary fuel

(A) Details of generation source

Sl. No	Particulars	Details
1.	Location of power station (Specify place, district and state)	DB Power Ltd. Village Badaulaha, Dist. Jangir Champa, Chhattisgarh
2.	No. of existing/ proposed units and installed capacity of each unit (in MW)	Existing: Sl. No. of Units of Installed Capacity COD 1. Not Applicable 2. Not Applicable Proposed: Sl. No. of Units of Installed Capacity Expected COD 1. 2 Units 1200 MW August, 2013 (2x600 MW)
3.	Primary Fuel	Domestic Coal
4.	Dates of last major R&M (unit-wise)	Not Applicable
5.	Duration of Fuel Supply Agreement(s) (FSA)	The Project has received LOA from CIL and part tapping linkage. The Fuel Supply Agreements for the respective sources are to be executed. The company has also been allocated Coal block.
6.	Quantum of power contracted with other purchasers, if any (in MW)	<ul style="list-style-type: none"> PPA executed with Chhattisgarh State Power Trading Company Ltd. under the Implementation Agreement 30% of Installed Capacity - Approx. 360 MW 5% of Net Power (Installed Capacity - Aux. Consumption) - Approx. 60 MW Additional 2.5% of Net power in proportion to use of coal from captive coal mine - Approx. 10 MW Offered capacity under Case-1 bid (Under evaluation) - 314 MW
7.	Details of surplus capacity (in MW)	Surplus Capacity Available Approx. 223 MW

Registered Office: Block 1/A, 5th Floor, Corporate Block, DB City Park, DB City, Arera Hills, Opp. MP Nagar Zone-I, Bhopal (MP) 462 016.
Tel.: +91-755-398 8884 Fax: +91-755-267 5130

Director (Distribution)
Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

(B) Details of primary fuel

Sl. No.	Particulars	Remarks
1	Primary fuel (Insert as applicable: "Domestic coal/ imported coal/ Domestic (pipeline) gas/ imported gas (R-LNG)").	Domestic Coal
2	Fuel source (Insert as applicable: "Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ Imported gas (R-LNG)").	Coal India Limited (CIL) coal linkage and domestic Captive Coal Mine
3	Fuel grade (Applicable only in case of coal)	B & F Grade
4	Name of the CIL subsidiary from which coal is proposed to be sourced or name and location of the captive coal mine (as applicable)	Southern Eastern Coal Field and Mahanadi Coal Field for Coal linkage and Durgapur - II/Saria Coal block (It may be noted that said linkage from MCL has already been transferred to SECL vide MCL letter No. MCL/SBP/GM/S&M/COMM/DBPOWER/2012/2714 dt. 26 th September, 2012)
5	Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under: 1. Administered Price Mechanism ("APM"); or 2. Controlled and notified by an independent Regulator; or 3. Controlled and notified by the Government of India or Government of India Instrumentality. (Applicable only for gas)	Administered Price Mechanism (As per notified price of CIL from time to time)

For DB Power Ltd.

Gurish Agarwal
Managing Director
Date: 01st March, 2013
Place: Mumbai

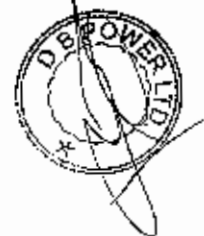


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



6 SCHEDULE 6: ESCALATION INDEX

- 6.1.1 The index ("Escalation Index") to be applied for escalation of Quoted Escalable Capacity Charges, Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable (or indexed) Capacity Charge and Escalable Energy Charge, as per the provisions of this Agreement
- 6.1.2 For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e. $100 * (1 + 0.047/12)$]. The value of the Escalation Index at the end of the Nth Month after the Bid Deadline shall be calculated as: $100 * (1 + N * 0.047 / 12)$ for Quoted Escalable Energy Charges. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified as applicable as per the CERC notification. The value of the Escalation Index shall be calculated up to the fourth decimal point.
- 6.1.3 The different per annum escalation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:
- a) Quoted Escalable Capacity Charges;
 - b) Quoted Escalable Energy Charges;
 - c) Quoted Escalable Inland Transportation Charges.
- 6.1.4 In case due to any reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurer and the Seller shall replace the above inflation rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.



7 SCHEDULE 7: REPRESENTATION AND WARRANTIES

7.1 *Representations and Warranties by the Procurer*

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

7.1.1

- i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Procurer in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental 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.
- vi) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines. In case the quantum of Contracted Capacity of Procurer exceeds the additional demand forecast for the next three (3) years, the Procurer has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured, as required under Para 3.1(i) of the Bidding Guidelines.

- 7.1.2 The Procurer makes all the representations and warranties above to be valid as on the date of this Agreement.


Director (Distribution)
Tamil Nadu Generation & Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002. Tender No.03/PPLT/2012



7.2 Representation and Warranties of the Seller

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

- i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Seller in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller 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 Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

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

7.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 11.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 11 of this Agreement.



8 SCHEDULE 8: QUOTED TARIFF

opened on 7.5.13


DB Power Limited
Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel. +91 22 3930 6000 • Fax +91 22 3930 6008

For
P. [Signature]
G. [Signature]

4.10 Format for Financial Bid

- Total capacity of power (in MW) offered by the bidder: 208 MW (Two Hundred and Eight MW)
- Fractions of the offered total capacity of power (in MW).
 - 50 MW (Fifty MW)
 - 50 MW (Fifty MW)
 - 50 MW (Fifty MW)
 - 58 MW (Fifty eight MW)
- Name of the Interconnection Point Power Grid Corp. India Ltd's sub-station at Kotra, Chhattisgarh
- Name of the Injection Point Power Grid Corp. India Ltd's sub-station at Kotra, Chhattisgarh
- Region and State in which the Injection Point is located: Western Region, State Chhattisgarh.
- Whether the STU system be used to transmit power between the Interconnection Point and the Injection Point? No
- Details of proposed Delivery Point(s) : - Not Applicable
- % Transmission loss in STU system) : - Not Applicable
- Name(s) of the regional ISTS to be involved in transmission of power between the Injection Point and the Delivery Point: Western Region and Southern Region
- Distance of Coal Block to Power Station: up to 100 km.

For DB Power Ltd.

Girish Agrawal
Managing Director

Place: Mumbai
Date: 01st March, 2013



Registered Office: Block 1A, 5th Floor Corporate block, DB City Park, DB City, Asera Hills, Opp MP Nagar, Zone-4, Shopal (MP)-462 016.
Tel: +91-755-393 8684 Fax: +91-755 267 5199


Director (Distribution)
Tamil Nadu Generation & Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002. Tender No.03/PPT.T/2012



Power Purchase Agreement 19-08-2013

Format for Financial Bid Scenario 2 - Power Generation Source Linkage Based Cont

Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges (Rs./kWh)	Quoted Escalable Capacity Charges (Rs./kWh)	Quoted Non Escalable Energy Charges (Rs./kWh)	Quoted Escalable Energy Charges (Rs./kWh)	Quoted Non Escalable Island Transportation Charges (Rs./kWh)	Quoted Escalable Island Transportation Charges (Rs./kWh)
1	1-10-2013	31st Mar	2.260	0.000	0.047	0.886	0.000	0.388
2	01-Apr-2014	31st Mar	3.000	Same as above	0.047	Same as above	0.000	Same as above
3	01-Apr-2015	31st Mar	3.000	Same as above	0.047	Same as above	0.000	Same as above
4	01-Apr-2016	31st Mar	2.442	Same as above	0.047	Same as above	0.000	Same as above
5	01-Apr-2017	31st Mar	2.172	Same as above	0.047	Same as above	0.000	Same as above
6	01-Apr-2018	31st Mar	2.302	Same as above	0.047	Same as above	0.000	Same as above
7	01-Apr-2019	31st Mar	1.138	Same as above	0.047	Same as above	0.000	Same as above
8	01-Apr-2020	31st Mar	2.168	Same as above	0.047	Same as above	0.000	Same as above
9	01-Apr-2021	31st Mar	2.105	Same as above	0.047	Same as above	0.000	Same as above
10	01-Apr-2022	31st Mar	2.100	Same as above	0.047	Same as above	0.000	Same as above
11	01-Apr-2023	31st Mar	2.100	Same as above	0.047	Same as above	0.000	Same as above
12	01-Apr-2024	31st Mar	2.100	Same as above	0.047	Same as above	0.000	Same as above
13	01-Apr-2025	31st Mar	2.100	Same as above	0.047	Same as above	0.000	Same as above
14	01-Apr-2026	31st Mar	2.100	Same as above	0.047	Same as above	0.000	Same as above
15	01-Apr-2027	31st Mar	2.163	Same as above	0.047	Same as above	0.000	Same as above
16	01-Apr-2028	30.09.2028	2.276	Same as above	0.047	Same as above	0.000	Same as above

Name : Girish K. Arwal
Designation : Managing Director
Place : Mumbai
Date : 01st March 2013



FC/PT

EE/PP

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



2 AUG 2013

3035 IPENB 130128

Bank Guarantee No. A.L.C. Br/2013

unequivocally, irrevocably and unconditionally to pay to the Procurer at 144, Anna Salai, Chennai-2 forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees Sixty Two Crores and Forty Lakhs (Rs. 62.40 Crores) only on behalf of M/s. DB Power Ltd.

This guarantee shall be valid and binding on the Guarantor Bank up to and including 31st December, 2013 and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. Sixty Two Crores and Forty Lakhs (Rs. 62.40 Crores) only. Our Guarantee shall remain in force until 31st December, 2013. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

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

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

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Chennai shall have exclusive jurisdiction. The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

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

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



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



- 2 AUG 2013

BANK GUARANTEE

Bank Guarantee

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. Sixty Two Crores and Forty Lakhs (Rs. 62.40 Crores) only and it shall remain in force until 31st December, 2013 with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by DB Power Ltd. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand.

Notwithstanding any thing contained herein after our liability under this guarantee is restricted to Rs.62,40,00,000/- (Rupees Sixty Two Crores Forty Lacs only) and this guarantee is valid up to 31-12-2013 and we shall be released and discharged from all liabilities hereunder unless a written claim for payment under this guarantee is lodged on us on or before 31-01-2014 irrespective whether or not the Original bank Guarantee is returned to us.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this Second day of August, 2013 at Ahmedabad.



For Bank of India
Authorized Signatory
J. B. PARMAR
147646

For Bank of India
Authorized Signatory
S. R. SHAH
129819

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



10 SCHEDULE 10: SELECTED BID

DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.1 Format for Covering Letter

Date: 01st March, 2013
From: DB Power Ltd
Office Block 1A, 5th Floor,
Corporate block, DB City-Park,
Anera Hills Opp M.P. Nagar,
Zone-I, Bhopal - 462016
Tel.#: 022 - 3930 6000
Fax#: 022 - 3930 6008
E-mail address# prish.sury@dainikbhaskargroup.com

To
Chief Engineer/PPP
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maligai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India

Dear Sir,

Sub: Bid for supply of power on 'long' term basis through tariff based competitive bidding process under Case-1 bidding procedure in response to RFP dated 21.12.2012


We, the undersigned DB Power Ltd having read, examined and understood in detail the RFP and RFP Documents for supply of power on 'long' term basis through tariff based competitive bidding process for meeting the requirements of the Procurer hereby submit our Bid comprising of Financial bid and Non-Financial Bid. We confirm that neither we nor any of our Parent Company/Affiliate/ Ultimate Parent Company has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

1. We give our unconditional acceptance to the RFP, dated 21.12.2012 and RFP Documents attached thereto, issued by the Procurer, as amended. In token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.

2. Bid Bond

We have enclosed a Bid Bond of Rs. 5,24,00,000/- (Rupees Six Crores Twenty Four Lakhs only), in the form of bank guarantee no. 20351PEB@13DC35 28th Feb, 2013 as

Registered Office: Block 1A, 5th Floor, Corporate block, DB City Park, DB City, Anera Hills, Opp MP Nagar, Zone-I, Bhopal (MP) Pin-462016.
Tel.: +91-755-288 8884 Fax: +91-755-267 5190


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

per Format 4.9 from Bank Of India and valid up to 3rd August, 2013 in terms of Clause 2.12 of this RFP. The offered quantum of power by us is 208 MW.

3. We have submitted our Financial Bid strictly as per Format 4.10 of this RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

4. Acceptance

We hereby unconditionally and irrevocably agree and accept that the decision made by the Procurer in respect of any matter regarding or arising out of the RFP shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to supply of power.

5. Familiarity with Relevant Indian Laws & Regulations

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of RFP have been fully examined and considered while submitting the Bid.

6. Contact Person

Details of the contact person are furnished as under:


Name : Mr. Devendra Khandelwal
Designation: Sr. General Manager - Finance
Company : DB Power Ltd.
Address : 3rd Floor, Express Tower,
Nariman Point, Mumbai - 400 021.
Phone No. : 022-3930 6023.
Fax No. : 022-3930 6008
E-mail address: kdevendra@dainikbhaskargroup.com

7. We are enclosing herewith the Non Financial Bid (Envelope I) and Financial Bid (Envelope II) containing duly signed formats, each one duly closed separately, in one (1) original + Three (3) copies (duly attested) as desired by you in the RFP for your consideration.

8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Procurer.

9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.




Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/TPL1/2012

10. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and twenty (120) days from the Bid Deadline.

11. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1, of this RFP.

12. We confirm that no order / ruling has been passed by an Appropriate Commission or a competent court against us or any of our Affiliates in the preceding one (1) years from the Bid Deadline for breach of any contract for supply of power having duration of contract in excess of one (1) year and that the bid security submitted by the us or any of our Affiliates has not been forfeited, either partly or wholly, in any bid process under Case-1 or case-2 bidding procedure for procurement of power, in the preceding one (1) years from the Bid Deadline to any licensee in India as per the provisions of Clause 2.1.8.

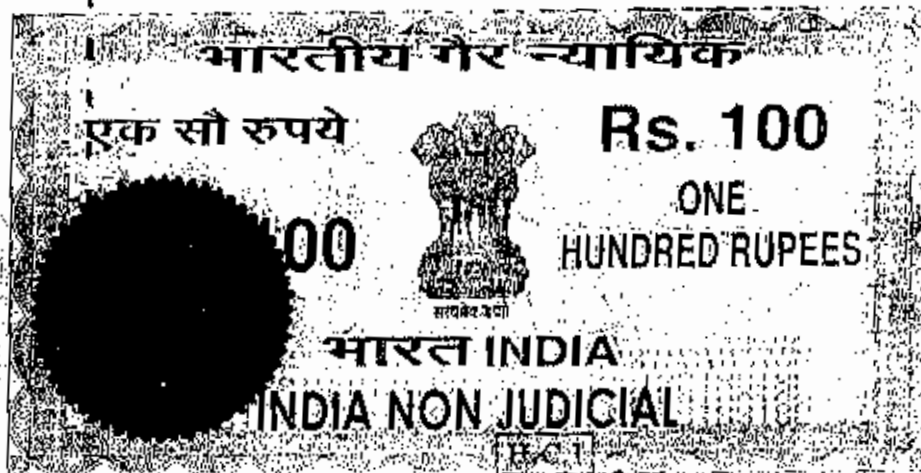
Dated the 01st day of March, 2013

Thanking you,

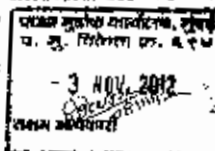
We remain,
Yours faithfully,
For DB Power Ltd.

Girish Agarwal
Managing Director.





महाराष्ट्र MAHARASHTRA



ड. प्रकाश मुकुंद दामोदर, मुंबई
प. नं. २७, सिविल लाइन्स, ए. ६ ६ ७
- 3 NOV 2012
प्रमाणित

GF 021075



स्वे. ए. ए. ए.

POWER OF ATTORNEY

know all men by these presents, We DB Power Ltd having its registered office at Office Block 1A, 5th Floor, Corporate block, DB City-Park, Arera Hills Opp M.P Nagar, Zone-I, Bhopal - 462016 do hereby constitute, appoint and authorize Mr. Girish Agarwal 10, Kumarah, Worli Seaface, Worli, Mumbai - 400018 who is presently employed with us and holding the position of Managing director as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for supply of power on 'long' term basis through tariff based competitive bidding process for meeting the requirements of Tamil Nadu Generation And Distribution Corporation Limited in the country of India in response to the RFP dated 21.12.2012 issued by "Procuree", including signing and submission of the bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Procuree require us to submit. The aforesaid Attorney is further authorized for making representations to the "Procuree", and providing information / responses to "Procuree", representing us in all matters before "Procuree", and generally dealing

PRAKASH H. DODA
B.A.L.L.B.
Advocate High Court,
Madhya Pradesh Government of India,
8, Konark Road, No. 3,
Collied Tala-Hidpasa, Parat,
Bhopal-462012.

Namrata



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



with "Procuree" in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.


We hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.


Signed by the within named DB Power Ltd through the hand of Mrs. Namita Agarwal duly authorized by the Board to issue such Power of Attorney

Dated this 01st March, 2013

Accepted



Signature of Attorney : 
Name : Girish Agarwal
Designation : Managing Director
Address of the Attorney : 3rd Floor, Express Tower,
Nariman Point, Mumbai - 400 021



Attested

Signature of executant : 
Name : Namita Agarwal
Designation : Director
Address of the executant : 3rd Floor, Express Tower
Nariman Point, Mumbai - 400 021

Common Seal of DB Power Ltd. has been affixed in the presence of Mr. Girish Agarwal, Managing Director of the Company and Mr. Devendra Khandelwal, Authorized person of the company pursuant to the Board of Director's resolution dated 20th February, 2013

Witness


Name: 
Designation: 
Date: 01st March, 2013

Name: 
Designation: 
Date: 01st March, 2013

Attested by me

PRAKASH DOOA
B.A.L.L.B.
Advocate, High Court,
Government of India,
8, Kojdaji Bldg. No. 3,
Behind Tata Hospital, Patel,
Mumbai-400042.




Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 032.

DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.5 Format for Bidder's composition and ownership structure

• Corporate Details:

Please provide the following information for the Bidder.

a. Company's Name, Address, Nationality and Director's details:

Name: DB Power Ltd.
Registered/Principal Address: Office Block 1A, 5th Floor,
Corporate block, DB City-Park,
Arenia Hills Opp M.P Nagar,
Zone-I, Bhopal - 462016
Website Address: www.dbpowergroup.com
Corporate Identification Number, if any: U40109MP2006PLC019008
Country of Origin: India
Address for Correspondence: 1st Floor, Express Tower
Nariman Point,
Mumbai: 400 021

Directors details:


Name:	Nationality:	Address:	Telephone No	Email	Telefax
Shri. Ramesh Chandra Agarwal	Indian	Office Block 1A, 5th Floor, Corporate block, DB City-Park, Arenia Hills Opp M.P Nagar, Zone-I, Bhopal - 462016	0755 3988884	chairman_sect1@dainikbhaskargroup.com	0755 2675190
Shri. Girish Agarwal	Indian		022 39306000	girish.sect1@dainikbhaskargroup.com	022 1930 4908
Shri. Pawan Agarwal	Indian	Hills Opp M.P Nagar, Zone-I, Bhopal - 462016	0755 3988884	pravin@dainikbhaskargroup.com	0755 2675190
Shri. Nitin Mishra	Indian		022 66695453	nitin.mishra@warburgpincus.com	022 66500001
Shri. Ajay Agarwal	Indian		0755 3988884	ajay@dainikbhaskargroup.com	0755 2675190
Shri. Nandini Agarwal	Indian		0755 3988884	nandini@dainikbhaskargroup.com	0755 2675190

B. Year of Incorporation: 12th October, 2006

C. Company's Business Activities: Power Generation



Registered Office: Block 1A, 5th Floor, Corporate block, DB City Park, DB City, Arenia Hills, Opp M.P Nagar, Zone-I, Bhopal (NP)-462 016.
Tel.: +91-755-398 8884 Fax: +91-755-267 5190


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPLT/2012



d. Name of the authorized representative: Mr. Girish Agurwal

e. Telephone Number: 022-3930 6000

f. Email Address: girish.agurwal@deliabkhsangroup.com

g. Telefax Number: 022-3930 6008

h. Status as a Bidder:

- ✓ (i) Bidding Company
- (ii) Lead Member of the Bidding Consortium
- (iii) Member of the Bidding Consortium

i. Company's Local Address in India (if incorporated outside India): Not Applicable

j. Please provide the following documents:

- (i) Enclosed copy of the Memorandum and Articles of Association and certificate of incorporation certified by the company secretary of the DB Power Ltd
- (ii) Enclosed Authority letter in favour of "Procuree" from the DB Power Ltd authorizing "Procuree" to seek reference from bankers, lenders, financial institutions and any other person as given below in the Authorization, as per Clause 2.1.7 of the RFP.

k. Whether the Bidder wishes to form a Project Company for the supply of power? No

l. Whether the Bidder has already formed a Project Company: No

- Details of Ownership Structure:

Details of persons owning 10% or more of the total paid up equity of the Bidding Company / each Member of the Consortium.

Name of the Bidding Company: DB Power Ltd.

Status of equity holding as on 01st March, 2013

Name of Equity Holder	Type and Number of Equity Shares owned	% of Equity Holding	Extent of Voting Control (%)
Diligent Power Pvt. Ltd.	124,17,79,993	100%	100%

For and on behalf of DB Power Ltd.

Name: Girish Agurwal
Designation: Managing Director

Date: 01st March, 2013

Place: Mumbai





महाराष्ट्र MAHARASHTRA

दे. महाराष्ट्र
को. अति. १०३२
एल. एन. १०३२
महाराष्ट्र
स. नं. १०३२
संयुक्त महाराष्ट्र
विकास.

GV 263158

महाराष्ट्र सरकार, मुंबई
स. नं. १०३२
१५ FEB 2013
संयुक्त महाराष्ट्र



AUTHORISATION

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith as Annexure A hereto, including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by "Procuree" to verify the authenticity of the documents / information submitted by us for meeting the Qualification Requirements in respect of our Bid for procurement of power on 'long' term basis through 'tariff' based competitive bidding process for meeting the requirements of Tamil Nadu Generation And Distribution Corporation Limited and / or regarding our financial standing and general reputation.

For and on behalf of M/s. DB Power

Girish Agastwal
Authorized Signatory
Place: Mumbai
Date: 01st March, 2015



Attested by me

Prakash H. DOGA
B.A.L.L.B.
Advocate High Court,
Holar Government of India,
u, Kondaji Bldg. No. 3,
Behind Tale Hospital, Parul,
Mumbai-400012.



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



Tender No.03/PPLT/2012

List of Bankers

1. Name of the Bank: State Bank of India
Address: Corporate Accounts Group,
Neville House, 3rd Floor,
J.N. Heredia Marg,
Ballard Estate, Mumbai: 400 001
Person Contact: Mr. Rajeev Arora
Telephone: 022-6154 2900/2670
Fax: 022-6154 2802
Email-Id: r.arora@sbi.co.in
2. Name of the Bank: IDBI Bank
Address: 5th Floor, IDBI tower,
Cuffe Parade
Mumbai: 400 005
Person Contact: Mr. Animesh Sinha
Telephone: 022-66552448
Fax: 022-22184699
Email-Id: animesh.sinha@idbi.co.in

Attested by me

Prakash H. Dooa
01/03/2013
PRAKASH H. DOOA
S.A.L.L.B.
Advocate High Court,
Ministry Government of India,
8, Khandaj Bldg. No. 3,
Behind Tata House, Parli,
Mumbai-400012.



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nurlman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.6 A: FORMAT FOR QUALIFICATION REQUIREMENT

To
Chief Engineer/PPP
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maligai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India

Dear Sir,

Sub: Bid for procurement of power on 'long' term basis through tariff based competitive bidding process in response to the RFP dated 21.12.2012.

We submit our Bid for the total capacity of 208 MW for which we submit details of our Qualification Requirements.

Financial Bid	Offered Capacity (MW)
DB Power Ltd's 2x600 MW Power Plant at Village Badadarha, Dist. Jangir Champa, Chhattisgarh	208 MW
Total of all Generation Sources	208 MW

We certify that the DB Power Ltd had a Networth of Rs. 1027.16 Crores computed as per instructions provided in Clause 2.1.2 of this RFP based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Financially Evaluated Entity	Relationship with Bidding Company	Networth (Rs. Crore)	Financial Year
DB Power Ltd.	Self	1027.16	2011-12
Total Network		1027.16	

Yours faithfully
For DB Power Ltd.

Girish Agarwal
Managing Director
Date: 27th February, 2013
Place: Mumbai



Registered Office: Block 1A, 5th Floor, Corporate Block, DB City Park, DB City, Aerodrome Hills, Opp VLP Nagar, Zone-I, Bhopal (MP)-462 015.
Tel.: +91-755-298 8864 Fax: +91-755-267 5190.

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PP1.1/2012



For Gupta Navin K & Co.
Firm Registration No. 086263C
Chartered Accountants



Partner
Membership No. 62503
Date: 27th February, 2013
Place: Mumbai

Common Seal of DB Power Ltd. has been
affixed in the presence of Mr. Girish
Agarwal, Managing Director of the
Company and Mr. Devendra Khandelwal,
Authorised person of the company
pursuant to the Board of Director's
resolution dated 20th February, 2013

Devendra Khandelwal

Witness

Name: Nitesh D. Gode
Designation: CATER MANAGER
Date: 27th February, 2013

Name: ROUSHAD SHAH
Designation: FINANCE TRAINEE
Date: 27th February, 2013



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Computations for calculations of Networth
(As per Clause 2.1.2.1 of Request for Proposal)

		(Rs. In Crores)
Net Worth		2011-12
	Paid up Share Capital	1026.78
Add:	Reserves	0.38
Subtract:	Revaluation Reserves	-
Subtract:	Intangible Assets	-
Subtract:	Miscellaneous Expenditure to the extent not written off and carry forward losses	-
Total Networth (NW)		1027.16

For DB Power Ltd.

Gurishagarwal
Managing Director

Date: 27th February, 2013



For Gupta Navin K & Co.
Firm Registration No. 006263C
Chartered Accountants



Partner:

Membership No. 65522

Date: 27th February, 2013

Place: Mumbai



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.6B FORMAT FOR QUALIFICATION REQUIREMENT

To
Chief Engineer/PPP
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Malligai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India

Dear Sir,

Sub: Bid for procurement of power on 'long' term basis through tariff based competitive bidding process in response to the RFP dated 21.12.2012.

We hereby submit following details/documents in support of meeting the Qualification Requirements prescribed in Clause 2.1.2.2.

1 Land:

Details of Land Acquired are as follows:

Particulars	Area (Acres)
Land acquired under Land Acquisition Act, 1894 (Lease period of 99 years)	230.95
Govt. Land - Leasehold Land (Lease period of 99 years)	72.20
Private Land	617.27
Total Land Acquired	920.42

Enclosed letter issued by Sub-Registrar, Dabhara, Dist. Jangir Champa, Chhattisgarh dt. 30th August, 2012

Total Land required as per MoEF letter dt. 16th September, 2010 is 630 Acres.

Land Affidavit duly signed by Managing Director dt. 01st March, 2013 is enclosed

2 Fuel:

➤ Domestic coal:

➤ Entire coal requirement for the project is tied up through

Registered Office: Block 1A, 5th Floor, Corporate block, DB City Park, DB City, Anna HRB, Opp MP Nagar, Zone-I, Shilpa, MP-462 016
Tel: +91-755-358 8884 Fax: +91-755-267 5190

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

- Coal linkage of 2.497 MTPA from South Eastern Coalfields Ltd. ("SECL"), subsidiary of Coal India Ltd.
- Coal linkage of 2.497 MTPA part 1:porting from Mahanadi Coalfields Ltd. ("MCL") subsidiary of Coal India Ltd. (It may be noted that said linkage from MCL has already been transferred to SECL vide MCL letter No. MCL/SHP/GM/S&M/COMM/POWER/2012/2714 dt. 26th September, 2012)
- 2 MTPA coal from Durgapur / Sarhya II captive coal minus
- Shortfall if any will be met through e-auction

Computation for consumption of coal is as follows

Particular	Project
Installed capacity (MW)	1200
PLF (%)	85%
Gross Generation (MUs)	8935.20
Expected Coal GCV (kcal/kg)	4100
Expected Station Heat Rate (kcal/kwh)	2250
Expected coal consumption (MTPA)	4.90

Particulars of documents enclosed in support of the above:

- Letter of Assurance dt. 15th June, 2009 issued by SECL for 2.497 MTPA "F" Grade Coal is enclosed
- Letter of Assurance dt. 8th July, 2009 Issued by MCL for 2.497 MTPA "F" Grade Coal is enclosed
- Coal Block Allotment Letter dt. 6th November, 2007 for allotment of Durgapur II / Sarhya Coal Block issued by Ministry of Coal
- Letter for change of source of coal supply from MCL to SECL issued by MCL dt. 26th September, 2012 is enclosed

Bid Evaluation is as per Scenario-2 Power generation source linkage based coal

3. Water: Total Water Allotment from Mahanadi River of 40 MCM P.A.

- Enclosed Water Allotment Letter dt. 18th January, 2008 from Water Resource Dept. Govt. of Chhattisgarh for 20 MCM
- Enclosed Additional Water Allotment Letter dt. 27th December, 2008 from Water Resource Dept. Govt. of Chhattisgarh for further 20 MCM



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PPCT/2012

4. Environmental Clearance:

Received Environment Clearance from Ministry of Environment and Forest vide its letter dt. 16th September, 2010 (Copy Enclosed)

5. Forest Clearance:

- No forest land is involved in Power station area, therefore forest clearance not required. Enclosed No Objection Certificate received from Office of the Divisional Forest Officer, Janjgir Champa Forest Division, Champa (C.G)

6. In case of existing power station: Not Applicable

Yours faithfully
For DB Power Ltd.

Managing Director
Name: Girish Agarwal

Date: 01st March, 2013
Place: Mumbai

Common Seal of DB Power Ltd. has been affixed in the presence of Mr. Girish Agarwal, Director of the Company and Mr. Devendra Khandelwal, Authorised person of the company pursuant to the Board of Director's resolution dated 20th February, 2013

[Signature]

D. P. Khandelwal

Witness:

Name: Nilesh Gode
Designation: Chief Manager
Date: 01st March, 2013

Name: Rooshabhi Shah
Designation: Finance Trainee
Date: 01st March, 2013



[illegible]

GV 263159

15 FEB 2013



श्री. सचिव 3A

अथवा

सुभाषचंद्र बोस
आचार्य विद्यालय विद्या

11. Girdish Agarwal, aged about 41 years, s/o Ramesh Chandru Agarwal, resident of 10, Kumanan, Worli Seaface, Worli, Mumbai - 400018 do hereby solemnly declare as under:-

4. That I am the Managing Director of the JIB Power Ltd. and hence competent and authorized to swear the instant affidavit;

2. That M/s DE Power Ltd. have acquired 920.42 Acres of land till 30th August,

Attested by Sd/- at villages Badaderba and Tondri, Tehsil Dabhra, Dist. Janjgir-Champa in the State of Chhattisgarh, (hereinafter referred to as 'Acquired Land') for the purpose of establishing a 2 x 600 MW coal based thermal power plant.

PRAKASH H. DODA
BALLB

Advocate High Court,
Notary Government of India,
A. Krishna Rao Building No. 2,
Barristers Chambers - 2,
Madurai - 625 002.

**Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.**



for which certificate has been obtained from the Sub-Registrar, Dabhara, Dist. Janjgir Champa, Chhattisgarh;

3. That to the best of my knowledge the Sub-Registrar is the competent authority for granting such certificates of ownership of land. The Total land required for setting up the power plant as per environment clearance is 630 Acres;
4. That the DB Power Ltd. is the true and legal owner of the Acquired Land and Acquired Land is in the possession of DB Power Ltd.;
5. That the documentary evidence provided at the bidding stage by the DB Power Ltd. in relation to Acquired Land is true and correct and;
6. That DB Power Ltd. has acquired the Acquired Land to establish and run power station;
7. That the facts stated in the aforesaid affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

Verified at Mumbai on this 01st day of March, 2013



DEPONENT

Attested by me

PRAKASH H. DOOA
B.A.Li. B.
Advocate, High Court,
Notary Government of India,
21, Kondhli Bldg. No. 3,
Behind Jala Hospital, Parol,
Mumbai-400012.



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.





DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

Format 4.7 Format of Undertaking

(A) Bidder's Undertaking

To
Chief Engineer/Private Power Project
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maligai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India


Dear Sir,

Sub: Bidders' Undertakings for Bid for supply of power to Procuree in response to the RFP dated 21.12.2012

1. We give our unconditional acceptance to the RFP and RFP Documents issued by Procuree as a part of the RFP dated 21.12.2012, and as amended. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP.
2. We have submitted our Financial Bid(s) strictly as per Format 4.10 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.
3. We have submitted the Bid on the terms and conditions contained in the RFP.
4. Our Bid (including Financial Bid) is valid up to the period required under Clause 2.9 of the RFP.
5. Our Bid (including Financial Bid) has been duly signed by authorised signatory and closed in the manner and to the extent indicated in the RFP and the Power of Attorney/ Board Resolution as per Clause 2.4.1.1 in requisite format as per RFP has been enclosed in original with this undertaking.
6. "We undertake that we shall not submit any bid, on the basis of the same generation source and quantum of power from such source as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, whichever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline."
7. Not Applicable



Registered Office: Block 1A, 5th Floor, Corporate block, DB City Park, DB City, Arera Hills, Opp MP Nagar, Zone-I, Bhopal (MP) 462 015.
Tel.: +91-755-399 8884 Fax: +91-755-267 5190


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



Tender No.03/PPLT/2012

8. Not Applicable

9. Not Applicable

10. We confirm that our Bid meets the following conditions:

a) The Scheduled Delivery Date is not later than the date specified in the RFP, subject to the provisions of the PPA.

b) The quantum of power offered in our Bid is equal to or greater than the Minimum Bid Capacity and is for the following offered capacity.

Financial Bid	Offered Capacity in MW
1. DB Power Ltd's 2x600 MW Power Plant at Village Badakarna, Dist. Jangir Champa, Chhattisgarh	208 MW

11. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP including:

a) Ratio of minimum and maximum Quoted Capacity Charges during the Contract Years for which Tariff has been quoted in Format 4.10 of the Bid is not less than zero point seven (0.7) as provided in Clause 2.4.1.1(B)(x) of the RFP.

b) Financial Bid is in the prescribed Format 4.10, and is submitted duly signed by the authorised signatory

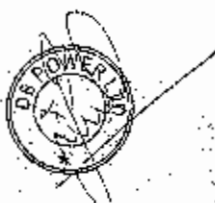
c) Financial Bid(s) is unconditional

12. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree that the same would be treated as a Seller's event of default under PPA, and consequent provisions of PPA shall apply.

For DB Power Ltd:

Girish Agarwal
Authorised Signatory

Date: 14th March, 2013
Place: Mumbai



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 092.

Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.7(B) Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company

Name: DB Power Ltd
Full Address: Office Block 1A, 5th Floor,
Corporate block, DB City-Park,
Areni Hills Opp M.P Nagar,
Zone-I, Bhopal - 462016
Telephone No.: 022 3930 6000
E-mail address: girish.seey@doinikhaskargroup.com
Fax / No.: 022 - 3930 6008

To,

Chief Engineer/Private Power Project
Tamil Nadu Generation And Distribution Corporation Limited
6th Floor, Eastern Wing, 144, Anna Salai, Chennai -2, Tamil Nadu India.

Dear Sir,

We refer to the Request for Proposal dated 21.12.2012 issued by you for procurement of power for 'long' term basis through tariff based competitive bidding process for meeting the requirements of procurer.

"We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per the prescribed Format 4.7 (B).

We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the DB Power Ltd for the supply of power in the event of it being selected as the Successful Bidder".

In view of the above, we hereby undertake to you and confirm that in the event of failure of DB Power Ltd to submit the Contract Performance Guarantee in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by DB Power Ltd.



Registered Office: Block 1A, 5th Floor, Corporate block, DB City Park; DB City, Areni Hills, Opp. M.P Nagar, Zone-I, Bhopal (MP)-462 016.
Tel.: +91-755-358-8884 Fax: +91-755-267 5190


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



Tender No.03/PPI.T/2012

We have attached hereto certified true copy of the Board Resolution whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RPP.

Yours faithfully
For DB Power Ltd.

Girish Agarwal
Managing Director
Date: 01st March, 2013
Place: Mumbai

Common Seal of DB Power Ltd. has been affixed in the presence of Mr. Girish Agarwal, Managing Director of the Company and Mr. Devendra Khandhelwal, Authorised person of the company pursuant to the Board of Director's resolution dated 20th February, 2013

D P Khandhelwal

Witness

Name: Nilesh Gode
Designation: Chief Manager
Date: 01st March, 2013

Name: Rudshabh Shah
Designation: Finance Trainee
Date: 01st March, 2013



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021
Tel.: +91 22 3930 6000 • Fax : +91 22 3930 6008

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTOR OF DB POWER LIMITED BY CIRCULATION ON WEDNESDAY, 20th FEBRUARY, 2013

The Chairman informed the Board that the Company is desirous of submitting Case-I bid to Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). The matter was discussed and it was -

"RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer, in the format specified in RPP, draft of which is attached hereto and initialed by the Chairman whereby the company undertakes to provide the One Hundred percent (100%) of the Contract Performance Guarantee, as per the terms and conditions of the RPP, representing the total amount of Contract Performance Guarantee required to be provided by the DB Power Ltd, in case of failure of DB Power Ltd to provide such Contract Performance Guarantee.

FURTHER RESOLVED THAT Mr. Girish Agarwal (Managing Director), Mr. Himanshu Thawar, Mr. R.K. Gupta, Mr. Sukhbir Singh, Mr. Vinod Kishreshtha or Mr. Devendra Khundelwal authorised signatory of the company, be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting attended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, requested to be submitted to the Procurer as part of the Bid or such other documents may be necessary in this regard.

FURTHER RESOLVED THAT any one Director of the Company be and is hereby authorized to issue Power of Attorney in favour of Mr. Girish Agarwal, Managing Director of the Company and all such acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

FURTHER RESOLVED THAT the Common Seal of the Company be, if so required by the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), affixed to the various documents, undertakings, Power of Attorney etc., where ever required, in the presence of any one director of the company or Mr. Himanshu Thawar or Mr. R. K. Gupta or Mr. Sukhbir Singh or Mr. Vinod Kishreshtha or Mr. Devendra Khundelwal, authorised signatories"

For DB Power Limited

Managing Director

[[Certified True Copy]]



Attested by me

Prakash H. DOCA
Advocate High Court,
Notary Government of India,
8, Konaaji Wing, No. 3,
Sahakar, Tera Hospital, P. 171,
Mumbai-400012.

Registered Office: Block-1A, 5th Floor, Corporate block, DB City Park, DDI City, Area-1, Bhopal (MP)-462 016.
Tel.: +91-755-398 8884 Fax: +91-755-2625198

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

Tender No.03/PP1.T/2012



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.11 Format of checklist for submission of Bid

Submission of Bid requirements	
Covering Letter as per Format 4.1	Yes
Original Power of Attorney as per Format 4.2	Yes
Consortium Agreement as per Format 4.3 (if Bid is submitted by a Bidding Consortium)	NA
Letter of Consent from Consortium Members as per Format 4.4 (if Bid is submitted by a bidding consortium)	NA
Bidder's composition and ownership structure as per Format 4.5	Yes
Details of meeting Qualification Requirement as per Format 4.6 (A) and (B)	Yes
Documentary evidence for meeting the Qualification Requirement as per Format 4.6 (A) and (B)	Yes
Bidder's Undertaking as per Format 4.7(A)	Yes
Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company as per Format 4.7(B)	Yes
Applicable Board Resolutions as per Format 4.8	Yes
Bid Bond as per Format 4.9	Yes
Financial Bid as per Format 4.10	Yes
Checklist of submission of Bid as per this Format 4.11	Yes



Registered Office: 8 c/o 1A, 5th Floor, Corporate Bldg, DB City Park, DB City, Atrera Hills, Opp MP Nagar, Zone-5, Chennai (MP) 600 016.
Tel.: + 91-755-393 8584 Fax: +91-755-287 5193

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 052.



Submission of Bid requirements	Response (Yes/No)
Disclosure as per Format 4.12	Yes
Details of source of power and primary fuel as per Format 4.13	Yes
Certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member as per Format 4.14	Yes
Calculation sheets detailing computation of Networth considered for meeting Qualifying Requirements.	Yes
Last 3 financial years' unconsolidated/consolidated audited annual accounts of the Bidder duly certified by the Statutory Auditor.	Yes
Authority letter in favour of procurer, from the bidder authorizing procurer, to seek reference from their respective bankers and others.	Yes
Initialling of all pages of Bid by authorized signatory.	Yes

For DB Power Ltd.

Girish Agarwal
Managing Director

Place: Mumbai
Date: 01st March, 2013



Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 062.

Tender No.03/PP1.T/2012



DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021.
Tel.: +91 22 3930 6000 • Fax: +91 22 3930 6008

4.12 Format for Disclosure

To,
Chief Engineer/Private Power Project
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Mullai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India

Sub: Bidders Disclosure for Bid for supply of power to Procurer in response to RFP dated 21.12.2012

We hereby declare that the following companies with which we have direct or indirect relationship are also separately participating in this bidding process as per following details

Sl. No.	Name of the Company	Relationship
1.		
2.	Nil	Not Applicable
3.		

Further we confirm that we don't have any Conflict of Interest with any other Bidder participating in this bid process.

For DB Power Ltd.

Girish Agarwal
Managing Director

Place: Mumbai
Date: 01st March, 2013



Registered Office: Block 1A, 5th Floor, Corporate block, OD-City Park, DB City, Arena Hills, Opp MP Nagar, Zone-I, Bhopal (MP)-462015.
Tel.: +91-755-398 8884 Fax: +91-755-267 5780

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

DB Power Limited

Corporate Office : 3rd Floor, Express Towers, Nariman Point, Mumbai - 400 021
Tel.: +91 22 3930 6000 + Fax: +91 22 3930 6008

4.14 Format for certificate of relationship of Parent company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member.

Date: 02nd March, 2013

To
Chief Engineer/PPP
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Mallai, 6th Floor, Eastern wing,
144, Anna Salai, Chennai-600002, Tamil Nadu, India

Dear Sir,

Sub: Bid for procurement of power on 'long' term basis through tariff based competitive bidding process in response to RFP dated 21.12.2012

We hereby certify that DB Power (Madhya Pradesh) Ltd is the affiliate and M/s Diligent Power Pvt. Ltd is the parent company of the Bidding company as per the definition of Affiliate/Parent Company as provided in this RFP and based on the details of the equity holding as on seven (7) days prior to the Bid deadline.

The details of equity holding of the bidding company in the Affiliate/Parent Company as on (seven) 7 days prior to the Bid Deadline are as below:

Name of the Bidding company	Name of the Affiliate of the Bidding company	Name of the Parent company of the Bidding Company	Name of the company having common control on the Affiliate and the Bidding company
DB Power Ltd.	DB Power (Madhya Pradesh) Ltd.	Diligent Power Pvt. Ltd.	Diligent Power Pvt. Ltd.

*Diligent Power Pvt. Ltd. holds 100% equity of DB Power Ltd. and DB Power (Madhya Pradesh) Ltd. DB Power Ltd. does not hold any equity shares of DB Power (Madhya Pradesh) Ltd. and for Diligent Power Pvt. Ltd. DB Power (Madhya Pradesh) Ltd. is an Affiliate of DB Power Ltd. by virtue of Common Control by Diligent Power Pvt. Ltd.

For Gupta Navin K & Co.
Firm Registration No: 006263C
Chartered Accountants

Partner
Membership No. 02022



Registered Office: Block 1A, 3rd Floor, Corporate Block, DB City Park, DB City, Anand Hills, Opp MP Nagar, Zoned, Bhopal (MP)-462 016.
Tel.: +91-755-338 8884 Fax: +91-755-267 5190

Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002

Tender No.03/PPLT/2012



II SCHEDULE II: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

Nationalised Banks

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Bank of Baroda
6. Canara Bank
7. Central Bank of India
8. Corporation Bank
9. Dena Bank
10. Indian Bank
11. Indian Overseas Bank
12. Oriental Bank of Commerce
13. Punjab National Bank
14. Punjab and Sind Bank
15. Syndicate Bank
16. Union Bank of India
17. United Bank of India
18. UCO Bank
19. Vijaya Bank

2. Foreign Banks

1. BNP Paribas
2. Citi Bank N.A.
3. Deutsche Bank A.G.
4. The Hongkong and Shanghai Banking Corporation Ltd.
5. Standard Chartered Bank
6. ABN Amro Bank N.V.
7. UFJ Bank Ltd.
8. Sumitomo Mitsui Banking Corporation
9. Societe Generale
10. Barclays Bank
11. Bank of Novascotia



3. Scheduled Private Banks

- 1 ING Vysya Bank Ltd.
- 2 ICICI Bank Ltd.
- 3 HDFC Bank Ltd.
- 4 IDBI Bank Ltd
- 5 Axis Bank
- 6 Kotak Mahindra Bank

[Note: The Procurer is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



12 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS

12.1 *Substitution of the Seller*

12.1.1 Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

12.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurer and the Seller in favour of the Selectee, the Procurer and the Seller shall cooperate with the Lenders to carry out such substitution.

12.2 *Procurer Notice of Default*

12.2.1 The Procurer, who serve(s) the Preliminary Default Notice on the Seller as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

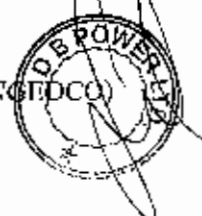
12.3 *Substitution Notice*

12.3.1 In the event of failure of the Seller to rectify the Seller Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer, the Lenders, either on their own or through its representative (the "Lenders' Representative") shall be entitled to notify the Procurer and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the "Substitution Notice").

12.4 *Interim operation of Power Station*

12.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 12 of this Agreement.

12.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments there under, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurer. If the Procurer, at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurer shall be compensated for rendering such services in accordance with Clause 12.9.4 of this Schedule.



12.4.3 If the Procurer refuse to take over the Power Station on request by the Lenders in accordance with Clause 12.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

12.4.4 The Lenders and the Procurer shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

12.5 Process of Substitution of Seller

12.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Procurer, such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurer, in accordance with these terms of substitution.

12.5.2 The Lenders and the Seller shall ensure that, upon the Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer in favour of the Selectee as mentioned in Clause 12.1.2 of this Schedule.


12.6 Modality for Substitution

Criteria for selection of the Selectee

12.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) if the Seller is proposed to be substituted prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer under and in accordance with the PPA and also

Tender No.03/PP/T/2012


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the Procurer, involving sums greater than Rupees Ten (10) Crores at any time in the last two (2) years as on the date of the substitution notice to the Seller.
- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

12.7 Modalities

12.7.1 The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

12.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer (the "Proposal") pursuant to Clause 12.7.3 below, the name of the Selectee for acceptance, seeking:

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

12.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as Procurer may reasonably require. The Procurer may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

12.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer of the Proposal:

- (a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurer or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such

Selectee was the Seller originally named under the PPA; or the respective RFP Document; and

- (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer as if such Selectee was the Seller originally named under such Financing Agreements.

12.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 12.7.2, the Procurer may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

12.7.6 The Procurer shall convey their approval or disapproval of such Proposal, through the Lead Procurer, if applicable, to the Selectee. Such decision shall be made by the Procurer at their reasonably exercised discretion within twenty one (21) days of:

- (a) the date of receipt of the Proposal by the Procurer; or
(b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurer under Clause 12.7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer for the Selectee shall not be withhold in case the Selectee meets the criteria mentioned in Clause 12.6.1.

12.7.7 Upon approval of the Proposal and the Selectee by the Procurer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

12.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

12.7.9 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer and upon transfer of ownership and complete possession of the Power Station by the Procurer or the Seller, as the

Tender No.03/PPLT/2012


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.



case may be, to the Selectee. The Procurer shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurer shall in no way be responsible to bear the same.

12.7.10 Upon the substitution becoming effective pursuant to Clause 12.7.9 above, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurer against the erstwhile Seller or the Selectee.

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

12.7.12 The decision of the Lenders and the Procurer in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

12.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurer shall not be liable for the same.

12.7.14 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

12.8 Seller's Waiver

12.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer or exercise of their rights under and in accordance with these terms.

12.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 12.7.10, it shall

cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

- 12.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer. The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

12.9 Interim Protection Of Service And Preservation Of Security
Appointment of a Receiver

- 12.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurer refusing to take over the Power Station and the Seller failing to operate the Power Station in accordance with Clause 12.4.3 and the Procurer not electing to act as Receiver as per Clause 12.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 12.9.2 If the assets of the Power Station are, in the opinion of the Procurer, necessary and required for the operation and maintenance of the Power Station, the Procurer shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurer to facilitate the same.
- 12.9.3 Upon appointment of the Court appointed Receiver or the Procurer acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.
- 12.9.4 When acting as a Receiver or operator in accordance with Clauses 12.9 or 12.4.2, Procurer shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage



or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer.

12.10 Substitution Consideration

12.10.1 The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurer' respective dues, to the exclusion of the Seller.

12.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

12.11 Change in the Procurer or Lenders

12.11.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that Procurer may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis such Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may be possible that any Lender may be substituted or a new Lender may be added. In the event of any Procurer or Lender ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.


Director (Distribution)
Tamil Nadu Generation &
Distribution Corporation Ltd.
144, Anna Salai, Chennai-600 002.

