

Filed.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**M/s DB POWER LTD.**

**AND**

**CHHATTISGARH STATE POWER TRADING COMPANY  
LIMITED (CSPTRADECO)**

**2 X 600 MW UNITS 1 & 2**

**05<sup>th</sup> January, 2011**



## Table of Contents:

LIST OF ABBREVIATIONS	3
PARTIES TO AGREEMENT AND RECITAL	4
1. ARTICLE 1: DEFINITIONS AND INTERPRETATIONS	7
2. ARTICLE 2: AMENDMENT	15
3. ARTICLE 3: TERM OF THE AGREEMENT	16
4. ARTICLE 4: RIGHTS & OBLIGATIONS FOR SUPPLY AND OFF-TAKE	20
5. ARTICLE 5: OPERATION AND MAINTENANCE	27
6. ARTICLE 6: METERING AND ENERGY ACCOUNTING	29
7. ARTICLE 7: APPLICABLE TARIFF	31
8. ARTICLE 8: BILLING AND PAYMENT	32
9. ARTICLE 9: PAYMENT SECURITY MECHANISM:	37
10. ARTICLE 10: FORCE MAJEURE	39
11. ARTICLE 11: ASSIGNMENTS AND SUCCESSION	43
12. ARTICLE 12: GOVERNING LAW	44
13. ARTICLE 13: CHANGE IN LAW	45
14. ARTICLE 14: EVENT OF DEFAULT AND TERMINATION	47
15. ARTICLE 15: DISPUTE RESOLUTION AND ARBITRATION	51
16. ARTICLE 16: MISCELLANEOUS PROVISIONS	53
17. SCHEDULE 1: TARIFF SCHEDULE	59



  
Managing Director,  
CSP TRAD CL, Raipur



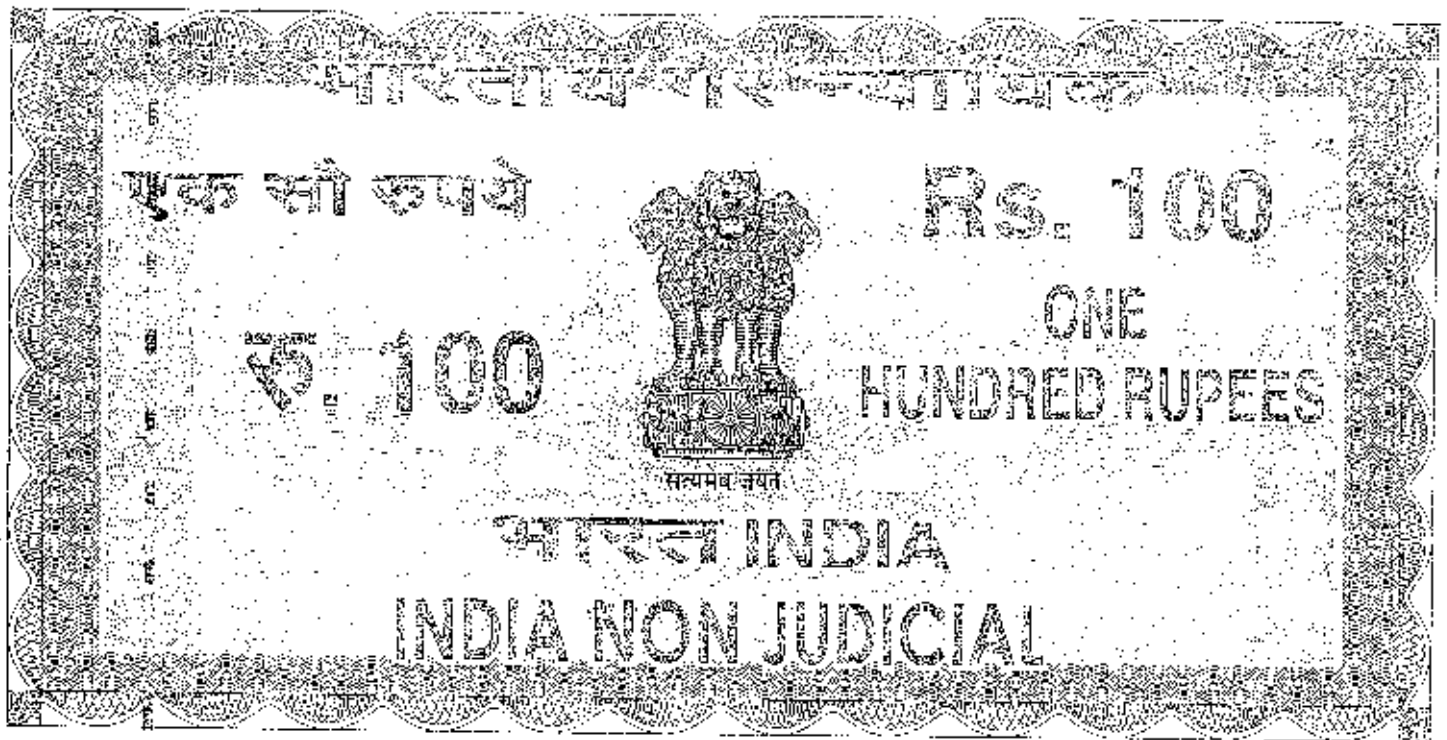
## LIST OF ABBREVIATIONS

COD	Commercial Operation Date
CERC	Central Electricity Regulatory Commission
CSEB	Chhattisgarh State Electricity Board
CSERC / Commission	Chhattisgarh State Electricity Regulatory Commission
CSPDCL	Chhattisgarh State Power Distribution Company Limited
CSPGCL	Chhattisgarh State Power Generation Company Limited
CSPHCL	Chhattisgarh State Power Holding Company Limited
CSPTCL	Chhattisgarh State Power Transmission Company Limited
CSPTradco	Chhattisgarh State Power Trading Company Limited
EC	Energy Charges
GoCG	Government of Chhattisgarh
IEGC	Indian Electricity Grid Code
IPP	Independent Power Producer
MW	Mega Watt
PPA	Power Purchase Agreement
REA	Regional Energy Accounts
RLDC	Regional Load Despatch Centre
SLDC	State Load Despatch Centre
STU	State Transmission Utility
UI	Unscheduled Interchange
WRLDC	Western Regional Load Dispatch Centre
WRPC	Western Regional Power Committee



*(Signature)*  
Managing Director,  
CSPT TRAD CO., Raipur





छत्तीसगढ़ CHHATTISGARH

B 748038

This Power Purchase Agreement (hereinafter referred to as the "PPA" or "Agreement" or "the Agreement" or "this Agreement") is made on this fifth day of January, Two Thousand and Eleven.

BETWEEN

The Chhattisgarh State Power Trading Company Limited (CSPTadeco), a Company incorporated under the Companies Act, 1956 and having its registered office at Vidyut Sewa Bhawan, Daganiya, Raipur - 492 013, Chhattisgarh (hereinafter referred to as 'CSPTadeco' or 'Procurer', which expression shall, unless repugnant to the context or meaning thereof include its successors and permitted assigns) as the Party of One Part:

AND

M/s DB Power Ltd., a Company incorporated under the Companies Act, 1956, and having its registered office at 6, Dwarka Sadan, Press Complex, MP Nagar Zone-1, Bhopal-462.011 (hereinafter referred to as 'Company' or 'Project Developer', which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as the Party of the Other Part.

(The Company and CSPTadeco are individually referred to as "Party" and collectively as "Parties")

PPA between CSPTadeco & M/s DB Power Ltd.

Page 4

Managing Director  
DBPCL, Raipur (CG)

क्रमांक 1332 दिनांक 1/1/79 कोमत 1991

साथ निम्नलिखित डी.डी. पावर लि.

पिता/पुत्रादि रामपुर

पता रामपुर जिला रायपुर

आपका मो. जकीर

आपका श्री. रामपाल देवीगंज रामपुर

कैसे हस्ताक्षर रामपाल

१

श्री. रामपाल रायपुर रायपुर रायपुर रायपुर

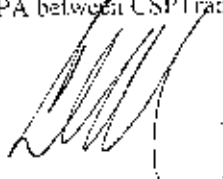



**AND WHEREAS:**

- a) The Company has entered into Memorandum of Understanding (MOU) on 07.01.2008 with State Government of Chhattisgarh (GOCG) and erstwhile CSEB;
- b) Pursuant to the provisions of the MOU, an Implementation Agreement (IA) has been entered with State Government of Chhattisgarh, CSPHCL (a successor company of CSEB) & M/s DB Power Limited on 06.08.2009;
- c) The Company is setting up a coal based thermal Power Station of the Installed Capacity of 1200 MW (consisting of 600 MW x 2 Nos. of Units) at Village - Baradarha in Janjgir-Champa District in Chhattisgarh. In accordance with the terms and conditions of the aforesaid IA, the Company has agreed to sell Five percent (5 %) on annualized basis of the Net Power (gross power generated minus the auxiliary consumption) generated by the project at Energy Charges as determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required to the State Government of Chhattisgarh.

Provided that if the Company is allocated captive coal block also in the State of Chhattisgarh an additional 2.5% of the net power generated by the project shall also be supplied by the company at energy charges, as determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required to the State Government of Chhattisgarh. Further provided that the additional 2.50% of the net power however shall be in proportion to the component of power generated utilizing coal from the captive coal block. Quantum of coal block allotted vis-a-vis coal requirement shall be the basis for determining the additional power to be supplied by the Company at energy charges as aforementioned. Suitable declaration in this regard (duly notarised) alongwith certified copy of the coal block allotment letter shall be submitted by the Company to CSPTradeco within 24 months of signing of this agreement or 12 months prior to COD, whichever is earlier.

- d) Further, the Company is under an obligation to offer thirty percent (30 %) of the aggregate Capacity of the Power Station (as per IA) and the corresponding electrical energy at the bus-bar of Generating Station at the rate to be determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required, and the State Government has agreed to purchase this power on round the clock basis through CSPTradeco, its authorised trading representative;
- e) Under the provisions of The Chhattisgarh State Electricity Board Transfer Scheme 2010 (hereinafter referred to as the 'Scheme'), the Government has decided to retain the ownership of the power contracted prior to 01 January, 2009 either directly or through the erstwhile Chhattisgarh State Electricity Board from the various Developers i.e. Independent Power Producers (IPPs) and also of the power to be contracted after 01 January 2009 with the IPPs;



  
Managing Director,  
CSPTradeco

- f) The Scheme has further authorised Chhattisgarh State Power Trading Company (CSPTadeco), as an authorised representative of the GoCG, to execute power purchase agreements with the Developers- State IPPs and to sell the power so contracted on behalf of the GOCG; Whereas as per the MOU and the Implementation Agreement, both the Parties have agreed to sign this Power Purchase Agreement to set out the detailed provisions and procedures for supply and evacuation of power, payment of tariff and the payment security mechanism between the Parties;

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 that:

## 1. ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

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

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

"Act" or "Electricity Act" or "Electricity Act 2003" shall mean the Electricity Act 2003 (36 of 2003) and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;

"Affected Party" shall have the meaning as ascribed thereto in Article 10.1.1 of this Agreement;

"Agreement" or "PPA" or "Power Purchase Agreement" shall mean this Power Purchase Agreement (PPA) including its recitals and schedules, as amended, supplemented or modified from time to time, as approved by the Appropriate Commission, if required;

"Appropriate Commission" shall mean the Central Electricity Regulatory Commission, or the Chhattisgarh State Electricity Regulatory Commission, as the case may be;

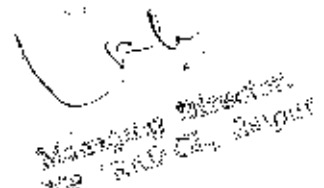
"Availability" shall, for any period, mean the average of the daily average Declared Capacities (DCs), for all the days during that period expressed as a percentage of the Installed Capacity of the Generating Station minus normative auxiliary consumption in MW, and computed in accordance with the formula prescribed by CERC;

"Bill" shall mean a Monthly Bill, a Supplementary Bill, or any other Bill or Invoice raised by any of the Parties;

"Billing Date" shall mean the date on which a Bill is presented to the Designated Officer of either Party and acknowledged by such Designated Officer of either Party;

"Billing Month" shall mean the calendar month for which a Bill is issued by either Party;

"Business Day" shall mean a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State;

A handwritten signature in black ink is positioned to the left of a circular stamp. The stamp contains the text "DB POWER LIMITED" around the perimeter and "CHHATTISGARH" at the bottom.A handwritten signature in black ink is positioned above a rectangular stamp. The stamp contains the text "Managing Director" and "CSP TradeCo" below it.

**"CERC"** shall mean Central Electricity Regulatory Commission, as defined in the Electricity Act, 2003;

**"CERC Regulations"** shall mean the CERC (terms and conditions of Tariff) Regulations or any other Regulations notified from time to time;

**"CSPTCL" or "CSPTransco"** shall mean the Chhattisgarh State Power Transmission Company Limited, the State Transmission Utility and deemed transmission licensee for the State of Chhattisgarh as per Sub-section (1) of Section 39 of the Electricity Act 2003;

**"CSPTTadeco Event of Default"** shall have the meaning as ascribed hereto in Article 14.2 of this Agreement;

**"CTU" or "Central Transmission Utility" or "PGCIL"** shall mean the utility as defined in the Electricity Act, 2003, namely, Power Grid Corporation of India Limited, or its successors;

**"Capacity Charges" or "CC"** shall mean the fixed charges to be paid by CSPTTadeco on a monthly basis to the Company, determined as per the provisions of Schedule I to this Agreement;

**"Change in Law"** shall have the same meaning as ascribed thereto in Article -13 of this Agreement;

**"Check Meter"** shall mean the meter which shall be connected to the same core of the current transformer (CT) and voltage transformer (VT) to which Main Meter is connected and shall be used for accounting and billing of electricity in case of failure of Main Meter;

**"Coal"** shall mean coal procured from the subsidiaries of Coal India Limited either through Coal Supply Agreement or e-auction or open market and/or imported coal procured from other agencies or coal blocks allocated;

**"Commission" or "CSERC"** shall mean the Chhattisgarh State Electricity Regulatory Commission, constituted under Section 82 of the Electricity Act, 2003;

**"Company Event of Default"** shall have the meaning as ascribed hereto in Article 14.1 of this Agreement;

**"Competent Court of Law"** shall mean the Supreme Court or any High Court, or any tribunal, or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to generation and distribution of electricity;

**"Contracted Capacity"** shall be equal to thirty percent (30 %) of the Aggregate Capacity of the Project and shall be in addition to the Contracted Output;

**"Contracted Output"** shall mean 5 % (Five percent) of the Net Power generated by the Project to be provided by the Company to CSPTradeco on an annualized basis and as per the terms of this Agreement. Provided that if the Company is allocated captive coal block also in the State of Chhattisgarh an additional 2.5% of the net power generated by the project shall also be supplied by the company to the State Government of Chhattisgarh at energy charges, as determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required. Further provided that the additional 2.50% of the net power, however, shall be in proportion to the component of power generated utilizing coal from the captive coal block;

**"Contracted Power"** shall mean the sum of Contracted Capacity in percentage & Contracted Output in percentage of installed Capacity;

**"Contracted Energy"** shall mean the sum of energy in Kwh available ex-bus bar equivalent to Contracted Capacity & Contracted Output i.e. total share of energy of CSPTradeco in the installed Capacity;

**"Consents, Clearances & Permits"** shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgments, agreements or concessions required to be obtained from or provided by any Indian Governmental Instrumentality for the development, operation and maintenance of the Generating Station including without any limitation for the construction, ownership, operation and maintenance of the Generating Station and other associated facilities;

**"Declared Capacity"** shall mean the net capacity at Delivery Point during any Settlement Period, as declared by the Company in its Daily Generation Schedule or Revised Generation Capability Schedule, subject to the availability of adequate Fuel and regardless of constraints in the Grid;

**"Dedicated Transmission Line"** shall mean the transmission line constructed by the Company for interconnection of the Project switchyard with the CTU network;

**"Delivery Point"** shall have the meaning ascribed to it under Article 4.5.1

**"Designated Officer"** shall mean the designated representative of the Company duly authorised to carry out any/all functions required under this Agreement;

**"Dispute"** shall mean any dispute or difference of any kind between CSPTradeco and the Company, in connection with or arising out of this Agreement including any issue on the interpretation and scope of the terms of this Agreement and shall be dealt as per the provisions of Article 15 of this Agreement;



**"Distribution System"** shall mean the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the points of connection to the installation of the consumers within the State;

**"Due Date"** in relation to any Bill, shall mean the first Business Day falling thirty (30) days after the Billing Date;

**"Effective Date of Agreement"** or **"Effective Date"** shall be as per the provisions of the Article 3.1.1;

**"Electrical Output"** shall mean the net electrical output of the Power Station at the Interconnection Point, as expressed in kWh;

**"Energy Charges"** or **"EC"** is the monthly amount payable by CSPTradeCo to the Company in respect of Electrical Output and shall be determined in accordance with the provisions set forth in Schedule 1 of this Agreement;

**"Event of Default"** shall mean the Company Event of Default or CSPTradeCo Event of Default, as the case may be;

**"Expiry Date"** shall mean the twentieth (20<sup>th</sup>) anniversary of the date of commencement of Supply. For the avoidance of doubt, in case the date of commencement of supply is December 19, 2008, then the twentieth (20<sup>th</sup>) anniversary of the date of supply would be December 19, 2028;

**"Financial Year"** or **"Year"** shall mean the period from 1st of April of any year to 31st of March of the next year;

**"Financial Closure"** shall mean the date on which the Financing Documents proving for funding by the Lenders have become effective and the Company has immediate access to such funding under the Financing Documents

**"Financing Documents"** shall mean the documents executed by the Company in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Project and includes amendments or modifications made from time to time;

**"Force Majeure"** shall have the meaning as ascribed thereto in Article-10 of this Agreement;

**"Forced Outage"** shall mean an outage of the Generating Station which is not a Planned Outage;

**"Fuel"** shall mean the Coal and Fuel Oil required for continuous operation of the Project;

**"Fuel Oil" or "Secondary Fuel Oil"** means the heavy oil used for start up and low load support in the steam generators

**"Generating Station(s)" or "Power Station" or "Station" or "Project"** shall mean the power station being set up at Village-Baradarha in Janjgir Champa District in Chhattisgarh consisting of Unit Nos. 1 & 2 of 600 MW each Installed Capacity for generating electricity, including any building and plant with step-up transformer, switch-gear and switch yard, cables or other auxiliary equipments, if any used for that purpose and the site thereof, a site intended to be used for the generating station, and any building used for housing the operating staff of a generating station, but does not in any case include any sub-station;

**"GOCC"** shall mean the State Government of Chhattisgarh;

**"Grid Code"** shall mean the Indian Electricity Grid Code and as amended from time to time;

**"Grid System"** shall mean the Central Transmission System;

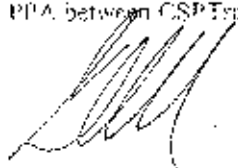
**"Implementation Agreement"** in short **"IA"** shall mean Agreement executed between the Govt. of Chhattisgarh, CSP Holding Co. Ltd. and the Project Developer.


**"Indian Governmental Instrumentality"** shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India, but excluding the Company and CSPTradeco;

**"Installed Capacity"** shall mean the summation of the nameplate capacities of all the Units of the Generating Station or the corresponding capacity of the Generating Station (reckoned at the generator terminals);

**"Interconnection Point"** shall mean the physical point or points of the outgoing gantry of the Generating Station where the transfer of electrical power occurs for fulfilling the obligation of the Company to deliver the Contracted Output and Contracted Capacity to CSPTradeco;

**"Interface Meter"** shall mean the meter used for accounting and billing of electricity, connected at the Interconnection Point;



  
Accounting Director  
CSPTradeco, Raigarh

**"Intra-state Transmission System"** or **"State Transmission System"** or **"STS"** shall mean any system for conveyance of electricity by transmission lines within the area of the State and includes all transmission lines, sub-stations and associated equipment of transmission licensee in the State;

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

**"Late Payment Surcharge"** shall have the meaning as ascribed thereto in Article 8.4.2 of this Agreement;

**"Letter of Credit"** or **"LC"** shall have the meaning ascribed thereto in Article 9.1;

**"Lenders"** shall mean the banks, other financial institutions, 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 at Financial Close to provide the Company with the debt financing and 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 Company of its obligations to the Government under this Agreement in any manner and shall also does not lead to an increase in the liability of the Government.

**"Main Meter"** shall mean the meter which would primarily be used for accounting and billing of electricity;

**"Meter"** shall mean a device suitable for recording and / or indicating consumption of electrical energy or any other quantity related with electrical system;

**"Metering Code"** shall mean the code and / or the metering section of the Grid Code covering aspects relating to metering equipment, its installations, operation and use in force or any amendments thereof approved by the CERC;

**"Monthly Bill"** shall mean a monthly invoice comprising Capacity Charges and Energy Charges, including Late Payment Surcharge if any as per the provisions of this Agreement;

**"Net Power"** shall mean gross power generated minus the auxiliary consumption (in kwh);

**"Notice of Default"** shall have the meaning as ascribed hereto in Article 14.3 of this Agreement;

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "M/S DB POWER LTD." around the perimeter and "2021" at the bottom.A handwritten signature in black ink, possibly reading "Cout", is written on the page.



**"Outage Planning Process"** shall have the meaning as ascribed thereto in the Grid Code;

**"Planned Outage"** shall have the meaning as ascribed thereto in the Grid Code;

**"Prudent Utility Practices"** shall mean the practices, methods and standards that are generally accepted nationally from time to time by electric utility industry for the purpose of ensuring the safe operation, repair and maintenance of the Generating Station and which practices, methods and standards shall be adjusted as necessary, to take account of:

- operation, repair and maintenance guidelines given by the manufacturers,
  - the requirements of Laws of India, and
- the physical conditions at the site on which a Generating Station is located;

**"Regional Energy Account" or "REA"** shall mean the accounts of power and energy as issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month, including the revisions and amendments thereof;

**"RLDC"** shall mean the relevant Regional Load Despatch Centre as defined in the Electricity Laws in the region in which the Project is located;

**"Rebate"** shall have the same meaning as ascribed hereto in Article 8.4.1 of this Agreement;

**"Regulations"** shall mean any regulations made by the CERC under the Electricity Act, 2003, and as subsequently amended from time to time;

**"Scheduled COD"** shall have the meaning as mentioned in Article 4.1.13 of the Implementation Agreement dated 06.08.2009 for the Unit or the Power Station, as the case may be.

**"Settlement Period"** shall mean the time block for issue of daily generation and drawl schedules as provided in the Grid Code and communicated by the RLDC;

**"State"** shall mean the State of Chhattisgarh;

**"State Load Despatch Centre" or "SLDC"**, in relation to a State, shall mean the centre so established under Sub-section (1) of Section 31 of the Electricity Act;

**"State Transmission Utility" or "STU"** shall mean the Board or the Government Company specified as such by the State Government under Sub-section (1) of Section 39 of the Act. CSPITCL has been specified as the State Transmission Utility (STU) by the Government of Chhattisgarh;



Managing Director  
DB Power Limited

**Supplementary Bill** shall mean the bill raised by Company for any amount due from the CSPTradeco, other than the Monthly Bill or a bill raised by CSPTradeco for any amount due from the Company and as stipulated in Article 8.3 of this Agreement;

**"Tariff"** shall mean the Capacity Charges and Energy Charges payable by CSPTradeco for purchase of Contracted Power under this Agreement as determined in accordance with the relevant regulations of CERC from time to time and approved by the Appropriate Commission, if required;

**"Termination Notice"** shall have the meaning as ascribed hereto in Article 14.4 of this Agreement;

**"Transmission Charges"** shall mean all the applicable transmission charges payable to PGCIL or any other agency for utilising their Transmission System in relation to transfer of Contracted Capacity and Contracted Output to CSPTradeco;

**"Transmission System"** shall mean the lines, sub-stations, communication, and other associated facilities and covers entire transmission system without any specific reference to any lines or sub-stations and will automatically cover all new additions, modifications, up gradation, augmentations and expansion of Transmission System by CTU or other agency;

**"Unit(s)"** shall mean the unit of the Power Generating Station;

Words importing the singular meaning shall include the plural and vice versa

## 2. ARTICLE 2: AMENDMENT

- 2.1 This Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement.
- 2.2 This Agreement shall not be amended without prior written consent of the GoCG in any manner which may affect the rights and interests of the GoCG.

- 2.2 This Agreement shall not be amended without prior written consent of the GoCG in any manner which may affect the rights and interests of the GoCG.

### **3. ARTICLE 3: TERM OF THE AGREEMENT**

#### **3.1 Effective Date and Term of Agreement:**

**3.1.1** This Agreement shall come into force from the date of signing of the Agreement for all purposes and intent. The term of this Agreement is for a period of twenty (20) years from the date of commencement of supply of electricity by the Company to CSPTradeco, unless extended as per Article 3.4.

#### **3.2 Conditions Precedent :**

**3.2.1** The Conditions Precedent and obligations of the Parties with regard thereto, are as specified below:

- (i) Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable co-operation as may be required upon mutual understanding of both parties, to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- (ii) The Conditions Precedent required to be satisfied by the Company shall be deemed to have been fulfilled when the Company achieves Financial Closure within thirty (30) months from the Effective Date of IA, and
- (iii) within 36 (Thirty Six) months of the Effective Date of IA, awarded the Engineering, Procurement and Construction contract ("EPC contract") or main plant contract for boiler, turbine and generator ("BTG"), for the Project and shall have given to such contractor an irrevocable Notice To Proceed (NTP)

**3.2.2** The Company shall promptly inform CSPTradeco when any Condition Precedent for which it is responsible, has been satisfied.

#### **3.3 Right to Terminate:**

**3.3.1** (a) If the Conditions Precedent listed in Section 3.2.1 are not satisfied by the Company within the time prescribed there in, or such extended time as may be

mutually agreed between the Parties in writing, then the CSPTradeco may terminate this Agreement in the manner provided in Article-14.

(b) The Company agrees and undertakes to duly perform and complete the activities within the time stipulated, unless such completion is affected due to the CSPTradeco failure to comply with their obligations under Article 4.1 of this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the CSPTradeco. The Company shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and each Party shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible:

c) The Company shall fulfil the obligation under Article-4.1.13 of the IA and not later than 6 months prior to Scheduled COD, filed an appropriate petition before the Appropriate Commission for determination of tariff for the sale of the Contracted Power, if required.

### **3.3.2 Satisfaction of Conditions Precedent by the CSPTradeco:**

The CSPTradeco agrees and undertakes to duly perform and complete the following activities within the time stipulated, unless such completion is affected due to any Force Majeure event or if any of the activities is specifically waived in writing by the CSPTradeco. The CSPTradeco shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and each Party shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible:

(i) The CSPTradeco shall have, not later than 12 months from the Effective Date, obtained from the STU and/or the CTU as may be required, Long Term Access for transmission of the Contracted Capacity and Contracted Output from the Delivery Point;

### **3.3.3 Consequences of non-fulfilment of conditions under Article 3. 2.1 & 3.3.2:**

(a) In case of inability of either by the Company or CSPTradeco as the case may be, to fulfil the conditions specified in Article 3.2.1 or 3.3.2 due to any Force Majeure event or waived by the other party, the time period for fulfilment of the Condition Precedent shall be extended for the period of such Force Majeure event, subject to a maximum extension period of eighteen (18) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be

Managing Director,  
CSP TRADECO, WAPDA

terminated by either the CSPTradeco or the Company by giving a notice of at least thirty (30) days, in writing to the other Party.

This, however, will not absolve the Company from payment of damages to CSPTradeco arising out of such termination.

(b) If the Company fails to achieve COD of each of the Units on their respective Scheduled Commercial Operation Date as specified in this Agreement, subject to conditions mentioned in Article 3.2, the Company shall be liable to reimburse the Transmission Charges paid by CSPTradeco to CIU or any other agency for the transmission system associated with the evacuation of Contracted Power from the Project under this Agreement. Provided that the above failure of the Company is not due to force majeure conditions and not due to reasons attributable to CSPTradeco.

**3.3.4** Immediately after CoD, a BG for an amount of Rs. 18 ( Eighteen) Crores (worked out on the basis of Rs. 4 lakhs per MW of contracted power) for the term of the PPA towards Performance Security Deposit shall have to be submitted by the Company, the validity of which shall be extended from time to time till termination of this PPA.

### **3.4 Extension of Term:**

3.4.1 Prior to at least one hundred and eighty days (180) before the Expiry Date, either Party may give a written notice to the other Party that it wishes to extend this Agreement for an additional period.

3.4.2 Upon the receipt of the notice from a Party under Article 3.4.1 above, the Parties shall in good faith negotiate the terms and conditions for extension of the Agreement including the revision in Tariff and period of extension and if the Parties mutually agree on the above, the Parties will enter into an amendment to this Agreement. Provided that any extension to this Agreement shall be given effect after the approval of GOCCG.

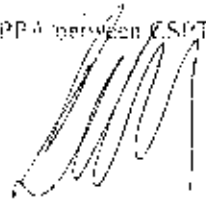
### **3.5 Early Termination**

This Agreement shall terminate before the Expiry Date;

- a) If either the Company or the CSPTradeco terminates the Agreement pursuant to Article 14 of this Agreement; or
- b) In such other circumstances as the Company and CSPTradeco may agree, in writing; or
- c) In the event of termination of IA.

### 3.6 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement as per the terms of this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.



*LPB*  
Managing Director  
M/s DB Power

#### **4. ARTICLE 4 : RIGHTS & OBLIGATIONS FOR SUPPLY AND OFF-TAKE**

##### **4.1 Obligation of CSPTradeco**

4.1.1 The CSPTradeco shall be responsible for:

- (i) Payment of the transmission charges, wheeling charges, transmission losses, RLDC and SLDC charges as determined by the Appropriate Commission and all other charges, taxes, cess, fees, levies and duties applicable to the generation, sale, purchase, despatch and transmission of the Contracted Power, to appropriate agencies;
- (ii) Off take Contracted Power and pay Monthly Bills and Supplementary Bills in accordance with this Agreement;
- (iii) Co-operate with the Company to facilitate the initial and periodic Performance Tests and Commissioning of the Project;
- (iv) Obtaining long term access for adequate transmission capacity from CTU/STU for evacuation of Govt's share of Contracted power;
- (v) Open and maintain the Letter of Credit as required under the terms and conditions specified in Article 9 of this Agreement;
- (vi) Fulfilling all other obligations undertaken by it under this Agreement and IA

##### **4.2 Obligation of Company**

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

- (i) Executing the Project in a timely manner so as to enable each of the Units and the Power Station as a whole to be Commissioned not later than its Scheduled Commercial Operations Date and such that as much of the Contracted Power as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the CSPTradeco's scheduling and despatch requirements throughout the term of this Agreement;



*Handwritten signature*



- (ii) Obtaining and maintaining in full force and effect all consents required by it pursuant to this Agreement and Indian Law;
- (iii) Making available the Contracted Output and the Contracted Capacity through the use of Prudent Utility Practices reliably to meet the CSPTadeco's scheduling and dispatch requirements throughout the term of this Agreement;
- (iv) Procure the requirements of electricity at the Project (including construction, commissioning and start-up power) and to meet in a timely manner all formalities for getting such supply of electricity;
- (v) Ensure Coal supply and other inputs required for delivery of Contracted Power throughout the Term of Agreement;
- (vi) Ensure Coal stock adequate for 15 days of generation at 85% PLF throughout the Term of Agreement;
- (vii) Continue to maintain all insurances required to be taken in respect of this Project, as required by this Agreement, the laws of India and Prudent Utility Practices, till the expiry of the Term of Agreement;
- (viii) Provide on a timely basis relevant information on Power Station specifications which may be required for interconnecting system with the transmission system; and
- (ix) Fulfilling all other obligations undertaken by it under this Agreement and arising in accordance with the provisions of Implementation Agreement (IA).

#### 4.2.2 Submission of progress report, project related Agreements:

The Company shall endeavour to furnish to the Energy Department, Govt. of Chhattisgarh or their nominated agency, quarterly progress reports of actual progress of the Project and shall give all such other relevant information as may be required by the GoCG or their nominated agency.



**4.2.3 To provide all information required under Approvals :**

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

**4.2.4 Scheduled COD:**

The Company shall achieve Commercial Operation Date as per the schedule mentioned by it under the Implementation Agreement or Bulk Power Transmission Agreement executed with PGCIL. However, considering COD as per IA shall not relieve the Company from the payment of transmission charges payable to PGCIL by the CSPTradeco for the delay in COD from the date mentioned in BPTA.

**4.2.5 Revised Scheduled COD:**

The Revised Scheduled COD of any Unit shall be mutually discussed between the CSPTradeco and the Company provided Company agrees to pay share of CSPTradeco transmission charges to PGCIL/STU or other agency for the extended period, as per the terms of agreement entered into by the CSPTradeco with PGCIL/STU for establishment of transmission system.

**4.2.6 Representations and Warranties of the Company:**

The Company represents and warrants that as of the date hereof, except as disclosed otherwise in the Disclosure Schedule :

- (a) The Company is a company duly registered and validly existing under the laws of India and has all requisite legal powers and authority to execute this Agreement and carry out the terms, conditions, and provisions hereof.
- (b) It has the financial standing and capacity to undertake the Project.
- (c) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocable waives any immunity in any jurisdiction in respect thereof.
- (d) It has complied with all Laws and has not been subject to any fines, penalties, injunctive relief of any other civil or criminal liabilities which in the aggregate have or may have material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement.

(e) There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened against or affecting the Company before any Court or administrative body or arbitral tribunal that might materially or adversely affect the ability of the Company to meet and carry out its obligations under this Agreement.

(f) The Company has duly paid all rents, royalties and all public demands, including provident fund dues, gratuity dues, employees State Insurance dues and outstanding sales tax, corporation tax and all other taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government /GOI Revenue and other taxes.

(g) The execution and delivery by the Company of this Agreement has been duly authorized by all requisite corporate or partnership action, and will not contravene any provision of or constitute a default under any other agreement or instrument to which it is a party or by which it is or its property may be bound; and

(h) No representation or warranty by the Company contained herein or in any other document furnished by it to, or to any Governmental Agency in relation to clearances and approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty no misleading.

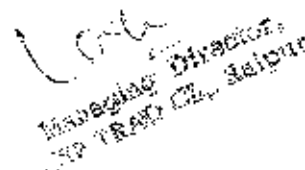
#### **4.3 Purchase and sale of Contracted Power:**

4.3.1 Subject to the terms and conditions of this Agreement, the Company undertakes to sell to the CSPTradeco and the CSPTradeco undertakes to purchase the Contracted Power and pay the Tariff in accordance with this Agreement for the Contracted Power supplied to CSPTradeco from the Project at the Delivery Point.

4.3.2 Unless otherwise instructed by the CSPTradeco, the Company shall sell all the Contracted Power to CSPTradeco.

#### **4.4 Right to Contracted Power:**

4.4.1 CSPTradeco undertakes to purchase power up to the Contracted Capacity for a period of twenty (20) years at the Tariff determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required.



- 4.4.2 In addition, the Company shall be under obligation to supply the Contracted Output to CSPTradeco, at the Energy Charges as determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required.

The Contracted Output to be provided at Energy Charges shall be computed based on scheduled generation of the Power Station. The quality of such power shall be firm power and at no time the Company shall be supplying such power less than ninety percentage (90%) of the percentage of the Contracted Output. Further such percentage shall not be more than one hundred and ten percentage (110%) during the off-peak periods. The off-peak period shall be notified by the Appropriate Commission from time to time. The above conditions are subject to the regulations of CERC and the provisions of HEGC.

- 4.4.3 CSPTradeco has exclusive rights to sell such power on behalf of GOCC. It has exclusive rights to exchange and dispose off power to any other party directly or through power exchange subject to availability of open access.

- 4.4.4 Subject to other provisions of this Agreement, the entire Contracted Power shall at all times be the exclusive right of the CSPTradeco to purchase the Contracted Power from the Company. The Company shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Power.

- 4.4.5 Notwithstanding Article 4.4.4, in the event the CSPTradeco fails to despatch all or part of the Contracted Power at any time, the Company shall be entitled to sell such non despatched Contracted Power to third parties. For any such third party sale, all open access charges including losses shall be payable by such third party as per regulations (s) of the Appropriate Commission(s).

**4.4.6 Consequences of sale under Clause 4.4.5 :**

In the event the Company sells power under the provisions of Article 4.4.5, the following conditions shall apply :

- (i) the CSPTradeco shall continue to be liable to pay the Capacity Charges determined as part of the Tariff, to the Company for such Contracted Capacity. Furthermore, in such a case, the sale price realized by the Company in excess of Variable Charges determined as part of the Tariff, shall be shared by the Company and the CSPTradeco in equal ratio. The Company shall maintain accounts and provide all details regarding cost of sale etc. to CSPTradeco in respect of such sales under Clause 4.4.5.

- (ii) where the sale under Clause 4.4.5 by the Company is consequent to a notice issued by the CSPTradeco to the Company indicating its unwillingness to purchase the Contracted Power or part thereof for a period specified in such notice, the CSPTradeco shall be entitled to request the Company for the resumption of supply of the Contracted Power at any time, however, the Company shall not be under obligation to resume such supply earlier than the period specified in the said notice.

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

**4.5 Delivery Point:**

**4.5.1** The Company will sell the Contracted Power to CSPTradeco at the outgoing gantry of the 400 KV bus of Power Station switchyard.

**4.5.2** The Contracted Power shall be evacuated by the CSPTradeco through dedicated transmission line constructed and owned by the Company, which shall be connected to the existing/proposed WR transmission system owned by CIU from the bus bar of Power Station of the Company.

**4.5.3** For wheeling of the Contracted Power from the bus bar of Power Station of the Company to connecting point of CIU, the transmission charges for utilization of Company's transmission line shall be payable by CSPTradeco to the Company by way of capacity charge. Accordingly the Company shall include the cost of dedicated transmission line in the Project Cost for computation of Capacity Charge.

**4.6 System of Supply**

The supply of Contracted Power to CSPTradeco shall be at nominal frequency of 50 Hertz and at a potential of 400 KV subject to variation limits permitted by the Grid Code applicable for the transaction, as amended from time to time. Both the Parties shall take all measures expeditiously to restore the frequency within the limit as stipulated in the applicable Grid Code, as amended from time to time, concurrent with the directions of the SLDC/RI DC, if any.

*(Signature)*  
Managing Director,  
CSP TRAD CO., RAIPUR

#### 4.7 Non performance of obligation

After the Commercial Operation Date, except for reasons of Force Majeure, if the Contracted Output and/or the Contracted Capacity is not made available in full or part thereof by the Company as per the terms of this Agreement to CSPTradeco for reasons attributable to the Company for a period of equal to or more than Two (2) continuous months or four (4) non-continuous months in a Financial Year, then it shall be treated as a Company Event of Default as per Article 14.1 of this Agreement. Further the CSPTradeco shall have the right to ask GoCG to withdraw all facilities extended to the Company under the IA or availed by the Company.

In addition to the above, for every additional day, of non supply of power by the Company to CSPTradeco, beyond the period specified in the para above in this Article 4.7, the Company shall pay a penalty to CSPTradeco for the amount equivalent to the total Capacity Charges (in Rs.) corresponding to the Contracted Capacity that would had been drawn by CSPTradeco in normal conditions on such day provided such total penalty charges shall not exceed two (2) months Capacity Charges.

Notwithstanding above penal provision, no capacity charge shall be paid to the Company for the days on which supply obligation was not made by it.

A handwritten signature in black ink is positioned to the left of a circular stamp. The stamp contains the text "DB POWER LIMITED" around its perimeter.A handwritten signature in black ink.

## **5. ARTICLE 5: OPERATION AND MAINTENANCE**

### **5.1 Operation and Maintenance of the Power Station:**

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

### **5.2 Scheduling & Dispatch:**

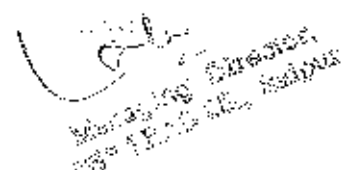
- 5.2.1 The Company and CSPTradeco shall furnish their generation schedule & drawl schedule respectively in accordance with the scheduling & dispatch procedures specified by the RLDC from time to time under the Grid Code, including provisions relating to the implementation of Availability Based Tariff, in so far as it relates to the matters connected with Scheduling & Dispatch, Prudent Utility Practices and Technical limits of the Power Plant.
- 5.2.2 In the event of a Forced Outage, the Company shall inform, in writing, to the concerned RLDC and CSPTradeco, the reasons and the details of occurrence of such Forced Outage. The Company shall further inform about the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in its opinion the work should begin, consistent with the Prudent Utility Practices.

### **5.3 Planned Outages:**

- 5.3.1 The Company shall, on a year-ahead basis, furnish to the RLDC, its outage programme as per the RLDC outage planning process for the next Financial Year under the Grid Code. The Company shall also give a copy of such outage programme to CSPTradeco so that it can plan its power procurement in advance.
- 5.3.2 The Company will adhere to the Planned Outage schedule agreed to by the RLDC and as modified from time to time by the RLDC.

### **5.4 Coordination among Parties:**

- 5.4.1 The Parties herein agree that the issues relating to interconnection, evacuation, transmission facilities and issues related to inter-utility metering, and coordination with the Grid System will be decided and settled between the Parties mutually or as



Managing Director  
CSP Tradeco

per any agreements executed between them and subsequently, on not being able to reach on a mutual agreement, shall be dealt with the provisions of the Grid Code.

**5.5 Maintenance of Records:**

- 5.5.1 Each Party shall keep complete and accurate records of the meter readings and other records needed to reflect power exchange between the Parties for each Settlement Period and Electrical Output of the Generating Station on a continuous real time basis;
- 5.5.2 Every Party shall have the right, upon reasonable prior notice, to examine the records and data of the other Parties relating to this Agreement or the operation and maintenance of the Power Station at any time during normal office hours on normal business days.



## **6. ARTICLE 6: METERING AND ENERGY ACCOUNTING**

### **6.1 Inter-connection point and boundary:**

6.2 The Parties agree that the inter-connection boundary between Company's Generating Station and CSPTradeco shall be the outgoing feeder gantry of the Power Station switchyard. The switchyard associated with the Generating Station and the Dedicated Transmission Line for interconnection with the Interstate Transmission System shall be under the control of Company.

6.2.1 The Parties herein agree that, at any subsequent date after signing this Agreement, any change in above arrangement of inter-connection boundary and / or in operation and control of switchyard associated with the Generating Station of Company, effected as per orders of the CLERC and agreed through mutual agreement between Company and CSPTradeco shall automatically apply to this Agreement without any further action.

### **6.3 Interface Metering Points:**

6.3.1 The meters for measurement of Contracted Power & energy for the purpose of energy accounting and/or billing shall be provided at the Inter-connection Point(s) of the Company's Generating Station.

6.3.2 Main Meters at the Interconnection Point(s) shall be owned and maintained by Company. CSPTradeco shall provide Check Meters at its own cost at all the Interconnection Points. Check Meters shall be owned and maintained by CSPTradeco but the safety and custody thereof shall be the responsibility of the Company.

### **6.4 Inspection and Testing of Meters:**

6.4.1 The Parties agree that the installation, sealing, inspection, calibration, maintenance and testing of meters shall be in accordance with the relevant clauses of the Metering Code.

### **6.5 Meter Reading:**

6.5.1 Meters for measuring the energy flow for the purpose of energy accounting and billing shall be programmed so as to register and store the readings from 00.00 hrs of the first day of the current month to 00.00 hrs of the first day of the subsequent month. Joint monthly meter readings of the meters for the purpose of billing shall be taken / downloaded simultaneously by both the Parties on the first day of the subsequent month and confirmation signed by the authorised representatives of the Company and CSPTradeco. No notice is required to be issued for monthly joint meter



Handwritten signature and stamp of Managing Director, CSP TRADCO, Raipur.

readings. In case any of the above parties is not able to attend the joint meter readings at the specified time, the meter readings taken by the other party (ies) shall be considered conclusive and binding on other party (ies), unless a written objection is filed by the Party, who failed to attend the joint meter readings, within seven (7) days of communicating such readings to them.

- 6.5.2 Any dispute between the Parties in relation to metering, billing and settlement shall be resolved in accordance with provisions of the Article 15 of this Agreement.
- 6.5.3 The Company and CSPTradeco shall be entitled to have access to the metering data from the metering installation related to the Power Station and the Delivery Point through appropriate technology for their use.
- 6.5.4 Notwithstanding anything contained in this Agreement the Parties hereby agree that the installation, testing, calibration, collection and transmission of meter output including its periodicity etc shall be in accordance with the provisions of ILGC and orders of RLDC from time to time.

#### **6.6 Energy Accounting:**

The energy accounting shall be in accordance with the provisions of the Grid Code or any other change in methodology of energy accounting as decided by the RPC. The RPC secretariat or other appropriate agency will issue Regional Energy Accounts (REA) based on the data provided by the RLDC and output of the Meters and Check Meters delivered by the Company pursuant to this Article and such REAs shall be subject to subsequent corrections. The REA as finalized shall be binding on the Parties.

#### **6.7 Transmission Loss**

All applicable transmission losses associated with the purchase of Contracted Power by CSPTradeco under this Agreement shall be borne by CSPTradeco including the transmission losses if any applicable to Generator up to the Delivery Point and levied in accordance with the Point of Connection transmission charges regulations of CERC.

In case common Dedicated Transmission Line is utilized for transmission of power from Generating Station to pooling sub-station of PGCIL, the transmission losses between the outgoing gantry of Power Station of the Company and pooling sub-station of PGCIL shall be shared by the Company and CSPTradeco in proportion to their share of power being transmitted.

## 7. ARTICLE 7: APPLICABLE TARIFF

### 7.1.1 Applicable Tariff:

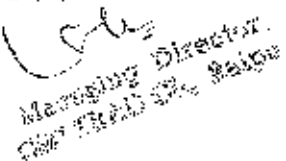
7.1.2 Both the Parties agree that the Tariff for supply of Contracted Power to CSPTadeco from the Generating Station of the Company under this Agreement shall be determined in accordance with CERC Regulations from time to time as per the provisions of Schedule 1 attached to this Agreement and approved by the Appropriate Commission, if required.

7.1.3 In case the Tariff is not determined prior to the commencement of commercial operation of the first generating Unit or the Power Station, as the case may be, the Parties agree to jointly work out an ad-hoc tariff based on the CERC's tariff regulation for the applicable period. Based on the ad-hoc tariff, the CSPTadeco shall make a provisional payment to the Company, subject to appropriate adjustment till the final tariff is determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required.

7.1.4 Infirm power shall be governed by the CERC regulations in force.

### 7.1.5 RLDC Charges:

7.1.6 The scheduling and RLDC charges, as determined by the CERC from time to time, shall be applicable and payable to RLDC separately by CSPTadeco.

A handwritten signature in dark ink is written over a circular embossed stamp. The signature is stylized and appears to be 'M. M.'. The stamp is circular with some text around the perimeter, but it is mostly illegible due to the signature and the quality of the scan.A handwritten signature in dark ink is written over a rectangular stamp. The signature is stylized and appears to be 'L. S.'. The stamp contains the text 'Managing Director' and 'CSPTAD 32, Raipur' in a bold, sans-serif font.

## 8. ARTICLE 8: BILLING AND PAYMENT

8.1.1 All charges under this Agreement shall be billed and paid in accordance with the following provisions:

From the Commercial Operation Date (COD) of the Project, CSPTadeco shall pay the Company the Tariff comprising:

- (i) Capacity Charges;
- (ii) Energy Charges or Variable Charges; and
- (iii) Incentive Payment,

determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required. The actual payment shall be made against the Monthly Bills issued by the Company for each Month. All Tariff payments by CSPTadeco shall be in Indian Rupees.

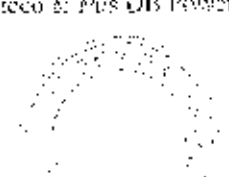

### 8.1.2 Monthly Bill:

8.1.3 The Company shall raise a Monthly Bill for each Billing Month on the basis of REA issued by WRPC and Tariff as applicable. For the purpose of UI bills prepared by the WRPC, weekly joint meter reading shall also be taken and sent to WRPC/WRI.DC, as the case may be.

8.1.4 The Company shall issue the Monthly Bill by 5th day of the month subsequent to the month in which the supply was affected to CSPTadeco. The Bills shall be raised in the name of Designated Officer of CSPTadeco.

(a) Provided that if the COD of the first Unit falls during the period between the first (1<sup>st</sup>) day and up to and including the fifteenth (15<sup>th</sup>) days of a Month, the first Monthly Bill shall be issued for such period of the Month.

(b) Provided further that if the COD of the first Unit falls after the fifteenth (15<sup>th</sup>) days of a Month, the first Monthly Bill shall be issued for the period commencing from the COD of the first Unit until the last day of the immediately following Month.



8.1.5 Each Monthly Bill shall include:

- a) Availability and energy account for the relevant Month as per REA issued by appropriate competent authority which shall be binding on both the Parties for the purpose of billing.
- b) On the basis of the REA, the Company shall prepare and submit the bills to CSPTradeco along with supporting data, documents and calculations in accordance with this Agreement.

Notwithstanding any thing contained in this Article 8.1.5, the procedure for preparing bills shall be as under:

- i) Out of the capacity declared by the Company, CSPTradeco is entitled for 5% and 2.5% (as defined in Contracted Output) of the corresponding energy to be supplied at Energy Charge at first charge. Accordingly out of total electrical energy scheduled to CSPTradeco in the REA, the above 5% & 2.5% (as defined in Contracted Output) shall be accounted first and shall be charged at the Energy Charges as determined in accordance with CERC Regulations and approved by the Appropriate Commission, if required; This shall be on annualised basis.
- ii) Subject to the above in i), the remaining electrical energy shall be accounted for, for the supply by the Company against the provision of Article 4.4.1 of this PPA i.e. 30% of aggregated installed capacity of the project and shall be worked out on net energy generated on real time basis and available ex-bus. This shall be charged at the Tariff as determined in accordance with CERC Regulations and approved by the Appropriate Commission; if required;

8.1.6 The Company shall open a bank account at Raipur (the "Designated Account") for all Tariff payments to be made by CSPTradeco to Company, and notify CSPTradeco of the details of such account within three (3) months prior to the Scheduled COD. CSPTradeco shall instruct its respective banker(s) to make all payments under this Agreement to the Designated Account and shall cause its banker(s) to notify the Company of such payments on the same day. CSPTradeco shall also designate a bank account at Raipur for payments to be made by the Company, if any (including Supplementary Bills) to the CSPTradeco and notify the Company of the details of such account within three (3) months prior to the Scheduled COD.

## 8.2 Payments

- 8.2.1 CSPTradeco shall arrange payment of Bill(s) within the Due Date. The date of the payment shall be considered the date on which the amount has been credited to the Designated Account of the Company and shall be considered as the date of payment for computation of Rebate or Late Payment Surcharge payable, as the case may be.
- 8.2.2 All payments made by CSPTradeco shall be appropriated by the Company in the following order of priority towards:
- (i) Late Payment Surcharge, payable by the CSPTradeco, if any,
  - (ii) Earlier unpaid Monthly Bill, if any, and
  - (iii) Current Monthly Bill.
- 8.2.3 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 CSPTradeco from the Company through an invoice duly acknowledged by the Company to be payable by the Company, and not disputed by the Company within thirty (30) days of receipt of the said invoice and such deduction or set off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) day period; and
  - (iii) Rebates provided under this agreement; and
  - (iv) Adjustment in tariff required by the terms of this agreement but not reflected in the Monthly Bill.

## 8.3 Supplementary Bills:

- 8.3.1 Any amount due to either Party and payable by either Party under this Agreement other than amounts set out in a Monthly Bill shall be payable within thirty (30) days of presentation of the Supplementary Bill by either Party.



#### **8.4 Rebate for prompt payment and Late Payment Surcharge:**

8.4.1 CSPTradeco shall be eligible for a Rebate of two percent (2%) of the amount of Bill in case of any Bill paid by it to the Company through any mode of payment within seven (7) Business Days of Billing Date. In case of Bills paid by CSPTradeco after seven (7) Business Days of Billing Date but prior to the Due Date, CSP Tradeco shall be entitled for a Rebate of one percent (1%). Such Rebate shall be deducted from the amount of the Bill by CSPTradeco at the time of payment and the payment shall be made to the Company accordingly.

8.4.2 In case the payment of Bills is delayed by CSPTradeco beyond a period of thirty (30) days from the Due Date, a Late Payment Surcharge, at the rate of one point two five percent (1.25%) per month or part thereof, on the outstanding amount for the period of delay shall be levied by the Company on CSPTradeco and such Late Payment Surcharge shall be payable by CSPTradeco to the Company in addition to the unpaid amount.

#### **8.5 Disputed Bill:**

8.5.1 If a Party does not dispute a Bill, raised by the other Party within thirty (30) days of receiving it, such Bill shall be taken as conclusive.


8.5.2 If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, that Party shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

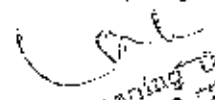
- i) Details of the disputed amount; its estimate of what the correct amount should be; and
- ii) All written material in support of its claim.

8.5.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, the invoicing Party shall revise such Bill within seven (7) days of receiving such notice and if the disputing Party has already made the excess payment, refund to the disputing Party such excess amount within fifteen (15) days of receiving such notice.

8.5.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, it shall, within fifteen (15) days of receiving the bill dispute notice, furnish a notice to the disputing Party providing:

- i) Reasons for its disagreement;



  
Managing Director:  
CSP TRAD CO. PVT. LTD.

ii) Its estimate of what the correct amount should be; and

iii) All written material in support of its counter-claim.

8.5.5 Upon receipt of notice of disagreement to the Bill Dispute Notice under Article 8.5.4, authorised representative(s) of each Party shall meet and make best endeavours to amicably resolve such dispute

8.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 8.5.4, the matter shall be referred to Dispute Resolution in accordance with Article 15.4 of this Agreement.

8.5.7 If a Dispute regarding a Monthly Bill or a Supplementary Bill is settled by authorised representative(s) of each Party mentioned under Article 8.5 or by Dispute resolution mechanism provided in accordance with Article 15 of this Agreement in favour of the Party, which issued 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 ten (10) days of the settlement of the Dispute.

#### **8.6 Start up power**

8.6.1 The Company shall be responsible for taking Start Up Power from the Distribution licensee or from any legally permitted source and making payment thereof in accordance with law.

#### **8.7 Statutory Duties, Taxes, Cesses, Levies, fees and other charges**

The Tariff determined in accordance with CERC Regulations does not include any electricity duty / cess or other such levy by the Project State Government, currently applicable on the generation and/or sale of electricity and shall, if levied, be payable by CSPTradeo to the Company notwithstanding anything contained in this Agreement contrary to this provision.

The Tariff determined pursuant to the other provisions of this Article-8 does not include any charges payable to the SI/DC/RI/DC, cost of transmission charges, licence fees, etc beyond the Delivery Point, all of which shall be borne by CSPTradeo.

Transmission charges and transmission losses as applicable to the Generator in accordance with the CERC Regulations shall be borne by the CSPTradeo in addition to the transmission charges and losses applicable beyond Delivery Point.



## 9. ARTICLE 9: PAYMENT SECURITY MECHANISM:

### 9.1 Letter of Credit:

- 9.1.1 CSPTradeco shall establish an unconditional, irrevocable and revolving Letter of Credit (LC) in favour of the Company. The LC shall revolve, only if operated. The Letter of Credit shall be opened with any scheduled commercial bank agreeable to the Company within 15 days prior to scheduled COD. The Company shall send prior intimation of scheduled COD to the CSPTradeco at least 30 days in advance.
- 9.1.2 The Letter of Credit established by CSPTradeco shall:
- (i) On the date it is issued, have a term equal to twelve (12) months and shall be renewed annually;
  - (ii) Be of a value equivalent to one hundred and five percent (105%) multiplied by one (1) month estimated / average billing (The average billing shall be computed on the basis of estimated energy supply at 85% load factor by the Company;
- 9.1.3 The amount of LC shall be reviewed on the basis of Tariff payments made for the previous one year by CSPTradeco to the Company, on the first day of April of each year for determination of the average monthly billing and its amount shall be enhanced / reduced accordingly.
- 9.1.4 All costs relating to opening and maintenance of the Letter of Credit shall be borne by CSPTradeco; however, the Letter of Credit negotiation charges shall be borne and paid by the Company.
- 9.1.5 The Company shall exercise its right of making a drawl from the Letter of Credit as a payment security option only on the failure of CSPTradeco to make payment by the Due Date(s). The Company shall not make more than one drawl in any month.
- 9.1.6 At any time, such Letter of Credit amount falls short of the amount specified above otherwise than by reason of drawl of such Letter of Credit by the Company, CSPTradeco shall restore such shortfall within seven (7) Business Days.
- 9.1.7 In case of drawl of the Letter of Credit by the Company in accordance with the terms of this Agreement, the amount of the Letter of Credit shall be recouped by CSPTradeco to ensure full payment of the Company's bills and there shall be no default in LC payment to the Company in respect of supply of power under this Agreement.



Managing Director,  
CSP TRADCO, Raipur

### **Third Party Sales on default:**

- 9.1.8 If the payment security mechanism is not fully restored within thirty (30) days of the event of the payment default, Company shall be entitled to sell the electricity generated by it to the third parties without losing claim on the pending dues from CSPTradeco.
- 9.1.9 The surplus revenue over Energy Charges recovered from sale to such third parties shall be adjusted against the Capacity Charge liability, if any, of CSPTradeco. In case the surplus revenue over the Energy Charges is higher than the Capacity Charge liability of the CSPTradeco, such excess over the Capacity Charge liability shall be retained by Company.
- 9.1.10 The third parties to whom the power can be sold under Article 9.1.8 shall be either:
- (i) Any consumer, subject to applicable law; or
  - (ii) Any licensee under the Electricity Act, 2003.

Sales to any third party other than CSPTradeco shall cease and regular supply of electricity to the CSPTradeco in accordance with all the provisions of this Agreement shall commence and be restored within five (5) days on which CSPTradeco pays the due payment to Company and renews the Letter of Credit as per the provisions of this Agreement.

### **Order of Precedence:**

- 9.1.11 The order of operating the payment security mechanism in case of payment default by CSPTradeco shall be as under:
- (i) Operation of Letter of Credit, and
  - (ii) Sale to third party

## 10. ARTICLE 10: FORCE MAJEURE

### 10.1 Definitions

For the purpose of this Agreement, the following terms shall have the meaning given hereunder.

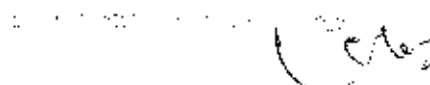
#### 10.1.1 Affected Party

- (i) An affected Party means CSPTradeco or the Company, whose performance has been affected by an event of Force Majeure.
- (ii) An event of Force Majeure affecting the CTU, which has affected the Interconnection Point(s) thereby causing inability of CSPTradeco to evacuate power from the Power Station, shall be deemed to be an event of Force Majeure affecting CSPTradeco subject to CTU and CSPTradeco complying with other requirements of this Article
- (iii) Any event of Force Majeure affecting the performance of the Construction Contractor or Fuel Oil Supplier or Coal Supplier or the transport contractors under the Fuel Oil Supply Agreement and the Coal Supply Agreement shall be deemed to be an event of Force Majeure which materially and adversely affects the obligations of the Company, subject to the Company and such Construction Contractor, Fuel Oil Supplier, Coal Supplier, transport contractors under the Fuel Oil Supply Agreement and the Coal Supply Agreement complying with the other requirements of this Article.

#### 10.1.2 Force Majeure

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

- (i) Natural Force Majeure Events-act of God, including but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado; and
- (ii) Non Natural Force Majeure Events

A handwritten signature in dark ink is written over a circular embossed stamp. The stamp appears to be a corporate seal or logo, though the details are not clearly legible.A handwritten signature in dark ink, possibly reading 'C. S. P.', is written on the right side of the page.

- (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 Non Natural Force Majeure Event excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site by the Affected Party or those employed or engaged by the Affected Party; or
- (c) Industry wide strikes and labour disturbances having a nationwide impact in India
- (d) Any explosion, accident, breakage of facilities, plant or equipment, structural collapse or a chemical contamination caused by a person not being the Affected Party and not being due to inherent defects in the Project or the Transmission Facilities; or
- (e) Any epidemic, plague or quarantine; or
- (f) Meteorite crash, air crash, damage caused by objects falling from aircraft, or other flying devices or vehicles, pressure waves caused by aircraft or aerial devices travelling at supersonic speed, shipwreck, train wrecks; or
- (g) Strikes, sabotage, go-slows or similar industrial disputes at the Project or at the works of boiler, steam turbine and generator manufacturer, or the Grid excluding such events which are Site specific / and/or attributable to the Company or such manufacturers; or
- (h) Expropriation, requisition, confiscation, nationalization, export or import restrictions, requirements, action or omissions to act on the part of any Government Instrumentality or any person controlled by a Government Instrumentality; or
- (i) Archaeological findings that were not reasonably foreseeable or discovery of historically significant artifacts on the Site; or
- (j) The revocation or cancellation or delay in renewing (other than for cause) of any Consent; or
- (k) Acts of government, or compliance with such acts, which directly affects such Party's ability to perform its obligations hereunder; or

(j) Any event or circumstance of a nature analogous to any of the foregoing.

10.1.4 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 Generating Station;

(b) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

(c) Strikes or labour disturbance at the facilities of the Affected Party;

(d) Insufficiency of finances or funds or the Agreement becoming onerous to perform; and

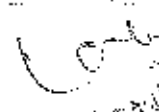
(e) Non-performance caused by, or connected with, the Affected Party's negligent or intentional acts, errors or omissions, failure to comply with an Indian law, or breach of or default under this Agreement.

**10.2 Notice of Force Majeure Event**

10.2.1 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.

10.2.2 Such notice shall be a pre-condition to the 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, and the Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.



  
Managing Director  
DB Power Co. Pvt. Ltd.

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

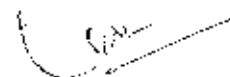
### 10.3 Available Relief for a Force Majeure Event

10.3.1 Available relief for a Force Majeure event shall be limited to the extent that no Party shall be in breach of its obligations pursuant to this Agreement including liability to make payments to the extent that the performance of its obligations was prevented hindered or delayed due to a Force Majeure event.

10.3.2 However the extension of time for such payment as mentioned in Article 10.3.1 shall be allowed as per the relevant provisions of this Agreement.

### 10.3.3 Extended Force Majeure

The continuance of an event of Force Majeure for a period of 18 consecutive months shall constitute Extended Force Majeure. In the event of an Extended Force Majeure, either party may terminate the Agreement without any further liability to either party from the date of such termination.

A handwritten signature in dark ink is written over a circular stamp. The stamp contains the text "DS POWER LIMITED" around its perimeter.A handwritten signature in dark ink, appearing to be "V. K. Singh", is written over a circular stamp.

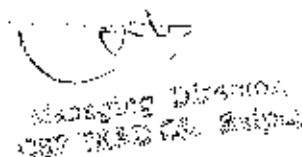
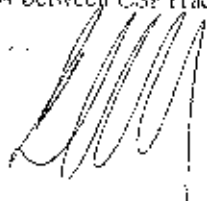
## 11. ARTICLE 11: ASSIGNMENTS AND SUCCESSION

### 11.1 Succession and Assignment:

11.1.1 In the event of CSPTradeco's rights and obligations under this Agreement are assigned to and / or succeeded by any other entity(s) through a future scheme of reorganisation at a subsequent date during the term of this Agreement, either by way of formation of subsidiaries or spin-off or splitting off or re-configuration into one or more entities, then the Company and CSPTradeco shall proceed as under:

(i) The generation capacity contracted under this Agreement shall be assigned and allocated amongst the successor companies/ restructured company (ies) of CSPTradeco in the manner, proportion and from such date as may be specified in the said scheme of reorganisation.

(ii) This PPA shall be substituted by new power purchase agreement(s) between the successor entities for the capacity allocation as set out in such scheme for reorganisation.



Handwritten signature and circular stamp, likely a company seal or official stamp.

## 12. ARTICLE 12: GOVERNING LAW

- 12.1 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 the appropriate courts in Bilaspur (Chhattisgarh).



### 13. ARTICLE 13: CHANGE IN LAW

13.1 "Change in Law" means the occurrence of any of the following after the Effective Date of this Agreement resulting into any additional recurring/non recurring expenditure by the Company or any income to the Company:

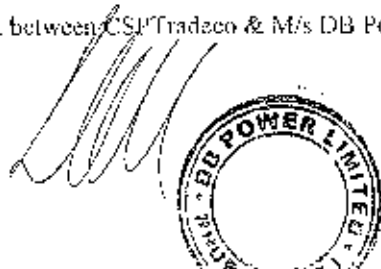
- (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law, statute, decree, ordinance or other law, regulation, code or rule by any Indian Governmental Instrumentality or a change in its interpretation of any Law by a Competent Court of Law, tribunal government or statutory authority; or
- (ii) the imposition by any Indian Governmental Instrumentality of any material condition in connection with the issuance, renewal, modification, revocation or non-renewal (other than for cause) of any Consent, Clearances and Permits after the Effective Date of this Agreement; or
- (iii) any change in tax or introduction of any tax or surcharge or cess levied or similar charges by the Indian Governmental Instrumentality on the generation of electricity but shall not include any change in any withholding tax on income or dividends distributed to the shareholders of the Company or change in respect of UI Charges or frequency intervals by the Commission.


#### 13.2 Compensation for Change in Law:

13.2.1 As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Company shall be determined and effective (adjustment in monthly Tariff) from such date, as mutually decided, shall be payable subject to rights of appeal provided under applicable Law. Provided that the compensation shall be payable only if and for increase/ decrease in revenues or cost to the Company is in excess of an amount equivalent to 1% of the total amount of Letter of Credit for twelve (12) months in aggregate for any Financial Year.

#### 13.3 Notice of Change in Law:

13.3.1 If Company is affected by a Change in Law in accordance with Article 13 and wishes to claim a Change in Law under this Article, it shall give notice to CSPTradeco of such Change in Law and the effect on Company of the matter, as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.



  
Managing Director,  
CSP TRAD CO, Raipur

- 13.3.2 The Company shall be obliged to serve a notice to CSPTradeco if it is beneficially affected by a Change in Law. In case Company has not provided such notice, CSPTradeco shall have the right to issue such notice to Company.

## 14. ARTICLE 14: EVENT OF DEFAULT AND TERMINATION

### 14.1 Company Event of Default

The occurrence of and continuation of any of the following events shall constitute the Company Event of Default unless such an event occurs as a result of CSPTradeco Event of Default or due to a Force Majeure Event;

- i) The Company does not rectify its breach within a period of thirty (30) days from a notice from CSPTradeco in this regard and repudiates this Agreement; or
- ii) The Company fails to make payments, if any, to CSPTradeco in respect of its obligations under this Agreement for more than 90 days for an amount exceeding Rupees Twenty Five lakhs (Rs. 25 lakhs); or
- iii) if
  - a) the Company assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or
  - b) the Company transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
    - 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
    - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee; or
- iv) if (a) the Company becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Company, or (c) the Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law; or
- v) except where due to any CSPTradeco's failure to comply with its material obligations, the Company is in breach of any of its material obligations pursuant to this Agreement; or



Managing Director,  
CSP TRAD CO, Raipur

- vi) Non performance of obligation by the Company as per Article 4.2 of this Agreement;
- vii) Occurrence of any other event which is specified in this Agreement to be a material breach or default of the Company.

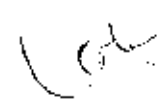
#### 14.2 CSPTradeco Event of Default

The occurrence of and continuation of any of the following events shall constitute CSPTradeco Event of Default unless such an event occurs as a result of Company Event of Default or due to a Force Majeure Event:

- i) CSPTradeco does not rectify its breach within a period of thirty (30) days from a notice from Company in this regard and repudiates this Agreement; or
- ii) CSPTradeco fails to make payments to the Company in respect of its obligations under this Agreement for more than thirty (30) days after the Due Date for any portion of the undisputed part of a Monthly Bill or Supplementary Bill; or
- iii) if (a) CSPTradeco 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 CSPTradeco, or (c) CSPTradeco 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; or
- iv) except where due to any Company's failure to comply with its material obligations, CSPTradeco is in breach of any of its material obligations pursuant to this Agreement.
- v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of the CSPTradeco.

#### 14.3 Procedure in case of Event of Default

- i) Upon the occurrence of an Event of Default by either Party pursuant to Article 14.1 or Article 14.2 above, the non defaulting Party shall have the right to issue a default notice ("Notice of Default") with a copy to the Appropriate Commission specifying the reasonable details giving rise to such Notice of Default.

- ii) On receipt of the Notice of Default, the defaulting Party shall take immediate steps to cure such a default within a period of sixty (60) days from the receipt of the Notice of Default with due notice to the non defaulting Party of the steps taken to cure the above default.
- iii) In the event the reasons leading to the default have been cured to the reasonable satisfaction of the non defaulting Party, the notice of default shall cease to have any effect.
- iv) In the event the Defaulting Party is unable to cure the default to the reasonable satisfaction of the non defaulting Party within the period specified in the sub clause (ii) above, the provisions of Article 14.4 shall apply.


#### 14.4 Termination for Event of Default

Owing the expiration of the cure period set forth herein, the Party giving notice may exercise its rights pursuant to this Agreement by delivery of a written notice for terminating this Agreement ("a Termination Notice").

The notice of termination shall be served carrying a fifteen (15) days notice by;

- i) The Company, in case of CSPTadeco Event of Default;
- ii) CSPTadeco, in case of Company Event of Default;
- iii) Either Party if it is affected by a Force Majeure Event and is unable to perform any obligations required to be performed under this Agreement due to Force Majeure for a continuous period of 18 months; or
- iv) The Company, in the event of enactment of any law or regulation or any subsequent act of any Governmental Instrumentality which makes the performance of this Agreement impossible for it.

- 14.5 Upon the expiry of the Termination Notice, the Party which served the notice shall be entitled to terminate this Agreement under intimation to the other Party unless the event leading to the Termination Notice has been rectified or complied with to the satisfaction to the Party which issued the Termination Notice.

  
Managing Director,  
CSPTADCO, Raipur

## **14.6 Consequences of Termination**

### **14.6.1 Consequence of Termination for Company Event of Default**

Where this Agreement is terminated by CSPTradeco pursuant to Article 14.5 for a Company Event of Default, the Company shall pay as compensation to CSPTradeco an amount equal to a sum of three (3) months Tariff payments calculated in accordance with Article 14.6.4 below.

However, in case any compensation decided by the Appropriate Commission for relinquishment of the transmission access is payable by CSPTradeco then such compensation amount shall be additionally payable by the Company.

Such amount shall be paid within thirty (30) days of the day of termination of this Agreement.

### **14.6.2 Consequence of Termination for CSPTradeco Event of Default**

Where this Agreement is terminated by the Company pursuant to Article 14.5 for a CSPTradeco Event of Default, CSPTradeco shall pay as compensation to the Company, an amount equal to a sum of three (3) months Tariff payments calculated in accordance with Article 14.6.4 below:

Such amount shall be paid within thirty (30) days of termination of this Agreement.

### **14.6.3 Consequence of Termination for Extended Force Majeure**

Where this Agreement is terminated by either Party pursuant to an Extended Force Majeure in accordance with this article 10.3.3, then in such event this Agreement shall stand terminated without any further liability to either party from the date of such termination subject to provisions under Article-8.2 & 8.3 of the IA.

### **14.6.4 Calculation of termination payments**

Termination payments shall be the Monthly Capacity Charge and Monthly Energy Charge for the number of Months set out in 14.6.1 and 14.6.2, assuming Normative PLF of 85% and Capacity Charges, cost of Coal and Fuel Oil being the average of such costs over the last twelve (12) Months of this Agreement.

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "DB POWER LIMITED" around the perimeter and "INDIA" at the bottom.A handwritten signature in black ink, appearing to be "L. S. B.", is written on the right side of the page.

## 15. ARTICLE 15: DISPUTE RESOLUTION & ARBITRATION

15.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity or termination (collectively called "Dispute") by giving a written notice to the other Party, containing a description of the Dispute, the grounds for such Dispute and all written material in support of its claim.

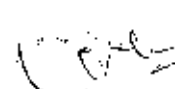
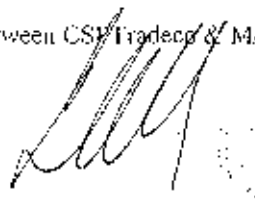
15.1.2 The other Party shall, within thirty (30) days of issue of Dispute notice issued under Article 15.1, furnish counter-claim and defences, if any, regarding the Dispute and all written material in support of its defences and counter-claim.

15.1.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 15.1, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred for Dispute Resolution in accordance with Article 15.2 unless the above period of thirty (30) days is mutually extended.

### 15.2 Dispute Resolution:

15.2.1 All Disputes between the parties herein arising out of or in connection with this Agreement shall be endeavoured to be settled amicably through mutual discussions between the Parties, failing which, it shall be referred to the dispute resolution mechanism in accordance with following procedure.

15.2.2 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 such claims could result in change in the Tariff or relates to any matter agreed to be referred to the Appropriate Commission under the provisions of Law, such Dispute shall be submitted to adjudication by the Appropriate Commission. The obligations of both the parties under this Agreement shall not be affected in any manner by reasons of inter-se disputes.



Managing Director  
CSF Trade Co. Pvt. Ltd.

- 15.2.3 If the Dispute arises out of or in connection with any claims not covered in Article 15.2.1, 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. The Arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules.
- 15.2.4 The place of arbitration shall be Raipur, India. The language of the arbitration shall be English. 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. The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
- 15.2.5 Notwithstanding the existence of any Dispute and difference referred to the Arbitral Tribunal as provided in Article 15.1.3 and save as the Arbitral Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



## **16. ARTICLE 16: MISCELLANEOUS PROVISIONS**

### **16.1 Amendment**

Any amendment (s) to this Agreement shall be in writing signed by all the Parties and only after prior written consent of GoCG.

### **16.2 Language**

The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

### **16.3 Confidential Information**

The Parties herein shall at all time during the continuance of this Agreement use their reasonable endeavours to keep all information relating to technical and commercial aspects affecting their business as confidential and accordingly no Party shall disclose the same to any other person unless the information which at the time of disclosure was in the public domain.

### **16.4 Severability**

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

If for any reason, if any provision of this Agreement becomes invalid, illegal or unenforceable or is declared by any Competent Court of Law or any other Indian Governmental Instrumentality to be invalid, illegal or unenforceable then, both the Parties will negotiate in good faith with a view to agree on one or more provisions which may be substituted/replaced for such invalid, illegal or unenforceable provision. Failure to agree upon any such provision shall not be subjected to dispute resolution under the Agreement or otherwise.

### **16.5 Compliance with Law**

Despite anything contained in this Agreement, 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 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.



Managing Director,  
GSPTAD CO., Raipur

#### **16.6 Taxes and Duties**

Subject to Article 8.7, the Company shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed / levied on the Company, its contractors or their employees that are required to be paid by the Company as per the Law in relation to the operation of the Generating Station and for providing services as per the terms of this Agreement.

#### **16.7 Promoters Equity in the Company**

Unless otherwise permitted by GoCG, the aggregate equity contribution of the Company with which the MOU was signed shall not be less than fifty-one percent (51%) during the construction period of the project and until two (2) years following the commencement of the commercial operation of the Power Station.

#### **16.8 Third Party Beneficiaries**

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

#### **16.9 Waiver**

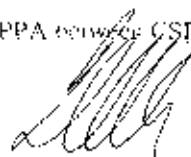
16.9.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party.

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

#### **16.10 Entirety**

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

16.10.2 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 CSPTradeco by the Company shall stand superseded and abrogated.



#### 16.11 Affirmation

The Company and CSPTradeeco 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 Company and CSPTradeeco hereby undertake not to engage in any similar acts during the term of Agreement.

#### 16.12 Notices

16.12.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

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

16.12.3 If to the Company, 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 : G-3A/4-6, Kamanwala Chambers,  
New Udyog Mandir-2, Mogul lane,  
Mahim (West),  
Mumbai-400016.


Attention : Mr. R.K.Gupta, C.F.O.

Email : rk.gupta@dbpower.in

Fax No. : 022-39804793

Telephone No. : 022-39888840



  
Managing Director  
CSPTradeeco Pvt. Ltd.

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

Name & Address: ED/CE(Technical Cell),  
CSP Trading Company Ltd.,  
2nd Floor,  
Vidyat Sewa Bhawan, Raipur-492013.

Email : ce.techcell@gmail.com

Fax No. : 0771-2242955

Telephone No. : 0771-2574117

#### 16.13 No Consequential or Indirect Losses

The liability of the Company and CSPTradeco shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall the Company or CSPTradeco claim from one another any indirect or consequential losses or damages.

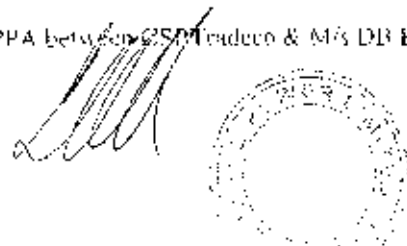

#### 16.14 Remedies

Where this Agreement provides for any rebate or other remedies for any breach or shortfall in performance, the parties shall not be entitled to make any other claim or pursue other remedies under law.

#### 16.15 Assignment

16.15.1 This Agreement shall not be assigned by either Party other than by mutual agreement between the Parties in writing.

16.15.2 Subject to Article 16.9, a Party may assign its rights and transfer its obligations under this Agreement to its Affiliate with the prior consent of the other Party, which shall not be unreasonably withheld.

A handwritten signature in black ink is written over a circular stamp. The stamp contains text that is partially obscured but appears to be a corporate seal or official stamp.A handwritten signature in black ink, consisting of a stylized 'C' followed by some illegible characters.

Provided that:

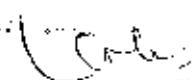
- (i) an entity shall qualify as an "Affiliate" of the Party if it, directly or indirectly, controls, is controlled by or is under common control of such Party; the term "control" meaning ownership of more than fifty percent (50%) of the equity share capital or voting rights of such Party or the power to appoint a majority of the board of directors of such Party;
- (ii) such affiliate has the ability to perform all obligations of the Party under this Agreement; and
- (iii) such affiliate expressly assumes such obligations;

16.15.3 Notwithstanding the provisions of Article 16.15.2, the Company may, for the purpose of financing of the Project under the Financing Agreements, with CSPTradeco's consent, which consent shall not be unreasonably withheld, assign or create security over its rights and interests of:

- (i) the Agreement and the Project;
- (ii) the Site;
- (iii) the movable property and intellectual property of the Company; and
- (iv) the revenues or any of the rights or assets of the Company;
- (v) CSPTradeco shall execute the required consent to such assignment of the required acknowledgement of the creation of such security in accordance with this Article 16.15.3, as is reasonably requested by the Company to give effect to such assignment or creation of security and CSPTradeco will effect such assignment in form and substance acceptable to CSPTradeco and the Lenders.


16.15.4 CSPTradeco may assign its rights and transfer its obligations under this Agreement to any entity that is formed as a result of a merger, consolidation or reorganisation of CSPTradeco and provided that such resulting entity expressly assumes all obligations of CSPTradeco under this Agreement and is in a position to perform them.



  
Managing Director,  
CSP TRADCO, Raipur


IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at Raipur, Chhattisgarh.


For and on behalf of:  
**M/S DB POWER LTD.**

  
.....  
Signature

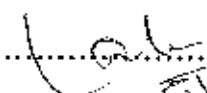
(Name: Irfan Quareshi  
Designation: General Manager  
For, DB POWER LIMITED  
Seal: .....

Authorized Signatory  
In the presence of:  
Witness :

1.   
.....  
(Signature of the Witness)  
Name: RANJAN JINDAL  
Designation: AGM (F&A)  
VISA POWER LTD.


2.   
.....  
(Signature of the Witness)  
Name: MD. ZAKIR, ASST. MANAGER  
Designation: DB POWER LTD

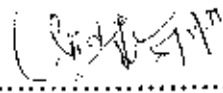
For and on behalf of:  
**CHHATTISGARH STATE  
POWER TRADING COMPANY  
LIMITED (CSPT Tradeco),  
RAIPUR**

  
.....  
Signature

(Name: V.K. SHIRIVASTAV  
Designation: Managing Director  
Managing Director  
Seal: .....

CSPTCE, Raipur (CG)  
In the presence of:  
Witness :

1.   
.....  
(Signature of the Witness)  
Name: A.K. GARG  
Designation: Asst. Secy (Tech. Cell), CSPT Tradeco

2.   
.....  
(Signature of the Witness)  
Name: D.K. CHOWDHURY  
Designation: SE (Tech Cell), CSPT Tradeco



## 17. SCHEDULE 1: TARIFF SCHEDULE

The calculation of applicable Tariff for the Contracted Capacity and the calculation of Energy Charges for the Contracted Energy shall be as per the provisions as laid down in 'Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009' and as amended from time to time.

1.1 The method of determination of Tariff payments for any Tariff Year during the Term of Agreement shall be in accordance with that set out in the CERC Tariff Regulations, except as otherwise specifically provided in this Schedules - I.

1.2 Paragraph - 2 of this Schedule - I sets out the method of determination of Annual Capacity Charges and the Monthly Capacity Charges required for determination of monthly Capacity Charges payment. Paragraph - 3 sets out the method of determination of Energy Charge payments, accounting for the Contracted Capacity and the Contracted Output (at energy charge).

### 2. Annual Capacity Charges and Monthly Capacity Charges

2.1 The Annual Capacity Charges or Annual Fixed Charges shall consist the following as per CERC Regulations:

- (i) Return on equity;
- (ii) Interest on loan capital;
- (iii) Depreciation;
- (iv) Interest on working capital;
- (v) Operation and maintenance expenses;
- (vi) Cost of secondary fuel oil;
- (vii) Special allowance in lieu of R&M or separate compensation allowance, wherever applicable.

2.2 The Annual Capacity Charge shall be calculated based on the following financial parameters and formula:

- (i) Capital Cost of the Project as finalized in accordance with CERC Regulations and as approved by the Lenders

- (ii) Debt and Equity as per CERC Regulations with equity not exceeding 30% of the Capital Cost and with debt having the principal amount, effective interest rate and tenors as per the Financing Agreements.
- (iii) Depreciation as per CERC Regulations applicable for the Project
- (iv) Return on equity grossed up for Tax in accordance with CERC Regulations;
- (v) O&M expenses calculated in accordance with CERC Regulations as applicable for the Project,
- (vi) Interest on Working Capital calculated in accordance with the CERC Regulations in respect of the Project and
- (vii) Secondary Fuel Oil calculated in accordance with CERC Regulations

### 2.3 Annual Capacity Charge Formula

Annual Capacity Charges shall be calculated taking into account the Installed Capacity and the Saleable Capacity of the Project and shall be determined using the following formulae:

$$ACC_{yn} = \frac{CC_{yn} * IC}{SC}$$

where:

$CC_{yn}$  is the Capacity Charge for the Tariff Year n determined in accordance with Paragraph 2.1 and 2.2 above, (in Rupees) ;

$SC$  is the Saleable Capacity of the Project during the Tariff Year n (in kW) which is equal to Installed Capacity minus the capacity equivalent to the energy to be supplied at Energy Charge to CSPTradeco;

$IC$  is the Installed Capacity of the Project.



ACCyn is the Annual Capacity Charges for the Tariff Year n (in Rupees);

#### 2.4. Monthly Capacity Charge formula:

The capacity charge (inclusive of incentive) payable for a calendar month (MCCtotal) shall be calculated in accordance with the following formulae:

**(a) If the Project is in commercial operation for less than ten (10) years on 1st April of the financial year:**

$$MCC_{total} = ACC_{yn} \times (NDM / NDY) \times (0.5 + 0.5 \times PAFM / NAPAF) \text{ (in Rupees)}$$

Provided that in case the plant availability factor achieved during a financial year (PAFY) is less than 70%, the total capacity charge for the year shall be restricted to

$$ACC_{yn} \times (0.5 + 35 / NAPAF) \times (PAFY / 70) \text{ (in Rupees)}.$$

**(b) If the Project is in commercial operation for ten (10) years or more on 1st April of the financial year:**

$$MCC_{total} = ACC_{yn} \times (NDM / NDY) \times (PAFM / NAPAF) \text{ (in Rupees)}.$$

Where,

MCCtotal = Total Monthly Capacity Charge for the Project

ACCyn = Annual Capacity Charge calculated for the year n as per Para 2.3,

NAPAF = Normative annual plant availability factor in percentage as per CERC Regulations

NDM = Number of days in the month

NDY = Number of days in the year

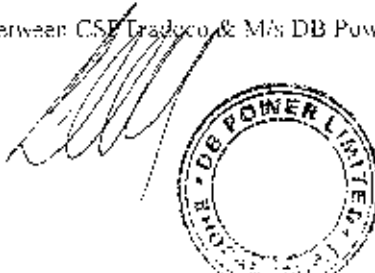
PAFM = Plant availability factor achieved during the month, in percent

PAFY = Plant availability factor achieved during the year, in percent

#### 2.5 The PAFM and PAFY shall be computed in accordance with the following formula:

$$PAFM \text{ or } PAFY = 10000 \times \sum_{i=1}^N DCi / \{ N \times IC \times (100 - AUX) \} \%$$

Where,



Handwritten signature and stamp: CSE TRADCO, RAIPUR.

AUX – Normative auxiliary energy consumption in percentage as per CERC Regulations

DCi = Average Declared Capacity (in ex-bus MW), subject to clause 21(4) of CERC Tariff Regulations 2009-14, for the ith day of the period i.e. the month or the year as the case may be, as certified by the concerned load dispatch centre after the day is over.

IC – Installed Capacity (in MW) of the Project

N = Number of days during the period i.e. the month or the year as the case may be.

## **2.6 Monthly Capacity Charge payable by CSPTradeco:**

The Monthly Capacity Charge payable by CSPTradeco shall be in proportion to the Contracted Capacity as per following formula:

$$MCC_{\text{CSPtradeco}} = MCC_{\text{total}} * \text{Contracted Capacity} / \text{Installed Capacity}$$

## **3.1 Monthly Energy Charge**

The energy charge shall cover the Coal cost and shall be payable by CSPTradeco for the energy scheduled to be supplied during the calendar month on ex-power plant basis including the energy corresponding to Contracted Output, at the energy charge rate of the month (with fuel price adjustment). Energy Charge payable by CSPTradeco for a month shall be:

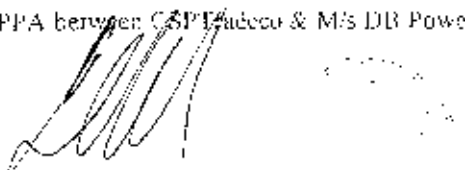
$$EC_m = ECR_m * SE_m$$

Where,

EC<sub>m</sub> is the Energy Charge payable by CSPTradeco for the month m (in Rupees)

ECR<sub>m</sub> is the Energy Charge rate in Rs./kWh for the month m and

SE<sub>m</sub> is the CSPTradeco Scheduled energy(ex-bus) for the month m in kWh as per REA



- 3.2 **Energy Charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae :**

$$ECR = \{ (GHR - SFC \times CVSF) \times LPPF / CVPF \} \times 100 / (100 - AUX)$$

Where,

AUX = Normative auxiliary energy consumption in percentage as per CERC Regulations

CVPF = Gross calorific value of Coal as fired, in kCal per kg for the month.

CVSF = Calorific value of secondary fuel, in kCal per ml for the month

ECR = Energy Charge rate, in Rupees per kWh sent out for the month

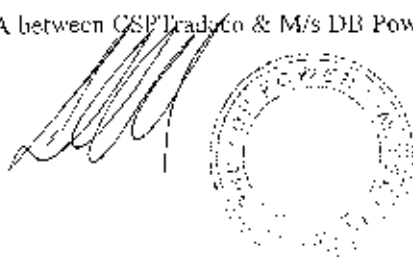
GHR = Gross station heat rate, in kCal per kWh as per CERC Regulations

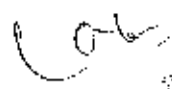
LPPF = Weighted average landed price of Coal, in Rupees per kg for the month.

SFC = Specific fuel oil consumption, in ml per kWh as per CERC Regulations

### 3.3 **Landed Cost of Coal**

The landed cost of Coal for the month shall include price of Coal corresponding to the grade and quality of Coal inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, costs associated with handling of Coal and arrived at after considering normative transit and handling losses as percentage of the quantity of Coal dispatched by the Coal supply company during the month as per CERC Regulations :



  
Director,  
Rajputana

