

**POWER PURCHASE AGREEMENT FOR**  
**PROCUREMENT OF 50 MW WIND POWER**  
**(For supply to Jharkhand Bijli Vitran Nigam Limited)**  
**ON LONG TERM BASIS**

**Between**

**Ostro Kutch Wind Private Ltd.**

**And**

**PTC India Limited**

**July 2017**



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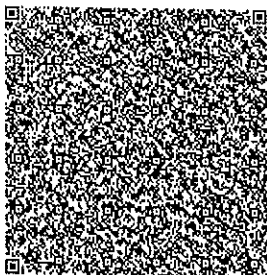


# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

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|---------------------------|--------------------------------------------|
| Certificate No.           | : IN-DL07303481844970P                     |
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| Account Reference         | : IMPACC (IV)/ dl806603/ DELHI/ DL-DLH     |
| Unique Doc. Reference     | : SUBIN-DL80660315644851375148P            |
| Purchased by              | : PTC INDIA LIMITED                        |
| Description of Document   | : Article 5 General Agreement              |
| Property Description      | : AGREEMENT FOR PURCHASE AND SALE OF POWER |
| Consideration Price (Rs.) | : 0<br>(Zero)                              |
| First Party               | : PTC INDIA LIMITED                        |
| Second Party              | : AS APPLICABLE                            |
| Stamp Duty Paid By        | : PTC INDIA LIMITED                        |
| Stamp Duty Amount(Rs.)    | : 100<br>(One Hundred only)                |



.....Please write or type below this line.....

This Power Purchase Agreement is made on the 21<sup>st</sup> day of July of 2017 at New Delhi.

Between

Ostro Kutch Wind Private Ltd., a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at Unit No. G-0, Ground Floor, Mira Corporate Suites, 1&2, Ishwar Industrial Estate, Mathura Road, New Delhi-110065 (hereinafter referred to as "**Wind Power Developer or WPD**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the FIRST PART;

And

PTC India Limited, a Company incorporated under the Companies Act 1956 or

Page 3 of 50

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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## BUYER-WPD PPA

Companies Act 2013, having its registered office at 2nd Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi-110066 (herein after referred to as “**Buyer**” which expression shall unless repugnant to the context or meaning thereof shall be deemed to include successors and permitted assigns) of the SECOND PART;

The WPD and PTC India Limited are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. The Buyer has been declared as a successful bidder against RfP issued by SECI vide Bid No. SECI/C&P/Wind/01/062016 dated 24.06.2016, for selection of Power Trading Company for purchase and sale of Wind Power and has been issued Letter of Award (LOA No. SECI/C&P/Wind-Trader/LOI/PTC/9200 dated 26.08.2016) against the same. Buyer’s main function is, inter alia, to carry on the business of purchase of all forms of electrical power both conventional and non-conventional from Independent Power Producers (IPPs), Captive Power Plants (CPPs), other Generating Companies, State Electricity Boards (SEBs), State Government’s Statutory Bodies, Licensees etc. for sale to SEBs, Power Utilities, other organizations and bulk power consumers etc., in India and abroad, and also to supply, import and export or otherwise deal in all forms of electrical energy in all aspects;
- B. Solar Energy Corporation of India Limited (SECI) has been designated by the Government of India as the nodal agency for implementation of MNRE Scheme for Setting up of 1000 MW ISTS connected Wind Power Projects for developing grid connected wind power capacity, vide Guidelines No. F. No. 53/14/2016-WE issued on 22.10.2016.
- C. The WPD has been declared as a successful bidder against RfP No. SECI/C&P/WPD/RfS/1000MW/102016 dated 28th October, 2016 issued by SECI for selection of WPDs for development of cumulative capacity of 1000 MW in the windy states and have been issued Letter of Award (LOA No. SECI/C&P/WPD/LOA/OKWPL/12365 dated 05.04.2017) for development of Wind Power Project(s), generation and sale of wind power under the above scheme.
- D. The WPD, is established in New Delhi with an objective, inter-alia, to develop and manage Wind power plants in India.



## BUYER-WPD PPA

E. The WPD is engaged in the business of generation of power and is desirous of setting up a 250 MW (250 MW) Wind power project located at Taluk Bhuj and Anjar in Kutch District in the state of Gujarat (hereinafter referred to as the “**Project**”). The Project is expected to be commissioned on 30.06.2018 (hereinafter referred to as “Date of Commissioning”) and commence its commercial operation by 30.06.2018 (hereinafter referred to as “**COD**”).

The WPD has agreed to sign this Power Purchase Agreement with Buyer to sell energy generated from Wind Power Project corresponding to 50 MW installed capacity of Wind Power Project (20% of generation) to Buyer for 25 years from the COD of the Project as per the terms and conditions of this Agreement.

F Buyer has agreed to purchase Wind Power from WPD as an intermediary Seller and sell it to identified Discom as per the Buyer-Discom Power Sale Agreement, accordingly Buyer has signed Power Sale Agreement for 50 MW Contracted Capacity with Jharkhand Bijli Vitran Nigam Limited (JBVNL) dated 23.06.2017 which is annexed as Shecdule-1 of this Agreement and is the basis of execution of this Agreement.

G. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Purchase Agreement (“**PPA**”) i.e. a definitive agreement, regarding purchase of power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PPA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

H. To establish the commitment of WPD to sell and Buyer to purchase power from the Project, the Parties have entered into this Agreement.

I. The Parties have accordingly agreed to enter into this PPA to record their understanding and agreement with regard to the purchase of power to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

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



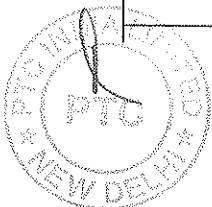
**ARTICLE 1: DEFINITIONS AND INTERPRETATION****1.1 Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

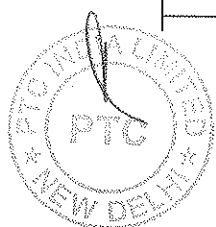
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| "Act" or "Electricity Act, 2003"                   | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;                                                                                                                                                                                                                                                                                                     |
| "Agreement" or "Power Purchase Agreement" or "PPA" | shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;                                                                                                                                                                                                                                                              |
| "Appropriate Commission"                           | shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;                                                                                                              |
| "Bill Dispute Notice"                              | shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;                                                                                                                                                                                                                                                                                  |
| "Business Day"                                     | shall mean with respect to WPD and Buyer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;                                                                                                                                                                                                                                                                        |
| "Capacity Utilisation Factor" or "CUF"             | Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time;                                                                                                                                                                                                                                          |
| "CERC"                                             | shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;                                                                                                                                                                                                                                                  |
| "CTU" or "Central Transmission Utility"            | shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.                                                                                                                                                                                                                                                                                 |
| "Change in Law"                                    | shall have the meaning ascribed thereto in Article 12 of this Agreement;                                                                                                                                                                                                                                                                                                                                               |
| "Commercial Operation Date"                        | shall mean the actual date of commercial operation/ commissioning of the project as declared by the State Nodal Agency (SNA)/ Committee/individual/any other entity authorized by SECI. COD will be declared only when the project developer has commissioned at least 50 MW capacity or 50% of the allotted project capacity whichever is higher. PPA tenure will be counted from the COD irrespective of the date of |



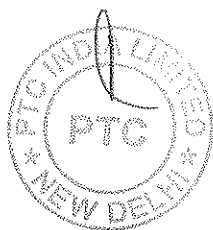
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|                                    | commissioning of the balance capacity;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| "Commissioning"                    | the Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the Guidelines/PPA.;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| "Competent Court of Law"           | shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| "Consents, Clearances and Permits" | shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| "Consultation Period"              | shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a WPD Preliminary Default Notice or Buyer Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;                                                                                                                                                                                                                                                                                                                                                                               |
| "Contract Year"                    | Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:<br>(i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and<br>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement |
| "Contracted Capacity"              | shall mean 50 MW contracted with Buyer for supply by the WPD to Buyer at the Delivery Point from the Wind Power Project;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Day"                              | Shall mean a day, if not a Business Day, the immediately succeeding Business Day.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| "Delivery Point"                   | shall mean the point at 220 kV or above where the power from the wind power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



|                        |                                                                                                                                                                                                                                                                                                                                                         |
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|                        | power will be injected into the ISTS i.e. the Delivery point. For interconnection with grid and metering, the developers shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time.                                                                                           |
| "Discoms"              | Shall mean the distribution utility or the distribution utilities who have signed the PSA (s) with Buyer for purchase of Wind Power;                                                                                                                                                                                                                    |
| "Dispute"              | shall mean any dispute or difference of any kind between Buyer and the WPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;                                                                      |
| "Due Date"             | Due Date shall mean the thirty-third (33rd) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Buyer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the Buyer.                                            |
| "Effective Date"       | shall have the meaning ascribed thereto in Article 2.1 of this Agreement;                                                                                                                                                                                                                                                                               |
| "Electricity Laws"     | shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;                                                                                    |
| "Energy Accounts"      | shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;                                                                                                                      |
| "Event of Default"     | shall mean the events as defined in Article 13 of this Agreement;                                                                                                                                                                                                                                                                                       |
| "Expiry Date"          | Shall mean the date occurring twenty five (25) years from the Commercial Operation Date;                                                                                                                                                                                                                                                                |
| "Financial Closure"    | shall mean the execution of all the Financing Agreements required for the Power Project and fulfilment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;                                                                                                                  |
| "Financing Agreements" | shall mean the agreements pursuant to which the WPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Buyer; |



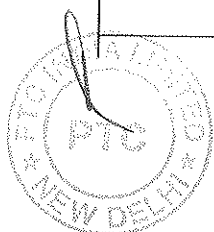
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| "Force Majeure" or "Force Majeure Event"  | shall have the meaning ascribed thereto in Article 11 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                |
| "Guidelines: or "Scheme"                  | shall mean the Scheme for Setting up of 1000 MW ISTS connected Wind Power Projects issued by MNRE vide No. F. No. 53/14/2016-WE dated 14.06.2016 and 22.10.2016.                                                                                                                                                                                                                                                                                        |
| "Grid Code" / "IEGC" or "State Grid Code" | shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;                                                                                                               |
| "Indian Governmental Instrumentality"     | shall mean the Government of India, Governments of state(s) of Gujarat, Delhi and Jharkhand and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;            |
| "Installed Capacity"                      | Shall mean the name plate capacity of all the units of the Power Project or the capacity of the Power Project (reckoned at the generator terminals),;                                                                                                                                                                                                                                                                                                   |
| "Insurances"                              | shall mean the insurance cover to be obtained and maintained by the WPD in accordance with Article 8 of this Agreement;                                                                                                                                                                                                                                                                                                                                 |
| "Interconnection Facilities"              | shall mean the facilities on WPD's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement; |
| "Invoice" or "Bill"                       | shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;                                                                                                                                                                                                                                                                                                                         |
| "Late Payment Surcharge"                  | shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                            |
| "Law"                                     | shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any     |



|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|                                     | of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| "Letter of Credit" or "L/C"         | shall have the meaning ascribed thereto in Article 10.4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| "Month"                             | shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| "Party" and "Parties"               | shall have the meaning ascribed thereto in the recital to this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| "Payment Security Mechanism"        | shall have the meaning ascribed thereto in Article 10.4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| "Performance Bank Guarantee"        | shall mean the irrevocable unconditional bank guarantee, submitted by the WPD to SECI;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "Pooling Substation/ Pooling Point" | means a point where more than one wind power projects may connect to a common transmission system. Multiple projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the developer(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual projects for the purpose of billing. |
| "Power Project" or "Project"        | shall mean the Wind power generation facility of Installed Capacity of 250 MW, located at Taluk Bhuj and Anjar in Kutch District, Gujarat having separate points of injection into the grid at interconnection/ metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. Each project must also have a separate boundary, control systems and metering;                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| "Power Sale Agreement" or "PSA"     | Shall mean the power sale agreement entered between the Discom and Buyer (Buyer-Discom PSA) for selling the wind power as per the provisions of Guidelines and annexed hereto as Schedule 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| "Preliminary Default Notice"        | shall have the meaning ascribed thereto in Article 13 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| "Project Capacity"                  | shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|                                       | signed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| "Prudent Utility Practices"           | shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:<br>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;<br>b) the requirements of Indian Law; and the physical conditions at the site of the Power Project |
| "RBI"                                 | shall mean the Reserve Bank of India;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "Rebate"                              | shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| "RLDC"                                | shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| "RPC"                                 | shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;                                                                                                                                                                                                                                                                                                                                                                                                            |
| "Rupees", "Rs.", "₹"                  | shall mean Indian rupees, the lawful currency of India;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| "Scheduled Commissioning Date"        | shall mean 04.10.2018 [Insert Date that is eighteen (18) months from the date of LOA];                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| "SERC"                                | shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;                                                                                                                                                                                                                                                                                                                                                                                |
| "SLDC"                                | shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "SLDC Charges"                        | shall mean the charges levied by the SLDC of the state wherein the Wind Power Project is located;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "SECI"                                | shall mean Solar Energy Corporation of India Limited;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "State Transmission Utility" or "STU" | shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| "Tariff"                              | Shall have the same meaning as provided for in Article 9 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



BUYER-WPD PPA

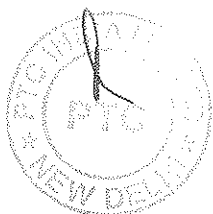
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| "Tariff Payment"     | shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;                                                                   |
| "Termination Notice" | shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;                                                            |
| "Term of Agreement"  | shall have the meaning ascribed thereto in Article 2 of this Agreement;                                                                                                                     |
| "Week"               | shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;                                                                        |
| "Wind Power"         | Shall mean power generated from the Wind Power Projects;                                                                                                                                    |
| "Wind Power Project" | shall mean the project that uses wind for conversion into electricity and that is being set up by the WPD to provide Wind Power to Buyer as per the terms and conditions of this Agreement; |



**1.2 Interpretation**

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;



- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;



## **2 ARTICLE 2: TERM OF AGREEMENT**

### **2.1 *Effective Date***

2.1.1 This Agreement shall come into effect from 21<sup>st</sup> July, 2017 and such date shall be referred to as the Effective Date.

### **2.2 *Term of Agreement***

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

### **2.3 *Early Termination***

2.3.1 This Agreement shall terminate before the Expiry Date if either Buyer or WPD terminates the Agreement, pursuant to Article 13 of this Agreement.

### **2.4 *Survival***

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



**3 ARTICLE 3: NOT USED**



#### **4 ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

##### **4.1 WPD's Obligations**

4.1.1 The WPD undertakes to be responsible, at WPD's own cost and risk, for:

- a) obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
- b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- c) continuance of supply of Contracted Capacity from the Commercial Operation Date/Project Commissioning throughout the term of the Agreement; and
- d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; and
- e) maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date of the Project; and
- f) fulfilling all obligations undertaken by the WPD under this Agreement.
- g) obtaining Long Term Access (LTA) and executing transmission agreement with CTU/STU as the case may be, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.
- h) providing quarterly progress report of the Project to Buyer within 15 days of the end of each quarter.

##### **4.2 Information regarding Interconnection Facilities**

4.2.1 The WPD shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the WPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point.

##### **4.3 Purchase and sale of Contracted Capacity**

4.3.1 Subject to the terms and conditions of this Agreement, the WPD undertakes to sell to Buyer and Buyer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity, subject to Article 4.4.1 of this Agreement.



**4.4 *Right to Contracted Capacity & Energy***

4.4.1 The Developer will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Buyer, in any Contract Year, shall not be obliged to purchase any additional energy from the WPD beyond 160.886 Million kWh (MU) [Insert value of energy generated corresponding to CUF of 120% of the declared CUF of 30.61% for Wind Project. If for any Contract Year, it is found that the WPD has not been able to generate minimum energy of 120.665 Million kWh (MU) [Insert value of energy generated corresponding to a CUF of 90% of the declared CUF for Wind project], WPD shall be liable to pay the compensation provided in the PSA as payable to Discoms by Buyer to enable Buyer to remit the amount to Discoms. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be equal to the compensation payable by the Discoms towards non-meeting of their RPOs. WPD shall maintain generation so as to achieve CUF not less than 90% of their declared CUF value and not more than 120% of their declared CUF value during PPA duration of 25 years. The lower limit will, however be relaxable by Buyer to the extent of grid non availability for evacuation which is beyond the control of the developer. The CUF will be calculated every year from 1<sup>st</sup> April of the year to 31<sup>st</sup> March next year.

4.4.2 Notwithstanding Article 4.4.1, the WPD is free to sell such power to any third party prior to the Commercial Operation Date and any capacity which is in excess of the quantum of power agreed as per Article 4.4.1 of this Agreement from Commercial Operation Date. However Buyer has first right and may agree to buy any surplus power as a trader if they find it viable outside the PPA at its sole discretion.

4.4.3 The compensation as per Article 4.4.1 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under Buyer-WPD PPA affecting supply of wind power by WPD.

**4.5 *Extensions of Time***

4.5.1 In the event that the WPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any Buyer Event of Default; or
- b) Force Majeure Events affecting Buyer/Discom, or
- c) Force Majeure Events affecting the WPD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than 'day for day' basis, to permit the WPD or Buyer/Discom through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the WPD or



Buyer/Discom, or till such time such Event of Default is rectified by Buyer.

4.5.2 Void.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) months , any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

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

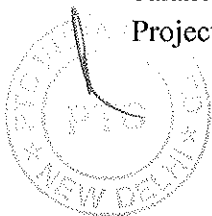
4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond 27 months from the date of issuance of LOA by SECI to WPD.

**4.6 *Liquidated Damages for delay in commencement of supply of power to Buyer***

4.6.1 The selected projects shall be commissioned within 18 months from date of issuance of Letter of Award. A duly constituted Committee will physically inspect and certify successful commissioning of the project. In case of failure to achieve this milestone, SECI shall encash the Performance Bank Guarantee (PBG) in the following manner:

Delay upto six (6) months – Buyer will encash total Performance Bank Guarantee on per day basis and proportionate to the balance Capacity not commissioned.

4.6.2 In case the commissioning of the project is delayed over Six (6) months, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 27 months from the date of LoA. In case, the Commissioning of the Project is delayed beyond 27 months from the date of LoA, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned, provided that the commissioned capacity is not below 50 MW or 50% of the allocated Project Capacity, whichever is higher, and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.



- 4.6.3 However, if as a consequence of delay in commissioning, the Applicable Tariff changes, that part of the capacity of the Project for which the commissioning has been delayed shall be paid at the tariff as per Article 9.2 of this Agreement.

**4.7 *Acceptance/Performance Test***

- 4.7.1 Prior to synchronization of the Power Project, the WPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Wind power projects.

**4.8 *Third Party Verification***

- 4.8.1 The WPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to Buyer and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the WPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the WPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from WPD or require the works to be stopped or to comply with the instructions of such third party.

**4.9 *Breach of Obligations***

- 4.9.1 The Parties herein agree that during the subsistence of this Agreement, subject to Buyer being in compliance of its obligations & undertakings under this Agreement, the WPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.



**5 ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

**5.1 *Synchronization, Commissioning and Commercial Operation***

- 5.1.1 The WPD shall give the concerned RLDC/SLDC and Buyer at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the WPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the WPD at its generation facility of the Power Project at its own cost. The WPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The WPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the WPD will inject in-firm power to grid time to time to carry out operational/functional test prior to commercial operation
- 5.1.5 The WPD shall commission the Project within eighteen (18) Months from the date of issuance of LOA by SECI to WPD.

**5.2 *Performance Bank Guarantee***

- 5.2.1 The Performance Bank Guarantee furnished by WPD to SECI shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement.
- 5.2.2 If the WPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.5, SECI shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of Buyer under this Agreement.
- 5.2.3 This Agreement will be operationalized only after successful Commissioning of the Project as certified/accepted by SECI.



**6 ARTICLE 6: DISPATCH**

**6.1 *Dispatch and Scheduling***

6.1.1 The WPD shall be required to Schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the WPD.

6.1.2 Each Party shall be responsible for deviations made by it from the dispatch schedule and for any resultant liabilities on account of charges for deviation as per applicable regulations.



**7 ARTICLE 7: METERING**

**7.1 Meters**

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the WPD and Buyer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The WPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at WPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the WPD shall install Main & Check meters with common CT, PT and one standby meter with separate CT, PT (different from the CT, PT for main and check meter but having identical specification) at the Delivery Point. All the meters must be ABT compliant.
- 7.1.4 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters (two meters with common CT, PT and one standby meter with separate CT, PT) are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in clause 7.1.3.

**7.2 Reporting of Metered Data and Parameters**

- 7.2.1 The grid connected Wind power plants will install necessary equipment for regular monitoring of ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the plant.
- 7.2.2 Online arrangement would have to be made by the Wind power developer for submission of above data regularly for the entire period of this Power Purchase Agreement to the concerned Ministry.
- 7.2.3 Reports on above parameters on monthly basis shall be submitted by the Wind power developer to MNRE/ SECI through Buyer for entire period of PPA.



**8 ARTICLE 8: INSURANCES**

**8.1 Insurance**

8.1.1 The WPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

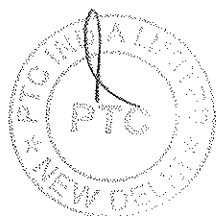
**8.2 Application of Insurance Proceeds**

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

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, Buyer shall have no claim on such proceeds of such Insurance.

**8.3 Effect on liability of Buyer**

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



**9 ARTICLE 9: APPLICABLE TARIFF**

- 9.1 The WPD shall be entitled to receive the Tariff of Rs. 3.46 per kWh for the power sold by the Buyer to the Discom for the scheduled energy as reflected in the REA with effect from the COD subject to the Article 4.6.3 of this Agreement.
- 9.2 Provided further that in case the commissioning of the project is delayed over Six (6) months beyond the Scheduled Commissioning Date, subject to Article 4, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned.
- 9.3 Further provided that in case of part commissioning, the final tariff of the entire Project after commissioning of the balance capacity will be weighted average of the tariff of the timely commissioned capacity of the Project discovered through Reverse Auction and reduced tariff of the balanced capacity as per Article 4.6.2 of this Agreement.



**10 ARTICLE 10: BILLING AND PAYMENT**

**10.1 General**

10.1.1 Not Used.

10.1.2 From the commencement of supply of power, Buyer shall pay to the WPD the monthly Tariff Payments, on or before the Due Date, in accordance with Article 9. All Tariff Payments by Buyer shall be in Indian Rupees.

**10.2 Delivery and Content of Monthly Bills/Supplementary Bills**

10.2.1 The WPD shall issue to Buyer a signed Monthly Bill for the immediately preceding Month after issuance of REA of the Applicable Month.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per REA and the applicable tariff.

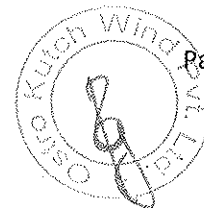
10.2.2 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to open access and scheduling for transmission of the power from the Delivery Points to the receiving substation(s) of the Discom if any, shall be reimbursed by Buyer on actuals on receipt of the same from the Discom. Invoicing for all transmission related charges shall be done through Supplementary Bills.

**10.3 Payment of Monthly Bills**

10.3.1 Buyer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the WPD, as shall have been previously notified by the WPD in accordance with Article 10.3.2 iii) below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and
- ii) amounts claimed by Buyer, if any, from the WPD, through an invoice to be payable by the WPD, and not disputed by the WPD within fifteen (15) 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 Buyer shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.



- iii) The WPD shall open a bank account at New Delhi (the "WPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by Buyer to the WPD, and notify Buyer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buyer shall also designate a bank account at New Delhi ("Buyer's Designated Account") for payments to be made by the WPD to Buyer, if any, and notify the WPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD's Designated Account or Buyer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

#### 10.3.3 *Late Payment Surcharge*

In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buyer within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the WPD at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by Buyer under the PSA. The Late Payment Surcharge shall be claimed by the WPD through the Supplementary Bill.

#### 10.3.4 *Rebate*

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the WPD to Buyer in the following manner.

- a) A Rebate of 2% shall be payable to the Buyer for the payments made within five (5) days of the receipt of the Monthly Bill by Buyer.
- b) Any payments made after five (5) days of the receipt of the Monthly Bill upto the Due Date shall be allowed a rebate of 1%.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

#### 10.4 *Payment Security Mechanism*

##### *Letter of Credit (LC):*

10.4.1 Buyer shall provide to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the WPD in accordance with this Article.

10.4.2 Not later than one (1) Month before the start of supply, Buyer through a scheduled bank at New Delhi open a Letter of Credit in favour of the WPD, to be



## BUYER-WPD PPA

made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the WPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, Buyer shall restore such shortfall within seven (7) days.

10.4.5 Buyer shall cause the scheduled bank issuing the Letter of Credit to intimate the WPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 Buyer shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Buyer.

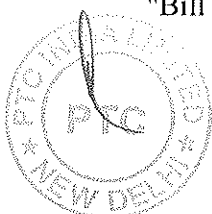
10.4.8 If Buyer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.3 & 10.5.2, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buyer, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to WPD and;
- ii) a certificate from the WPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

### ***10.5 Disputed Bill***

10.5.1 If the Buyer does not dispute a Monthly Bill or a Supplementary Bill raised by the WPD within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the Buyer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:



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

10.5.3 If the WPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the WPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the WPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Buyer providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

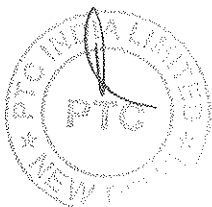
10.5.5 Upon receipt of the Bill Disagreement Notice by the Buyer under Article 10.5.4, authorized representative(s) or a director of the board of directors/member of board of the Buyer and WPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Buyer shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

#### **10.6 *Quarterly and Annual Reconciliation***

10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment



## BUYER-WPD PPA

payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the WPD and Buyer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the WPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

### 10.7 *Payment of Supplementary Bill*

10.7.1 WPD may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) pertaining to open access and scheduling related charges for transmission of the power

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

10.7.2 Buyer shall remit all amounts due under a Supplementary Bill raised by the WPD to the WPD's Designated Account by the Due Date. For Supplementary Bill on account of adjustment required by energy account, Rebate as applicable to Monthly Bills pursuant to Article 10.3.4 shall equally apply.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.3.

### 10.8 *Third Party Sales by WPD*

10.8.1 Notwithstanding anything to the contrary contained in this Agreement, WPD shall be entitled to but not obliged to regulate power supply of Wind Power of the Buyer in case of default in making payment by the 15<sup>th</sup> day of the Due Date by the Buyer,



BUYER-WPD PPA

10.8.2 WPD shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16<sup>th</sup> day.

10.8.3 Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.

10.8.4 In order to avoid any doubts, it is illustrated that:

In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, WPD would have a right to regulate and sell Buyer's allocation of the power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ).

10.8.5 WPD shall have the right to divert the Wind Power or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

WPD shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

10.8.6 Provided that such sale of power to third party shall not absolve the Buyer from its obligation to pay in full to WPD for the wind power as per this Agreement and any other outstanding payment liability of the Buyer as per this Agreement.

10.8.7 The amount realized from the diversion and sale of power to third party shall be first adjusted against the pending liability of the Buyer including open access/RLDC/SLDC charges etc. & any other costs and the deficit if any shall be made good by the Buyer.

10.8.8 Sales to any third party shall cease and regular supply of electricity to the Buyer shall commence and be restored within seven (7) days from the date of clearing all outstanding dues payable to WPD for the Wind Power under this Agreement.

10.8.9 Further, the liability of the Buyer to make the Tariff Payments to WPD as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by WPD for usage by the Discom.



## 11 ARTICLE 11: FORCE MAJEURE

### 11.1 Definitions

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

### 11.2 Affected Party

11.2.1 An affected Party means Buyer or the WPD whose performance has been affected by an event of Force Majeure.

### 11.3 Force Majeure

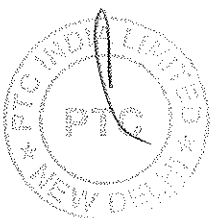
11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not 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:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado;
- b) 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
- c) radio active contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under Buyer-Discom PSA, thereby affecting delivery of power from WPD to Discom.

### 11.4 Force Majeure Exclusions

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

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;



- b. Delay in the performance of any contractor, sub-contractor or their agents ;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform;  
and
- f. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

#### **11.5 Notification of Force Majeure Event**

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

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

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



**11.6 *Duty to Perform and Duty to Mitigate***

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

**11.7 *Available Relief for a Force Majeure Event***

11.7.1 Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.



## **12. ARTICLE 12: CHANGE IN LAW**

### **12.1 Definitions**

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is the Bid Submission Date resulting into any additional recurring/non-recurring expenditure by the WPD or any income to the WPD:

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

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the WPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

### **12.2 Relief for Change in Law**

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.



**13 ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION**

**13.1 WPD Event of Default**

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

- (i) the failure to commence supply of power to Buyer up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to Buyer after Commercial Operation Date throughout the term of this Agreement.

if

a) the WPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or

b) the WPD 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;

- (ii) if (a) the WPD 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 WPD, or (c) the WPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the WPD will not be a WPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the WPD and expressly assumes all obligations of the WPD under this Agreement and is in a position to perform them; or

- (iii) the WPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Buyer in this regard; or



- (iv) except where due to any Buyer's failure to comply with its material obligations, the WPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the WPD within thirty (30) days of receipt of first notice in this regard given by Buyer.
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the WPD.

### 13.2 *Buyer Event of Default*

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the WPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting Buyer:

- (i) Buyer fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the WPD is unable to recover the amount outstanding to the WPD through the Letter of Credit,
- (ii) Buyer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the WPD in this regard; or
- (iii) except where due to any WPD's failure to comply with its obligations, Buyer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Buyer within thirty (30) days of receipt of notice in this regard from the WPD to Buyer; or
- (iv) if
  - Buyer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
  - any winding up or bankruptcy or insolvency order is passed against Buyer, or
  - Buyer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,



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

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

### **13.3 Procedure for cases of WPD Event of Default**

13.3.1 Upon the occurrence and continuation of any WPD Event of Default under Article 13.1, Buyer shall have the right to deliver to the WPD a notice stating its intention to terminate this Agreement (Buyer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

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

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

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the WPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Buyer may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the WPD.

### **13.4 Procedure for cases of Buyer Event of Default**

13.4.1 Upon the occurrence and continuation of any Buyer Event of Default specified in Article 13.2 the WPD shall have the right to deliver to Buyer, a WPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.



- 13.4.2 Following the issue of a WPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Buyer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the WPD shall be free to sell the Contracted Capacity to any third party of the WPD's choice.

Provided further that at the end of sixty (60) days period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the WPD.

**13.5 *Termination due to Force Majeure***

- 13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

**13.6 *Deleted.***

**13.7 *Specific Performance of the Agreement***

- 13.7.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this PPA is specifically enforceable at the instance of either Party.
- 13.7.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.
- 13.7.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.



## **14 ARTICLE 14: LIABILITY AND INDEMNIFICATION**

### **14.1 Indemnity**

14.1.1 The WPD shall indemnify, defend and hold Buyer harmless against:

- a) any and all third party claims against Buyer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the WPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer from third party claims arising by reason of a breach by the WPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the WPD, for which specific remedies have been provided for under this Agreement)

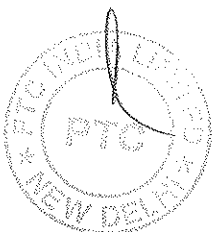
14.1.2 Buyer shall cause the Discoms to indemnify, defend and hold the WPD harmless against:

- a) any and all third party claims against the WPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Discoms of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the WPD from third party claims arising by reason of a breach by Discoms of any of its obligations. Buyer shall incorporate appropriate covenants in the PSA for the above obligations of Discoms. In so far as indemnity to WPD is concerned, Discoms shall be the indemnifying party and not Buyer.

### **14.2 Procedure for claiming Indemnity**

#### **14.2.1 Third party claims**

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:



- i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

#### **14.3 Indemnifiable Losses**

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

#### **14.4 Limitation on Liability**

- 14.4.1 Except as expressly provided in this Agreement, neither the WPD nor Buyer nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the



## BUYER-WPD PPA

other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Discoms, the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 Buyer shall have no recourse against any officer, director or shareholder of the WPD or any Affiliate of the WPD or any of its officers, directors or shareholders for such claims excluded under this Article. The WPD shall have no recourse against any officer, director or shareholder of Buyer or Discoms, or any affiliate of Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

### 14.5 *Duty to Mitigate*

14.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.



**15 ARTICLE 15: ASSIGNMENTS AND CHARGES**

**15.1 *Assignments***

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing.

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

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

**15.2 *Permitted Charges***

- 15.2.1 WPD shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement. However, the WPD may create any encumbrance over all or part of the receivables, payment mechanism, or the RFP Documents in favour of the Project Lenders or Lender's Representative on their behalf, as security for their debt under the Financing Agreements.



## **16 ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 *Governing Law***

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

### **16.2 *Amicable Settlement and Dispute Resolution***

#### **16.2.1 *Amicable Settlement***

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (a) a description of the Dispute;
  - (b) the grounds for such Dispute; and
  - (c) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
  - (a) counter-claim and defences, if any, regarding the Dispute; and
  - (b) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16
  - (i) if the other Party does not furnish any counter claim or defence under Article 16
  - (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

### **16.3 *Dispute Resolution***

#### **16.3.1 *Dispute Resolution by the Appropriate Commission***

- i) Where any Dispute (a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (b) relates to any matter agreed to be referred to the Appropriate Commission,



such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- ii) Buyer shall be entitled to co-opt the Discoms as a supporting party in such proceedings before the Appropriate Commission.

#### **16.3.2 *Dispute Resolution through Arbitration***

If the Dispute arising as per Article 16.2.1 is not amicably resolved & such dispute is not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as provided below:

- i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996
- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
- vi) Buyer shall be entitled to co-opt Discoms as a supporting party in such arbitration proceedings.

#### **16.4 *Parties to Perform Obligations***

- 16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



## **17 ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 *Amendment***

17.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.

### **17.2 *Third Party Beneficiaries***

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

### **17.3 *Waiver***

17.3.1 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:

17.3.2 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.

### **17.4 *Confidentiality***

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

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

without the prior written consent of the other Party.

### **17.5 *Severability***

17.5.1 The invalidity or unenforceability, 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.

### **17.6 *Notices***

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



- 17.6.2 If to the WPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : M/s Ostro Kutch Wind Private Ltd.,  
Unit No. G-0, Ground Floor, Mira Corporate Suites,  
1&2, Ishwar Industrial Estate, Mathura Road,  
New Delhi-110065  
Attention : Shri Pankaj Sharma, Head-Business Development  
Email : pankaj.sharma@ostro.in  
Fax. No. : 011-66469090  
Telephone No. : 011-66469000.

- 17.6.3 If to Buyer, 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:

(i) Address : PTC India Limited,  
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place  
New Delhi-110066  
Attention : Mr. Harish Saran, Executive Director  
Email : harishsaran@ptcindia.com  
Fax. No. : 011-41659142  
Telephone No. : 011-41659500/41659151

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

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

#### 17.7 *Language*

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

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



**17.8 *Restriction of Shareholders / Owners' Liability***

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956/2013.

**17.9 *Taxes and Duties***

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

17.9.2 Buyer shall be indemnified and held harmless by the WPD against any claims that may be made against Buyer in relation to the matters set out in Article 17.9.1.

17.9.3 Buyer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the WPD by Buyer on behalf of WPD.

**17.10 *Independent Entity***

17.10.1 The WPD shall be an independent entity performing its obligations pursuant to the Agreement.

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

**17.11 *Compliance with Law***

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



**17.12 No Consequential or Indirect Losses**

The liability of the WPD and Buyer shall be limited to that explicitly provided in this Agreement.

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

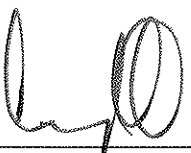
**17.13 Order of priority in application**

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

- i. applicable Law, rules and regulations framed thereunder;
- ii. the Grid Code; and
- iii. the terms and conditions of this Agreement;

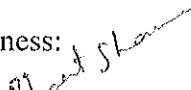
IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of  
**PTC India Limited**

  
RAJIB K MISHRA  
Director (Marketing & BO)  
PTC India Limited  
2nd Floor, NBCC Tower  
15, Bhikaji Cama Place, New Delhi-110068

Signature with seal

Witness:

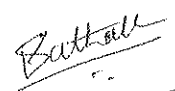
1.   
(Bhaat Sharan)  
PTC India Ltd.
- 2.

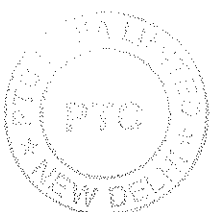
For and on behalf of  
**Ostro Kutch Wind Private Ltd.**

For Ostro Kutch Wind Pvt. Ltd.  
  
Randi Gupta

Signature with seal

Witness:

1.   
(SUHAIL PATHAK)
- 2.



BUYER-WPD PPA

**SCHEDULE 1: POWER SALE AGREEMENT (PSA)**

Power Sale Agreement dated 23.06.2017 executed between PTC India Limited and Jharkhand Bijli Vitran Nigam Limited (JBVNL) for 50 MW wind power from the Project is annexed.

