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POWER PURCHASE AGREEMENT

**FOR SHORT GESTATION LIQUID FUEL BASED POWER PROJECT
OF 355 MWs (ISO) AT KONDAPALLI, Krishna Dist., A.P.**

between

ANDHRA PRADESH STATE ELECTRICITY BOARD

and

M/s.LANCO POWER LIMITED

Dated March Thirty First, 1997

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Pen Shop No. 3 New M.L.A. Quarter,
HYDERABAD.

Kondapalli Power Corporation Ltd.
AMENDMENT NO:1 TO POWER PURCHASE AGREEMENT DATED 31.3.1997 FOR
SHORT GASTATION LIQUID FUEL BASED POWER PROJECT OF 355 MWs (ISO) AT
KONDAPALLI, KRISHNA DIST. A.P.

between
ANDHRA PRADESH STATE ELECTRICITY BOARD
and
M/s.LANCO POWER LIMITED

WHEREAS M/s.Lanco Power Limited resolved and changed their name to M/s.Kondapalli Power Corporation Limited, and the same is approved by the Registrar of Companies, A.P. who issued a "Fresh certificate of incorporation consequent on change of name" dated 1.4.1997, an amendment to the Power Purchase Agreement dated 31.3.1997 in accordance with the provisions of Article 15.1, is hereby issued as noted below:

The name of "M/s.Lanco Power Limited," wherever occurs in the Power Purchase Agreement dated 31.3.1997 shall be read as "M/s.Kondapalli Power Corporation Limited".

Place: Hyderabad

Date: 21-5-1997.

FOR AND ON BEHALF OF
THE COMPANY
LANCO POWER LIMITED,

[Signature]
Y. Harish Chandra Prasad,

Director & CEO.
WITNESSES:

1. *[Signature]*
T. V. V. K. KUMAR
10-1-853, A C Guards
Hyderabad - 4.

2. *[Signature]*
S. RAYAN TH
RT-95, Sachin Nagar,
Hyderabad-500020

FOR AND ON BEHALF OF
ANDHRA PRADESH STATE ELECTRICITY BOARD

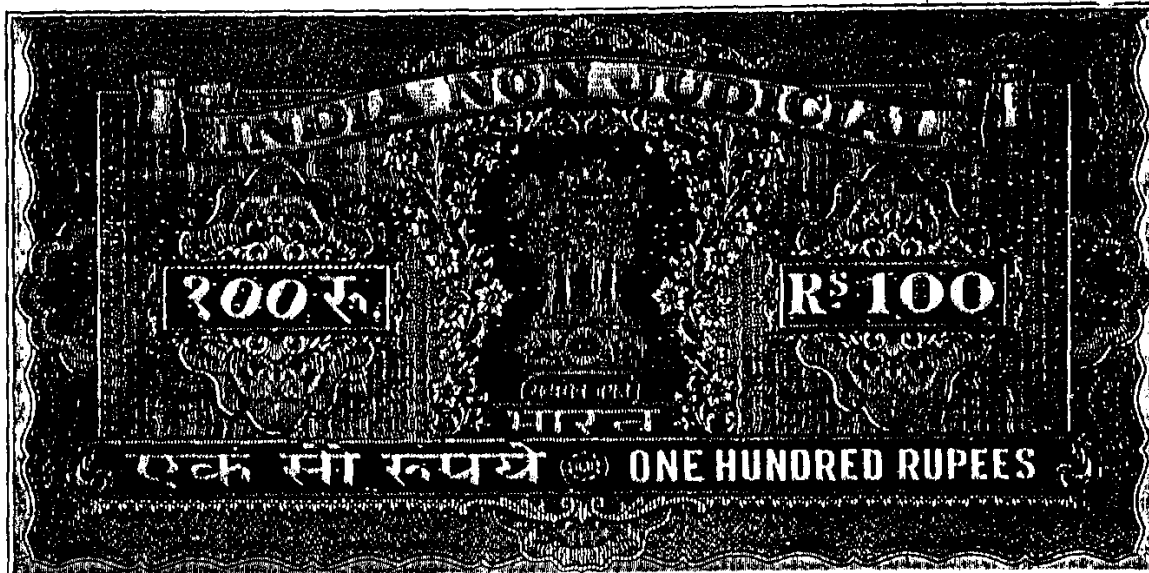
[Signature]
J. Parthasarathy

J. PARTHASARATHY
CHAIRMAN
WITNESSES:
A.P. STATE ELECTRICITY BOARD
VIOYUT SOUDHA, HYDERABAD - 500 048
INDIA

1.

[Signature]
MEMBER (PROJECTS)
A.P. STATE ELECTRICITY BOARD, VIOYUT SOUDHA,
HYDERABAD-500 048
INDIA

100Rs.



Sl. No...362....Date 31-3-97..Rs.100/-

42433

Sold to.....Srinivas.....

S/o.....Ramkrishna.....

For Whom L.A.N.C.O. POWER LIMITED.

G. NAGAMANI
G. NAGA MANI

Stamp Vender L. No: 72/95

II No: 5-9-22/44/S 4, 2nd FLOOR

GPP: ROCK GARDEN, ADARSHNAGAR

HYDERABAD - 500 463, A. P.

POWER PURCHASE AGREEMENT

FOR SHORT GESTATION LIQUID FUEL BASED POWER PROJECT
OF 355 MWs (ISO) at KONDAPALLI, Krishna Dist., A.P.

between

ANDHRA PRADESH STATE ELECTRICITY BOARD

and

M/s.LANCO POWER LIMITED

This Power Purchase Agreement (this "Agreement"), entered into on this 31st day of March, 1997, between Andhra Pradesh State Electricity Board, constituted under the Indian Electricity (Supply) Act, 1948 and having its office at Vidyut Soudha, Hyderabad - 500 049 (hereinafter referred to as the "Board", which expression shall, unless repugnant to the context or meaning thereof include its successors and assigns), as Party of the first part, and M/s.LANCO POWER LIMITED, Hyderabad, a company incorporated under the Indian Companies Act, 1956 and having its registered office at 6-3-569/1/2/1, Second Floor, Rockdale Compound, Somajiguda, Hyderabad 500082 (hereinafter referred to as the "Company", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), as Party of the second part;

WHEREAS the Government of Andhra Pradesh (hereinafter called "GOAP") announced a policy for attracting private sector investments in power sector and in line with the Government policy, the Board invited bids for short

LANCO POWER LIMITED.

T. Harish Chandra Prasad
Director. & CEO.

J. Parthasarathy

J. PARTHASARATHY

CHAIRMAN

A.P. STATE ELECTRICITY BOARD
VIDYUT SOUDHA, HYDERABAD - 500 049
INDIA

gestation power projects. M/s Lanco Industries Limited, Visakha Towers, 1-8-303-69/3, S.P.Road, Secunderabad - 500 003 has submitted a bid to design, finance, construct, complete, own and operate a liquid fuel based power station of 355 MW (ISO) capacity (hereinafter referred to as "Project") at Machillipatnam, Krishna Dist., in Andhra Pradesh, India. The Board accepted the bid by the M/s Lanco Industries Limited, and they were selected by the Board and duly approved by the GOAP to establish the said Project;

WHEREAS, the Board agreed to the request of the M/s Lanco Industries Ltd. for change of location to establish the said Project, from Machillipatnam to Kondapalli, Krishna Dist., in Andhra Pradesh;

WHEREAS, M/s.Lanco Industries Limited incorporated a new company under the Indian Companies Act, 1956 with the name "M/s. Lanco Power Limited and its Registered Office at 6-3-569/1/2/1, Second Floor, Rockdale Compound, Somajiguda, Hyderabad - 500 082 (hereinafter referred to as the "Company", which expression, shall, unless repugnant to the context or meaning thereof, include its successors and assigns) to develop, finance, construct, complete, own and operate the Project;

WHEREAS, the aforesaid Company proposes to develop, finance, construct, complete, own and operate the Project and agrees to sell the capacity and energy generated by the Project to the Board and the Board agrees to purchase such capacity and energy in accordance with the terms and conditions of this Agreement;

WHEREAS, it has been agreed that the Project would be executed by the Company with reasonable expedition and economy, subject to all Indian laws, rules, regulations and orders having the force of law;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties as given below :

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ARTICLE 1

DEFINITIONS

1.1 Definitions: For the purposes of this Agreement,

- 1) **Ambient Reference Conditions :** means the site reference conditions established pursuant to paragraph 1.2 (in the case of open cycle operation) or paragraph 2.2. (in the case of combined cycle operation) of Schedule F for determination of Installed Capacity.
- 2) **Authority:** means the Central Electricity Authority referred to in Article 3 of the Indian Electricity (Supply) Act, 1948 or any governmental successor entity entrusted with its functions and capacities.
- 3) **Availability Declaration:** has the meaning ascribed to in Schedule D.
- 4) **Auxiliary Consumption:** Auxiliary Consumption shall be (i) 1 (One) % for open cycle operations up to Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier and (ii) 3 (Three) % for combined cycle operations after Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier, Provided that the figures given above shall be increased by 0.5% during the Stabilisation Period.
- 5) **Billing Date:** means the fifth day after the last day of each Billing Month.
- 6) **Billing Month:** means each of (A) the period commencing on the Commercial Operation Date of the first Generating Unit and ending on (and including) (i) the tenth day of the calendar month in which the Commercial Operation Date of the first Generating Unit occurs or, (ii) if the Commercial Operation Date of the first Generating Unit occurs on or after the tenth day of the calendar month, the tenth day of the next calendar month; and (B) thereafter, the period commencing on the eleventh day of the calendar month and ending on (and including) the tenth day of the next calendar month.
- 7) **Board Default :** has the meaning ascribed to it in Article 9.1.
- 8) **Business Day :** means any day on which banks are open for business in Andhra Pradesh.
- 9) **Calorific Value (Gross) or GCV of Fuel:** means, for the purpose of calculating the Energy Charge for each Billing Month, the weighted

average gross calorific content of one designated unit of Fuel, consumed, as recorded, determined in each case for the relevant period on the basis of such sampling methods, frequency and tests as are internationally accepted and may be mutually agreed upon between the Parties on or before the date of Financial Closing.

- 10) **Capacity Charge:** shall have the meaning ascribed to it in Article 3.2 hereof.
- 11) **Capital Cost:** means the total expenses required for developing, financing, designing, manufacturing, delivering, and erecting the Project, quoted as Rs. 1240 crores.

Explanation : For the avoidance of doubt, the Company shall be solely responsible for, and shall obtain all clearances required to be obtained under Law from the Authority with respect to the Capital Cost.

- 12) **Cause :** in relation to the failure to issue, or renew or the revocation or amendment of any Permit means any fact or circumstance, which legally entitles the issuing Government Agency, or the Board, as the case may be, to withhold issuance of, revoke or amend such Permit due to any failure of the Company or any of the lenders, investors or Contractors (in whose name the Permit has been or is to be issued) to make timely application for, or to abide by any terms and conditions of any Permits that were in effect on the date of this Agreement or such later date of issuance of such Permit.
- 13) **Commercial Operation Date or COD:** means, with respect to each Generating Unit, the date on which such Generating Unit is declared by the Company to be operational; provided that the Company shall not declare a Generating Unit to be operational until such Generating Unit has completed its performance acceptance test in accordance with Schedule F (Test Procedures).
- 14) **Contractor:** means (i) in the case of the Company, the EPC contractor, the operator under the operation and maintenance agreement, and other contractors and suppliers to the Company specifically excluding suppliers of Fuel and transporters of Fuel, and (ii) in the case of the Board, any contractors and suppliers to the Board.
- 15) **Cumulative Available Energy :** has the meaning ascribed thereto in Schedule D.
- 16) **Current Rate of Exchange:** means, the applicable TT selling rate (s) as published by the State Bank of India at 12:00 hours on the Metering Date or if the Metering Date is not a Business Day, then the applicable

rate as published by the State Bank of India at 12:00 hours on the Business Day immediately following the Metering Date. Provided that if such rate is no longer quoted or if both Parties agree to change such rate, the Parties shall agree to a reasonable alternative reference rate that reflects the rate at which the relevant foreign currency could be purchased with Indian rupees at such time.

- 17) **Current Rate of Exchange (Actual)** : means, the applicable TT selling rate(s) as published by the State Bank of India (or such other reference rate as may be agreed pursuant to paragraph 16 above) at 12:00 hours on the date of payment of the monthly bills / supplementary bills by the Board.
- 18) **Declared Capacity** : has the meaning ascribed to it in Schedule D.
- 19) **Due Date of Payment**: means, with respect to any monthly tariff bill, the date on which the amount of such monthly tariff bill becomes due for payment, which date (A) in the case of any monthly tariff bill for any Billing Month, shall be the later of thirty (30) days from the Metering Date or twenty five (25) days from the date of its presentation to the designated officer of the Board; and (B) in the case of any supplementary bill, shall, subject to Article 5.5, be thirty (30) days from the date of its presentation to the designated officer of the Board.
- 20) **Emergency**: means a condition of or affecting the Board's electrical system which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric service by the Board or to endanger life or property, which condition is materially adversely affected by the continued delivery of energy from the Project.
- 21) **Energy Charge** : shall have the meaning ascribed to it in Article 3.3 hereof.
- 22) **Energy Unit**: means one Kilo Watt Hour (KWH) of electrical energy.
- 23) **Financial Closing**: means the signing of the Financing Documents and their approval by the Authority, the GOI and/or the GOAP, to the extent required by Law, and the fulfilment or waiver of all conditions precedent to the initial availability of funds thereunder and the receipt of commitments for such equity as required by the Company in order to satisfy the requirements of the lenders.
- 24) **Financing Documents**: means the loan agreements, notes, indentures, security agreements, letters of credit, and other documents relating to the financing of the Project and the Capital Cost or any part thereof.

rate as published by the State Bank of India at 12:00 hours on the Business Day immediately following the Metering Date. Provided that if such rate is no longer quoted or if both Parties agree to change such rate, the Parties shall agree to a reasonable alternative reference rate that reflects the rate at which the relevant foreign currency could be purchased with Indian rupees at such time.

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- 24) **Financing Documents**: means the loan agreements, notes, indentures, security agreements, letters of credit, and other documents relating to the financing of the Project and the Capital Cost or any part thereof.

- 25) **Force Majeure** : has the meaning ascribed to it in Article 10.1.
- 26) **Foreign Debt** : means any debt that shall be denominated by any lender to the Company in currencies other than Indian rupees under the Financing Documents.
- 27) **Fuel**: means gas, naphtha, low sulphur heavy stock or furnace oil, and the like, that is intended to be used as primary fuel, by one or more units of the Project to generate power from the Project or in case of unavailability of Naphtha any of the above as alternate fuel.
- a) **Fuel Linkage** : has the meaning ascribed to it in Article 7.2(g).
- 28) **Fuel Supply Agreement**: means the agreement entered into between the Company and a supplier and/or transporter of Fuel in order to supply and/or deliver Fuel for the Project.
- 29) **GOAP** : means the Government of Andhra Pradesh and its successors.
- 30) **GOI**: means the Government of India and its successors.
- 31) **Generating Unit or Unit** : means one gas or steam turbine generator and the equipment and facilities ancillary thereto.
- 32) **Government Agency**: means any local, state government in India or the Government of India or any department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Company) or commission under the direct or indirect control of such local or state government or the Government of India or any political subdivision thereof or any court, tribunal or judicial body within India.
- 33) **Grid System** : means the interconnected electrical transmission and distribution system of the state of Andhra Pradesh including the Inter Connection Facility and all other transmission lines and other equipment in the state of Andhra Pradesh on the Board's side of the Inter Connection Point.
- 34) **[Intentionally left blank]**
- 35) **Installed Capacity**: means the maximum electrical generating capacity of the Project or a Generating Unit, as the case may be, in megawatts ("MW") as measured at the generator terminals, determined from time to time pursuant to the tests given in Schedule F, subject to adjustments for the Ambient Reference Conditions.

Explanation 1 : Where the output of one or more Generating Units of the Project or of the Project as a whole, in final tests to be specified by the Board is higher than the output initially guaranteed by the manufacturer/supplier thereof, the output initially guaranteed by the manufacturer/supplier will be the installed Capacity thereof, as from the date of such final tests. However, where the output of one or more Generating Units of the Project or of the Project as a whole, in final tests to be specified by the Board is lower than the output initially guaranteed by the manufacturer/supplier thereof, that lower output alone will be the installed Capacity thereof.

Explanation 2 : The Installed Capacity furnished in the Bid is taken as the nominal capacity and for Installed Capacity as determined as per Explanation 1 above, a tolerance limit of plus or minus 5% is permitted.

- 36) **Inter Connection Facility:** means all the facilities to be installed by or for the Board on the Board's side of the Inter Connection Point to enable the Board to receive and utilize power from the Project in accordance with this Agreement.
- 37) **Inter Connection Point:** means the point or points where the Project connects to the 220 kv transmission line of the Grid System of the Board in the Project switch yard.
- 38) **Law:** has the meaning ascribed to it in Article 11.
- 39) **Metering Date:** means (A) the midday of the tenth day of the calendar month in which Commercial Operation Date of the first Generating Unit occurs or if the Commercial Operation Date of the first Generating Unit occurs on or after the tenth day of the calendar month, the tenth day of the next calendar month; and (B) the midday of the tenth day of each calendar month, thereafter.
- 40) **Misdeclaration of Availability:** has the meaning as ascribed to it in Schedule D.
- 41) **Net Electrical Energy:** means the Energy Units actually delivered by the Project as metered at the Inter Connection Point, which point shall be the only point at which such Net Electrical Energy shall be metered under this Agreement.
- 42) **Non-Political Force Majeure Event:** means any event of Force Majeure specified in Article 10.1 other than a Political Force Majeure Event and Non-Political Force Majeure shall be construed accordingly.

- 43) **Permits:** means all formal and informal permits, licences, visas, clearances, rights and any other authorisations and approvals from the Board or any Government Agencies which are required to develop, design, finance, construct, insure, own and operate the Project in accordance with this Agreement, including without limitation to those listed in Schedule E.
- 44) **Plant Load Factor or PLF :** means the ratio, expressed as a percentage, of the number of KWH of Cumulative Available Energy in any Tariff Year, as computed at the generator terminals in accordance with Schedule D , to the maximum KWH of energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals.
- 45) **Plant Load Factor (Incentive) or PLF(I) :** means the ratio, expressed as a percentage of the number of KWH of generation as computed at the generator terminals in any Tariff Year, by adding the Auxiliary Consumption to the Net Electrical Energy as metered at the Interconnection Point, to the maximum of KWH energy that could theoretically be generated by the Project during that Tariff Year based on 8760 hours multiplied by the Installed Capacity, computed at the generator terminals.

$$PLF(I) = \frac{NEE \times (1) + A}{8760 \times IC \times 1000}$$

Where :

NEE : Net Electrical Energy (kwhr)
 A : Auxiliary Consumption (%)
 IC : Installed Capacity (MWs)

- 46) **Political Force Majeure Event:** means any event of Force Majeure described in Article 10.1(i) and Political Force Majeure shall be construed accordingly.
- 47) **Project:** means the combined cycle power station proposed to be established at Kondapalli, Krishna Dist., in Andhra Pradesh, India, consisting of 2 (two) Generating Units, which are designed for poly-fuel-firing and 1 (one) steam Generating Unit, having a nominal installed capacity of 355 Mega Watts (ISO) adjusted to Ambient Reference Conditions.

- 48) **Project COD:** means, the Commercial Operation Date of the last Generating Unit.
- 49) **Promoter Group:** means M/s.LANCO POWER LIMITED (which includes its successors and assigns), and other associated firms and companies, all of whom have authorised M/s.LANCO POWER LIMITED to represent them.
- 50) **Prudent Utility Practices :** means those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally for use in electric utility industries taking into account conditions in India, and commonly used by the international electric utility industry to operate and maintain power stations and associated equipment of the size, service and type of the Project; adjusted as necessary to take into account (A) site conditions (B) conditions affecting the Grid System, (C) requirements of Law and (D) operation and maintenance guidelines of the manufacturers of the plant and equipment incorporated in the Project.
- 51) **Ramp-up Rate:** means the rate at which each Unit can be asked to increase its generation as specified by the Company in Schedule A, supported by the manufacturer's specifications.
- 52) **Ramp-down Rate:** means the rate at which each Unit can be asked to decrease its generation as specified by the Company in Schedule A, supported by the manufacturer's specifications.
- 53) **Scheduled Bank :** means any Bank, at Hyderabad indicated by the Board and reasonably acceptable to the Company and the parties providing financing for the Project.
- 54) **Scheduled Date of Completion:** means, the following dates with respect to each Generating Unit :

Unit	Scheduled Date of Completion
1. First	Not furnished in the bid
2. Second	Not furnished in the bid
3. Third and last	16 months

Provided that the Scheduled Date of Completion of the last Unit shall be extended day-for-day for any - delay- directly arising from i) a Force Majeure ((Article 10.4), ii) Board Default or failure of the Board to complete the Inter Connection Facilities eight (8) weeks before the Scheduled Date of Completion of the first Unit or any other reason for

which an extension in such date is provided hereunder (including pursuant to Article 7.2).

Explanation : In case of a delay in achieving the Scheduled Date of Completion of the last Unit, the Company shall pay as liquidated damages to the Board, a sum equal to Rs. 50,000 per day for the first one hundred and eighty (180) days of delay and Rs. 350,000 per day for delays in excess of one hundred and eighty (180) days, for each 100 MW of capacity bid or any part thereof, payment for which shall be due thirty (30) days from the Scheduled Date of Completion of the last Unit and every thirty (30) days thereafter or, if earlier, upon the termination of this Agreement provided for hereunder.

- 55) **Scheduled Outage :** has the meaning ascribed to it in Schedule D.
- 56) **Stabilization Period:** means, in respect of each Generating Unit, each ninety-day period commencing on the COD of the said Generating Unit.
- 57) **Station Heat Rate:** shall be 2755 kilo calories per KWH up to Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier and shall be 1900 kilo calories per KWH after Scheduled Date of Completion of the last Unit or the Project COD, whichever is earlier.

Explanation : Station Heat Rate means the quantum, in Kilo Calories, of input heat energy required by the Project to generate one Energy Unit.

- 57a) **Synchronisation :** means the electrical connection of a Generating Unit to the Grid System by means of Inter Connection Facility for the Project.
- 58) **Tariff Year:** means, prior to the Project COD, the period between the COD of the first Generating Unit and the Project COD; and thereafter, each period of one year from the Project COD.
- 59) **Technical Limits:** means the limits and constraints described in Schedule A hereto relating to the operation and maintenance of the Project.
- 60) **Working Capital Rate :** means the interest rate (or the weighted average of the interest rates) at which the Board or the Company, as the case may be, raises its working capital requirements in rupees or, if none, the rate which is offered from time to time by the State Bank of India (or its successors) for working capital facilities to most creditworthy

State Electricity Boards/ independent power companies in India as the case may be.

- 1.2 All other words and expressions, used herein and not defined herein but defined in the Indian Electricity (Supply) Act, 1948 and set out in Schedule B applicable to this Agreement shall unless the context otherwise requires, have the meanings, respectively, assigned to them as attached hereto as Schedule B.
- 1.3 Unless otherwise stated, all other references made in this Agreement to "Articles" and "Sections", and "Schedules" shall refer, respectively, to Articles of, Sections of, and Schedules to, this Agreement. The Schedules to this Agreement form part of this Agreement and will be of full force and effect as though they were expressly set out in the body of this Agreement. Headings are for ease of reference only.
- 1.4 In this Agreement, unless the context otherwise requires (A) the singular shall include plural and vice versa; (B) words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other legal entities; (C) a reference to any party includes that party's successors and permitted transferees and assigns, (D) a reference to this Agreement or any other agreement or document shall be construed as a reference thereto as from time to time amended, novated or replaced, (E) a reference to any Law shall be construed as a reference to such Law as from time to time amended or re-enacted and (F) references to times of day are references to Indian Standard Time.

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ARTICLE 2

SALE AND PURCHASE OF CAPACITY AND ENERGY

2.1 Sale and Purchase of Capacity

From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the Board shall purchase, for the consideration of the Capacity Charge, all the available capacity of the Project.

2.2 Sale and Purchase of Energy

From and after the Commercial Operation Date of the first Generating Unit, subject to the provisions of this Agreement, the Company shall sell, and the Board shall purchase, for the consideration of the Energy Charge, the Net Electrical Energy of the Project.

2.3 Sale and Purchase of Power before COD of a Generation Unit

The Company shall sell, and the Board shall purchase, all Energy Units generated by any Generating Unit during testing prior to the COD of such Generating Unit, for the consideration of the Energy Charge.

2.4 Despatch Rights of the Board

The Board shall have the right to despatch the Project at any capacity within the Availability Declaration of the Company and the Company shall comply therewith subject as provided in Schedule D. Any request by the Board for increase or decrease in the generation by the Company shall not violate the declared Ramp-up and Ramp-down Rates. The despatch procedures shall be as specified in Schedule D.

2.5 Shutdown

Except when the equipment of the Project is under forced shutdown, such equipment or any ancillaries, auxiliaries or works in relation thereto shall not be taken out for maintenance, testing or overhaul resulting in outages or reduced generation except as required by Prudent Utility Practices or in accordance with such schedules of outages as are established in accordance with Schedule D. The Company shall take all reasonable steps to bring back the equipment of the Project that is under forced shutdown to normal operations as early as may be reasonably practicable.

2.6 Scheduling and Co-ordination

The detailed schedule of construction, operation and maintenance of the Project and the procedures for co-ordination between the Company and the Board are specified in Schedule D.

2.7 Power Supplies by the Board

Upon the Company's request, the Board shall provide the Company with power as and when required for the purpose of the construction of the Project and following the completion of the Inter Connection Facility up to and including the synchronisation of the first Generating Unit, for start-up, testing and commissioning of the Project. The Board shall bill the Company for such power at a price equal to the Board's applicable published tariff. Thereafter, the Board shall provide power as and when required, for start-up and maintenance of the Project. The Board shall bill the Company for any such power at the rate as the Energy Charge computed under Article 3.3 and such billed amounts shall be set off from the next monthly bill.

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ARTICLE 3

CAPACITY AND ENERGY PAYMENTS

3.1 Capacity Charge

The Board shall pay for the capacity of the Project in respect of any Tariff Year a Capacity Charge calculated in the manner described in Article 3.2 in respect of the Cumulative Available Energy provided by the Project, up to (but not exceeding) an amount of Cumulative Available Energy which is equivalent to a PLF of 80%.

3.2 Computation of Capacity Charge

The Capacity Charge will be the sum of the following amounts, in Rupees, estimated in accordance with Article 5.2(b) for purposes of monthly billing and adjusted pursuant to Article 5.2(c) for each Tariff Year, and subject in either case to the limitation that the total of such amounts shall not exceed an amount corresponding to a PLF of 80%:

- (i) **Foreign Debt Service Charge (FDSC)** of US\$ 0.01628 per unit of Cumulative Available Energy payable in rupees converted at the Current Rate of Exchange; provided that such Foreign Debt Service Charge shall be payable only in respect of the period ending on the 12th (twelfth) annual anniversary of the COD of the last generating unit.
- (ii) **Other Fixed Charges (OFC)** of Rs. 0.4776 per unit of Cumulative Available Energy which shall be fixed for the term of this Agreement.

3.3 Energy Charge

(a) Computation of Energy Charge :

The Energy Charge will be computed based on the following formula:

$$U = EU * (hC)/(g(1-A/100))$$

where :

U is the Energy Charge in Rs. in respect of a Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates) ;

EU is the total number of Energy Units delivered at the Inter Connection Point in respect of such Billing Month measured on the Metering Date for such Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates) ;

h is the Station Heat Rate, in Kcal/KWH as per Article 1.1 (57);
C is the cost of Fuel in Rs. per unit of Fuel; as delivered at the Fuel metering point at the site
g is the GCV of Fuel in Kcal/unit of Fuel;
A is a number equal to the Auxilliary Consumption expressed as a percentage of gross generation as per Article 1.1 (4).

Provided that the cost of Fuel "C" shall be calculated in Rupees (with any amount denominated in any other currency being converted into rupees at the current rate of exchange (actual)) and shall equal the sum of

- (i) Basic weighted average cost of Fuel in case of Indigenous fuel and in case of Imported fuel, the weighted average CIF value plus, in each case, finance and procurement costs.
- (ii) Taxes, duties, cesses and other Government Agency levies ; and
- (iii) Handling, storage, transportation and importation charges

Provided that the Board has the right to review and approve the Fuel Supply Agreement through the Fuel Supply Committee in accordance with and subject to Schedule I.

(b) Minimum Fuel Off-take Charges

The Board shall reimburse the Company for charges paid in respect of its failure to take delivery of minimum levels of Fuel, but only if and to the extent that the Company's failure to take such Fuel is due to the Board's issuance of Despatch Instructions requiring that the Project be operated at a level less than the level of Declared Capacity set forth in any then-applicable Availability Declaration, or the Board's failure or inability to accept delivery of Net Electrical Energy from the Project (whether due to Force Majeure events or otherwise);

Provided that the Board shall reimburse such minimum Fuel off-take charges to the company only to the extent that :

- (i) Such minimum fuel off-take charges were incurred in accordance with the Fuel Supply Agreement;
- (ii) the Company exercised any right to elect, under the terms of the Fuel Supply Agreement, to "carry forward" the Fuel in question (i.e. to receive such Fuel at a later date) or to store such Fuel at any Fuel storage facilities of the Company or of the Fuel supplier, which are available under the Fuel Supply Agreement; and

- (iii) the Company took all reasonable steps available to it and such steps identified by the Board (such as on-sale of Fuel to the Board or other able purchasers identified by the Board) to reduce the amount of liability, any added costs of which the Board shall upon prior notice by the Company have agreed in writing to pay to the Company.

3.4 Monthly Fuel Price Adjustment

The Energy Charge, as per the above formula, will be modified monthly on account of variations in EU, C and g.

3.5 Computing the PLF and PLF(I)

For the purposes of clarification, it is understood and agreed that in computing the PLF and PLF(I), from the Commercial Operation Date of the first Generating Unit and prior to the Project COD, Installed Capacity shall mean the sum of the Installed Capacities of each Generating Unit which has declared commercial operation. Commencing on the Project COD, Installed Capacity shall mean the sum of the respective Installed Capacities of all the Generating Units. For a Tariff Year which includes the occurrence of the COD of one or more Generating Unit (s), the Installed Capacity for computing the PLF and PLF(I) will be determined on a time and megawatt weighted proportionate basis.

3.6 Disincentives

In case the Project is unable to achieve a PLF of 68.5% for- Tariff Year, then the Company will pay to the Board a penalty as a percentage of the Other Fixed Charge paid to the Company in such Tariff Year as given below:

PLF (%)	Penalty (%)
68.5%	Nil
Below 68.5% to 60.5%	2% for every 1% shortfall in PLF (i.e. for a PLF of 60.5%, the penalty will be 16% of the Other Fixed Charge)
Below 60.5% to 50.5%	3% for every 1% shortfall in PLF (i.e. for a PLF of 50.5%, the penalty Will be 16% + 30% = 46% of the Other Fixed Charge)
Below 50.5%	Same as for 50.5% i.e. 46% of the Other Fixed Charge

Provided that in case of a Tariff Year which involves the Stabilisation Period of a Generating Unit, the PLF for applying the penalty will be adjusted using a minimum threshold of 51.37% in place of 68.5% for such Stabilisation Period on a time and megawatt weighted basis (and each other threshold specified above, shall be adjusted downwards by the same proportion).

3.7 Incentives

In case the Project achieves a PLF(I) greater than 80% for a Tariff Year, then the Board will pay to the Company an incentive for the additional units of actual generation in excess of a PLF(I) of 80% as a percentage of the Other Fixed Charge in such Tariff Year as given below:

PLF(I) (%)	Incentive (%)
80%	Nil
Above 80% upto 85%	2% for every 1% increase in PLF(I) (i.e. for a PLF(I) of 85%, the incentive will be 10% of the Other Fixed Charge)
Above 85% upto 90%	3% for every 1% increase in PLF(I) (i.e. for a PLF(I) of 90%, the incentive will be 10% + 15% = 25% of the Other Fixed Charge)
Above 90%	Same as for 90% i.e. 25% of the Other Fixed Charge

3.8 Claims for Taxes on Income

Any advance income tax payable for the Project in any month supported by a certificate of a chartered accountant approved by the Board (such approval not to be unreasonably withheld or delayed) shall be reimbursed by the Board. After the tax assessment is completed for any year, and the liability thereon is determined by the taxation authorities in India, the excess or shortfall in the tax liability so determined will be adjusted in the supplementary bill (as defined in Article 5.5) for the succeeding month or on the due date of payment thereof, whichever is later, subject to Article 3.9. Tax to be reimbursed will be calculated on the income from the Project only, and calculated on the assumption that the Company is engaged solely in the ownership, design, financing, construction, operation and maintenance of the Project and will not include tax reimbursements of the previous year.

3.9 Minimisation of Liability due to Taxes on Income

The Company shall take all reasonable steps to ensure that its liability due to taxes on income in respect of its income from the Project is minimised, by obtaining or by suitable arrangement, all permissible benefits, rebates, concessions and the like, in accordance with Law. The Company, however, is not required, under this Article 3.9, to pass on to the Board any benefits, rebates, concessions and the like in taxation obtained by it as a result of any tax planning or otherwise, not connected with the income, expenditure and operations of this Project.

3.10 Claims for Taxes and Duties Levied on Generation and/or Sale of Electricity

Any taxes or duties or impost or cesses or levies on the generation and/or sale of electricity by any Government Agency levied on the Project will be reimbursed by the Board to the Company in the succeeding month after the payment of such taxes or duties by the Company to such Government Agency, based on a supplemental bill, duly supported by proof of payment of such taxes to be furnished by the Company to the Board. In case, such Government Agency refunds any excess tax or duty paid by the Company, such excess will be adjusted in the supplementary bill for the succeeding month after the receipt of such refund by the Company.

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[Signature]

ARTICLE 4

METERING

4.1 Installation

Main energy meters of 0.2 class accuracy shall be installed at the 220 KV points of supply by the Company and check meters at the same point and of the same accuracy shall be installed by the Board. Each of these will be a pair of export and import meters. The main energy meters shall be the property of the Company and the Company shall be responsible for the cost of inspection, maintenance, calibration, and replacement thereof. The check energy meters shall be the property of the Board and the Board shall be responsible for the cost of inspection, maintenance, calibration and replacement thereof.

4.2 Inspection: Sealing; No Interference

All the meters shall be jointly inspected and sealed on behalf of both Parties and shall not be interfered with except in the presence of the duly authorised representatives of both Parties. If one Party does not attend any inspection, check, calibration or test on the main or check meters required pursuant hereto after receiving such notice from the other Party as may be reasonable in the circumstances, then, notwithstanding anything to the contrary expressed herein, the other Party shall be entitled to proceed on its own and the results obtained shall be used for the purposes hereof.

4.3 Quarterly Checks

All meters shall be checked for accuracy on a quarterly basis by both Parties and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the class. Meter readings of the main meters will form the basis of billing, so long as the quarterly checks thereof are within the prescribed limit as per IS specifications. If the check meters are found to be defective during the quarterly checks they will be immediately calibrated and/or replaced if found necessary.

4.4 Errors in Main Meters

Where the quarterly check indicates errors in the main meters beyond the prescribed limit as specified in IS specifications but no such error is noticed in the check meters, billing for the month will be done on the

basis of the check meters and the main meters will be calibrated immediately or replaced if necessary.

4.5 Errors in Main Meters and Check Meters

If during the quarterly test checks, both the main meters and the corresponding check meters are found to be beyond permissible limits of error as per the IS specifications, both the meters shall be immediately calibrated and the correction applied to the generation of energy registered by the main meter to arrive at the correct generation of energy for billing purposes for the period of the month up to the time of such test check. Billing for the period thereafter until the next monthly meter reading shall be as per the calibrated main meter.

4.6 Calibration

All the main and check meters shall be calibrated upon installation and once in every six months thereafter jointly by both Parties i.e., January and July irrespective of the calibrations which might have been done where necessary, during the quarterly checks. All calibrations shall be undertaken at the loads and power factor specified in, and otherwise in accordance with IS specifications. Both Parties shall endeavour that recalibration is done as often as possible and the errors are adjusted as close to zero as possible. However, if the meters show errors consistently, the main meters, check meters or both shall be replaced.

4.7 Errors Found During Calibration

If the errors found at the time of semi-annual calibration are beyond permissible limits as per IS specifications, the same procedures applicable to the quarterly test checks shall be followed or the main meters/ check meters or both shall be replaced.

4.8 Corrections in Billing

Corrections in billing, whenever necessary, shall be applicable to the period between the previous monthly meter reading and the date and time of the test calibration. In the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at 100, 50, 20 and 10 percent load at unity power factor and 0.5 power factor. Of these eight values, the error at the load and power factor nearest the average monthly load served at the Inter Connection Point during the period shall be taken as the error to be applied for correction.

4.9 Defects

If both the main and check meters fail to record or if any of the potential transformer fuses are blown out, then the energy will be computed on a mutually agreeable basis for that period of defect. The main meters and the check meters shall be replaced.

4.10 RSS Meter

For the purpose of test and calibration, the rotating sub-standard (RSS) meter shall be calibrated and sealed by the Chief Electrical Inspector to the GOAP. This RSS meter shall be calibrated once in every six months at the Chief Electrical Inspector's Laboratory in Andhra Pradesh.

4.11 Conduct of Tests

All the tests on the main and check meters shall be jointly conducted by the authorized staff of both Parties. The result and correction so arrived at mutually will be applicable and binding on both Parties.

4.12 Monthly Reading

Monthly meter readings shall be taken (and an acknowledgement thereof signed) by the duly authorized representatives of both Parties on each Metering Date and, if the readings indicate a level of inaccuracy greater than the prescribed limits, all meters shall be immediately tested in accordance with this Article. If either Party fails to take such reading at the required time, in spite of reasonable notice giving reasonable time, then the reading taken by the other Party shall be used for the purposes hereof.



ARTICLE 5

BILLING AND PAYMENT

5.1 Payments for Power Generated prior to the COD of a Generating Unit

The Board shall pay to the Company monthly payment of the Energy Charge only for all Energy Units generated prior to the Commercial Operation Date of such Generating Unit. Each monthly payment shall be made on the fifth working day following the date of submission of a bill by the Company.

5.2 Monthly Tariff Bills

- (a) On or before each Billing Date, commencing with the first Billing Date following the Commercial Operation Date of the first Generating Unit, the Company shall furnish a monthly tariff bill to the Board, in the form specified in Schedule H, for the Billing Month, which bill will include monthly Capacity Charges and Energy Charges (including fuel price adjustment charges, duly supported by supporting data) and shall show where applicable any adjustments as specified in relevant clauses of this Agreement. Each bill for a Billing Month shall be payable by the Board on the Due Date of Payment.

- (b) The Company shall calculate the monthly Capacity Charge for each Billing Month as follows:

Monthly Capacity Charges = FDSC Payment + OFC Payment
where:

FDSC Payment = $FDSC * (Installed\ Capacity * 0.8 * Monthly\ Settlement\ Periods * 1000) * Current\ Rate\ of\ Exchange$

OFC Payment = $OFC * (Installed\ Capacity * 0.8 * Monthly\ Settlement\ Periods * 1000)$

Installed Capacity shall mean the sum of Installed Capacities of each Unit the Commercial Operation Date for which has occurred, adjusted in respect of the occurrence of the Commercial Operation Date of one or more Units in the Billing Month on a time and megawatt weighted proportionate basis.

Monthly Settlement Periods shall mean the total number of Settlement Periods in the Billing Month (i.e., 24 hours * no. of days), reduced however by the Settlement Periods (if any) during which an event of Political Force Majeure affecting either Party or a Non-Political Force Majeure event affecting the Board or a Force Majeure event affecting the Fuel supplier under Article 10.5 (e) has been declared (In respect of which the payment due shall be calculated in the manner set forth in Article 10.5 and paid as a Supplementary Bill).

- (c) At the end of each Tariff Year, in case the PLF is less than 80 % for that Tariff Year, the Company shall refund to the Board as a credit against the amounts due in the next monthly tariff bill(s), an amount which shall be the sum of the Monthly Capacity Charges paid during such Tariff Year pursuant to Article 5.2(b) multiplied by a fraction, the numerator of which shall be the percentage by which the PLF was less than 80%, and the denominator of which is 80%.

5.3 Adjustments for foreign exchange variation:

For each Billing Month, there shall be added or subtracted, as the case may be, from the Monthly Capacity Charges calculated in accordance with Article 5.2 as part of the monthly tariff bill, an amount (the "Foreign Exchange Adjustment") reflecting the variation in foreign exchange rates between the rates used in calculating the FDSC Payment for the preceding Monthly Bill and the rates in effect on the actual date of payment of the monthly tariff bill by the Board, calculated as follows:

Foreign Exchange Adjustment = FDSC Payment * (CRE(A) - CRE)

Where

FDSC Payment is as defined in Article 5.2(b).;

CRE(A) is the Current Rate of Exchange (Actual) and

CRE is Current Rate of Exchange.

5.4 Payment of Incentives and disincentives

Incentives and disincentives shall be calculated as per Article 3.7 and 3.6 respectively and shall be payable annually. In case the Board is required to pay incentives to the Company, the Company shall raise a supplementary bill for the same at the end of the Tariff Year. At the end of the Tariff Year, in case the Company is required to pay the Board on account of disincentives, the Company shall adjust the same as a credit in the next month's monthly tariff bill.

5.5 Supplementary Bills

For payments due to the Company for reimbursement of taxes on income, incentives or taxes and duties levied on generation and/or sale of electricity, payments for periods of Political Force Majeure affecting either Party or Non-Political Force Majeure affecting the Board or any other adjustments or payments due to the Company hereunder, the Company shall present a supplementary bill, in such form as may be mutually agreed upon by the Board and the Company, (duly supported by supporting data). Each supplementary bill shall be payable by the Board on the Due Date of Payment, except in case of supplementary bill for taxes on income. At least thirty (30) days prior to the date when income tax is required to be paid by the Company, the Company shall submit to the Board a supplementary bill for the same. This bill shall be payable by the Board within twenty-five (25) days of its presentation to the Board by the Company or at least five (5) days before the date on which the tax is required to be paid by the Company, whichever is later.

5.6 Amounts Due to the Board

Any amounts which may be due to the Board from the Company pursuant to Article 3.6 will be computed by the Company in the month following the close of each Tariff Year and shown as a credit in the bill for such month. Any amounts which may be due to the Board from the Company pursuant to Articles 3.8 and 3.10 will be shown as a credit in the supplementary bill for such month. A net credit in any supplementary bill will be deducted by the Board from the payments due to the Company under any monthly bill.

5.7 Billing Disputes

Notwithstanding any dispute as to all or any portion of any bill submitted by the Company to the Board, the Board shall pay the full amount of the bill provided that the amount of the bill is based on (a) a meter reading that has either been signed by both Parties or certified by the Company with respect to the Board's refusal to sign within three (3) days of the meter reading date and (b) the provisions of this Agreement. The Board shall notify the Company of any disputed amount, and the Company shall rectify the defect or otherwise notify its rejection of the disputed amount, with reasons, within five (5) days of the reference by the Board, failing agreement on which the provisions of Article 14 shall apply with respect thereto. If the resolution of any dispute requires the Company to reimburse the Board, the amount to be reimbursed shall bear interest at the Working Capital Rate applicable to the Board from the date of payment by the Board to the date of reimbursement. The Board may not

dispute any amount after sixty (60) days following the Due Date of Payment therefor.

5.8 Direct Payment

The Board has the right subject to two (2) Business Days notice to the Company, to make direct payment of any bill by cheque or draft at the same bank at which the Letter of Credit shall be opened on or prior to the Due Date of Payment and when such direct payment is made in full, the Company shall not present the same bill to the Scheduled Bank against the Letter of Credit or Escrow Account as the case may be.

5.9 Letter of Credit

On or before the date thirty (30) days prior to the Scheduled Date of Completion of the first Generating Unit, and at all times thereafter, the Board shall cause to be in effect an irrevocable revolving letter of credit issued in favour of the Company by a Scheduled Bank (the "Letter of Credit"). Each letter of credit shall:

- (a) On the date it is issued, have a term equal to the longest period obtainable by the Board on a commercially reasonable basis from any Scheduled Bank but not less than one year;
- (b) Be transferable to any lender under the Financing Documents;
- (c) Be payable upon the execution and presentation by an officer of the Company of a sight draft on the Due Date of Payment or such earlier date as is specifically authorised by the Board to the Issuer of such Letter of Credit supported by a certified copy of the bill for which payment is sought and a statement that such bill remains unpaid on the date of presentation and in the case of a monthly tariff bill rendered pursuant to Article 5.2, a meter reading statement accepted and signed by both parties or a certification from the Company that the Board failed to sign the meter reading statement within three days of the meter reading date; and,
- (d) On the date it is issued, have an aggregate revolving stated amount equal to the sum of one month's Capacity Charge based on PLF of 100% and one month's Energy Charge based on a generation equal to a PLF of 100% (the "LC Amount").

The LC Amount shall be determined (i) in the case of the Capacity Charges, for the initial Letter of Credit, based on the Current Rate of Exchange applicable (rather than on the Metering Date) on the date seven (7) days prior to the date of issuance of the Letter of Credit, which amount shall be adjusted thereafter upon each renewal of the Letter of Credit based on the average of the Current Rates of Exchange (Actual) applicable during each

month in the preceding six (6) months; and (ii) in the case of the Energy Charges, for the initial Letter of Credit, based on the Fuel costs applicable on the date seven (7) days prior to the date of issuance of the Letter of Credit and the methodology in Article 3.3 and thereafter, based on the average monthly Energy Charges (assuming a PLF of 100%) for the preceding six (6) months, adjusted to take account of any escalation in Fuel Costs provided for under the Fuel Supply Agreement.

- (e) Be immediately reinstated to the LC Amount following a valid drawing by the Company without limit to the amount of valid drawings thereunder and
- (f) Otherwise be in form and substance reasonably acceptable to the Company and the lenders.

Not less than thirty (30) days prior to the expiration of any Letter of Credit, the Board shall provide a new or replacement Letter of Credit. Every bill shall be presented at the said Scheduled Bank for payment under the Letter of Credit and shall become payable on the Due Date of Payment applicable thereto.

5.10 Escrow Account

To provide additional security to the Company for the Board's obligation hereunder, the Board shall also open an escrow account with any of the Board's Scheduled Banks, which account shall be maintained by such bank as agent for the company, and which shall be pledged as security to the Company and its Lenders for payment of all sums due to the Company by the Board under this Agreement as further set forth herein. Such account shall be opened on or before the date thirty (30) days prior to the Scheduled Date of Completion of the first Generating Unit. Such account shall be funded with revenues from payments due to the Board from customers comprising one or more circles/areas used by the Board for its administrative convenience. The Board shall cause all payments due to the Board from such customers to be deposited in such escrow account aggregating an amount equal to not less than 120% of the LC Amount as specified in Article 5.9. Such instruction shall be irrevocable during the term of this Agreement subject to the right of the Board to substitute other circles/areas with the concurrence of the Company and its Lenders. The Board shall not act in any manner as may negatively affect the inflow of the revenues into this account and shall take such steps as may be necessary to assure the flow of the specified level of revenues in such account (including adding or substituting customers and undertaking collection efforts) during the term of this Agreement. Provided that the Board is in compliance with its obligations under this Agreement with respect to payment of all sums

when due to the Company, through the Letter of Credit or otherwise, the Board shall be entitled to withdraw funds from the Escrow Account each month to be used for such purposes as the Board may designate. In the event of the Board's failure to pay any sums due to the Company on the Due Date of Payment through the Letter of Credit or otherwise when any sum is due to the Company, or in case of non-renewal of the Letter of Credit as required under Article 5.9, the company, by notice in writing to the bank holding the Escrow Account, may require such bank not to honour any of the cheques, hundies and requisitions presented to it by the Board or any other drawals on the account until after the claim of the Company is first discharged out of the revenues accumulated in the Escrow Account. An agreement among the Board, the Company and the Bank (the "Escrow Account Agreement") shall be executed in order to give effect to this Article 5.10, the details of which shall be in form and substance reasonably acceptable to the Company and its Lenders.

5.11 Rebates; Late Charges

For payment of Tariff bills (excluding supplementary bills) a rebate of 2.5% shall be allowed if payment is made, whether by cheque or by specific authorisation to draw on the Letter of Credit, within three (3) days after the date of presentation of bill. Where such payments are made on or before the Due Date of Payment but after the above three day period, a rebate of 1% shall be allowed.

Any payment made beyond the Due Date of Payment shall include a late charge in an amount equal to the greater of (a) the product of (i) the amount of such bill and (ii) the Working Capital Rate applicable to the Company then in effect, calculated on the basis of the number of days the payment was overdue, and (b) the amount of any liability incurred by the Company for penal interest on Debt arising out of the Board's failure to make such payment on the Due Date of Payment, provided that the Company shall furnish documentary evidence to the Board demonstrating such liability.

5.12 State Government Guarantee

As support for the Board's obligations under this Agreement, GOAP shall provide the State Government Guarantee (the "GOAP Guarantee").

5.13 Order of Precedence

The Company shall present its monthly tariff bills and any supplementary bills to the Board for direct payment by the Board as per this Article. In case of non-payment, or partial payment of the bill by the Board, the Company shall take recourse to the Letter of Credit under

Article 5.9 on or prior to the due date of payment or upon specific authorization by the Board to draw on the Letter of Credit prior to such date. In case of the claim of the Company not yet being fully satisfied, the Company shall take recourse to the Escrow Account as per the Escrow Account Agreement for the un-paid amount plus interest accrued for delayed payment as per Article 5.11. In case of default of payment by the Board still persisting, the Company shall take recourse to the Invoking of the GOAP guarantee as per Article 5.12 for claiming and releasing the unsatisfied claims. This provision is without prejudice to any other right or remedy of the Company arising out of this Agreement.

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ARTICLE 6

DURATION OF AGREEMENT

6.1 Term of the Agreement

Subject to the terms of this Agreement, this Agreement shall become effective upon the execution and delivery thereof by the parties and shall continue in force from the date of such delivery until the completion of a period of fifteen (15) years from the Project COD unless earlier terminated as provided herein, and not later than one hundred and eighty (180) days prior to the expiry of the initial term of this Agreement, the Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the Parties.

- 6.2 This Article shall survive any Termination of this Agreement. If the Parties do not mutually agree to renew this Agreement or otherwise upon the expiry of the initial term of this Agreement, the Board shall have the first option to purchase the Project at the Terminal Value plus any Transfer Costs and Transfer Taxes (as defined in Schedule G) and as determined by the Independent Appraiser defined in Schedule C.

Such option shall be exercisable during the sixty (60) day period immediately preceding the expiration of the initial term of this Agreement and the Company shall notify the Board of its acceptance or rejection of the option within such sixty (60) day period or fifteen (15) days after the date of Board's offer whichever is later. If the Board's offer is not accepted by the Company within such period, the Company may solicit offers of purchase from third parties or sell power from the Project to third parties as per applicable Law; provided that the Board shall have the first right of refusal with respect to any bonafide offer received by the Company which the Company wishes to accept, exercisable within thirty (30) days of receipt by the Company of such offer (which shall within five days of such receipt be provided to the Board by the Company) upon mutually satisfactory terms of payment. If the Board does not exercise such right or the Parties cannot agree to the terms of payment, the Company may dispose of the Project as it thinks fit subject to prevailing Law.

- 6.3 Notwithstanding any other provision of this Agreement, in the event that Financial Closing has not occurred within 12 months of the signing of this Agreement, either Party may upon 30 days notice to the other party terminate this Agreement without liability or obligation whatsoever

unless (in case of any termination by the Board) Financial Closing shall occur within such 30 day notice period, in which case such notice shall be deemed to have been withdrawn; provided that (I) the Company shall have used its reasonable endeavours to achieve such Financial Closing and (II) the Party seeking such termination shall then be in compliance with its obligations under this Agreement. In the event of such termination, the Security Deposit provided by the Company pursuant to Article 15.10 shall be cancelled and/or returned to the Company without being drawn upon by the Board, only if the Board is satisfied that the Company used its reasonable endeavours to achieve Financial Closing.



ARTICLE 7
UNDERTAKINGS

7.1 Covenants of the Company

The Company hereby covenants and agrees with the Board to:

- (a) use all reasonable efforts to construct the Project in accordance with the construction contract and to operate the Project in accordance with Prudent Utility Practices;
- (b) work without liability with, and co-operate in good faith with, the Board with respect to all of the Board's obligations and rights hereunder;
- (c) use all reasonable efforts to obtain all Permits;
- (d) adhere to the Technical Limits as set out in Schedule A ;
- (e) use all reasonable efforts to cause the date of Financial Closing to occur within Six (6) months of the date of signing of this Agreement and furnish to the Board periodic progress reports (not less than monthly) regarding the same and in any case cause Financial Closing to occur not later than twelve (12) months from the date of signing of this Agreement;
- (f) shall not, without the consent of the Board, reduce the amount paid in at Financial Closing by the Promoter Group as the main promoters of the Company and in the development, construction and operation of the Project efficiently during the subsistence of this Agreement;
- (g) if the Inter Connection Facilities are completed by the date which is eight weeks prior to the Scheduled Date of Completion of the first Generating Unit and the first Generating Unit is not synchronised on or before the Scheduled Date of Completion of the first Generating Unit, pay to the Board interest on the actual cost of the Inter Connection Facilities constructed only for the purposes of the Project (as established by the Board to the reasonable satisfaction of the Company), such interest being calculated on a daily basis and being equal to the interest charged in respect of any loans raised by it and applied towards meeting such cost and being payable from the Scheduled Date of

Completion of the First Generating Unit until the earlier of the date of such synchronisation or the date when such synchronisation would have occurred but for any delay arising from an event of Force Majeure. The Company's payment obligation under this Article shall not be affected by application of Article 10.4.

- (h) provide to the Board a copy of the Financing Documents and the shareholder subscription agreements relating to the Promoter Group's equity commitment to the Project within one month of the Financial Closing and promptly, as they are entered into, provide to the Board copies of Instruments creating any liens or encumbrances on any of the assets of the Project.
- (i) cause the Project COD to occur not later than the Scheduled Date of Completion of the last Unit, as per Article 1.1.54.

7.2 Covenants of the Board

The Board hereby covenants and agrees with the Company to:

- (a) (1) make all reasonable efforts for making arrangements (including financing and construction) for the Inter Connection Facility so that the Interconnection Facility is completed eight weeks before the Scheduled Date of Completion of the first Generating Unit of the Project and if the Inter Connection Facility has not been completed on or before such date or the date such Interconnection Facility would have been completed but for any delay arising from an event of Force Majeure, and an Independent Engineer designated by the Company and reasonably acceptable to the Board, has certified that the Project is ready to begin the process of Interconnection, the Board shall pay to the Company as liquidated damages for such delay an amount equal to 80% of the Capacity Charge calculated in the manner described in Article 5.2(b), substituting, however, for the Installed Capacity, the capacity of the first Generating Unit required to be installed as per the EPC Contract, from the later of the Scheduled Date of Completion of the First Generating Unit and the date falling six weeks after the first Generating Unit is ready to begin the process of Interconnection (as certified by the Independent Engineer) until earlier of the date falling six weeks after the date upon which the Inter Connection Facility is completed or the COD of the first Generating Unit, provided that the Board's payment obligations under this Article shall not be affected by application of Article 10.4. Within thirty (30) days of the COD of the first Unit, the Company shall refund to the Board,

the excess, if any, of the payments described above over the payments which would have been made based on the Installed Capacity as determined in testing and commissioning the first Unit.

- (b) work, without liability, with, and co-operate in good faith with the Company with respect to, all of the Company's obligations and rights hereunder; and,
- (c) make all reasonable good faith efforts to assist the Company in obtaining clearances for procurement of land and sourcing of water, and such other clearances as may be required at the State level.
- (d) provide electricity in accordance with Article 2.7 for construction, start-up, testing and commissioning and make reasonable efforts to facilitate the conduct of testing and commissioning procedures in accordance with Schedule F.
- (e) use its reasonable efforts to design, construct, operate and maintain the Inter Connection Facilities in accordance with specifications to be determined by mutual agreement of the Parties as per Article 15.5.
- (f) make all reasonable efforts to obtain the issuance of the GOAP Guarantee [as executed by the GOAP] substantially in the form attached hereto as Schedule-J within sixty (60) days of the date of execution hereof or as soon thereafter as practicable, provided that the Scheduled Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of GOAP Guarantee.
- (g) make all reasonable efforts to assist the Company to obtain the issuance of the Fuel Linkage i.e., the required Permits from the GOAP and the GOI allocating to the Project the right to obtain and use quantities of Naphtha to generate electricity at a PLF of 100% (the "Fuel Linkage"), subject to any actions of the Company, which may be required in connection therewith, within sixty (60) days of the date of execution of this Agreement or as soon thereafter as practicable provided that the Scheduled Date of Completion of the last Unit and all prior dates for the Company's performance hereunder shall be deemed to be extended day-for-day for each day of delay reckoned from 61st day in the issuance of the Fuel Linkage.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Company

The Company represents and warrants that:

- i) The Company is a company duly organised and validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- ii) This Agreement constitutes the valid, legal and binding obligation of the Company, enforceable in accordance with the terms hereof except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar law affecting creditors' rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceeding may be brought, and the principles of equity in general;
- iii) The Company has duly paid all rents, royalties and all public demands including provident fund dues, gratuity dues, employees state insurance dues, income tax, sales tax, corporation tax and all other taxes and revenues payable to any Government Agency and that at present there are no arrears of such dues, rents, royalties, taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government revenues and other taxes.
- iv) There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened, against or affecting the Company before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Company to meet and carry out its obligations under this Agreement; and
- v) The execution and delivery by the Company of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provisions of, or constitute a default

under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

8.2 Representations and Warranties of the Board

The Board represents and warrants that:

- i) The Board is a statutory corporation duly organised and validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions hereof;
- ii) This Agreement constitutes a valid, legal and binding obligation of the Board, enforceable in accordance with the terms hereof except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceeding may be brought, and the principles of equity in general;
- iii) There are no actions, suits, or proceedings pending or, to the Board's knowledge, threatened against or affecting the Board before any court or administrative body or arbitral tribunal which might materially adversely affect the ability of the Board to meet and carry out its obligations under this Agreement; and
- iv) The execution and delivery of this Agreement by the Board has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is party or by which it or its property may be bound.

8.3 Mutual Covenants

Each Party will (except to the extent the subject of a bonafide dispute) duly pay all rents, taxes, cesses, fees, revenues, assessments, duties, other outgoings and other amounts owing by it and will observe all the rules and regulations pertaining to the same and will not do or omit to do or (to the extent within its control) suffer to be done anything the purpose of which is to adversely affect or prejudice the interest and rights of the other Party hereunder in any manner whatsoever.

ARTICLE 9

DEFAULT AND TERMINATION

9.1 Board Default

The occurrence and continuation of any of the following events shall constitute a Board Default, unless any such event occurs as a result of a Company Default as defined in Article 9.2 or any breach by the Company of its obligations hereunder:

- (a) Any failure of the Board to make any payment (s) required to be made to the Company under this Agreement, which continues for a period of sixty (60) days or more from the Due Date of Payment; or any failure of the Board to make any payment (s) in excess of Rs. 30 Crores required to be made to the Company under this Agreement, which continues for a period of thirty (30) days or more from the Due Date of Payment; provided in either case that:
 - (i) the Company has furnished a bill to the Board for such payment as provided in Article 5;
 - (ii) to the extent the Letter of Credit is outstanding or as the case may be the Escrow Account is in operation, the Company shall have presented such bill for payment under the Letter of Credit or Escrow Account as provided under Article 5 of this Agreement;
- (b) The Board repudiates this Agreement or evidences in any manner its intention not to perform its obligations under, or to be bound by, this Agreement;
- (c) The transfer, pursuant to law, of either the Board's rights and obligations under this Agreement or all or a substantial portion of the assets or undertakings of the Board, or the dissolution of the Board, pursuant to law, including by way of merger, consolidation, liquidation, reconstitution or reorganisation unless the transferee or successor:
 - (i) expressly assumes the obligations of the Board under this Agreement and subject to (iii) below, those liabilities and obligations are guaranteed by the GOAP pursuant to the GOAP Guarantee;
 - (ii) is either the owner/operator of a substantial part of the transmission system of Andhra Pradesh and/or is the

purchaser/seller of a substantial part of the bulk supplies of electricity in Andhra Pradesh, has a credit rating (as determined by an independent credit rating agency) at least equivalent to that of the Board and is otherwise capable of performing the obligations of the Board under this Agreement.

- (iii) to the extent that the GOAP Guarantee remains in effect, the GOAP without interruption guarantees the performance of the transferee or successor on the same terms and conditions as the GOAP Guarantee or such other guarantees or commercial security are provided for the obligations of the resulting entity, successor or transferee that in the reasonable business judgement of the Company and the sole and absolute judgement of the Company's lenders if any, provides equivalent assurance of performance.
- (iv) the transferee or successor shall have provided to the Company security for its payment obligations hereunder which in the reasonable business judgement of the Company and the sole and absolute judgement of the Company's lenders if any, is at least equivalent to the security constituted by the Letter of Credit and the Escrow Account Agreement as defined in Article 5.10.
- (d) The failure of the Board to observe, or perform any obligation expressed to be assumed by it in Article 5.10 or the Escrow Account Agreement, which failure is not remedied within thirty (30) days of notice thereof from the Company or, in the case of any default in making of any payment from the Escrow Account, referred to therein, such longer period as is represented by the number of days until the Due Date of Payment, plus the cure periods referred to in Article 9.1 (a);
- (e) The GOAP repudiates the GOAP Guarantee, the GOAP shall be in material breach of its obligations under the GOAP Guarantee, or the GOAP Guarantee shall cease to be a legal or binding obligation of the GOAP other than by reason of the Company's failure to materially comply with its terms;
- (f) The serious breach by the Board of any material term of this Agreement (other than with respect to Articles 9.1 (a) through (e) above), where the Board shall fail to cure such breach within ninety (90) days of notice thereof by the Company.

9.2 Company Default

The occurrence and continuation of any of the following events shall constitute a Company Default, unless any such event occurs as a result of a Board Default as defined in Article 9.1 or any breach by the Board of its obligations hereunder:

- (a) Any failure of the Company to make any payment(s) required to be made to the Board under this Agreement, which continues for a period of sixty (60) days or more; or any failure of the Company to make any payment(s) in excess of Rs. 30 Crores required to be made to the Board under this Agreement, which continues for a period of thirty (30) days or more; either directly or through a credit to the Board in the bills, as per Article 5,
- (b) The Company repudiates the Agreement or evidences in any manner its intention not to perform its obligations under, or to be bound by this Agreement;
- (c) The transfer, pursuant to law, of either the Company's rights and/or obligations under this Agreement or all or a substantial portion of the Company's assets or undertakings, or the dissolution of the Company, pursuant to law, including by way of merger, consolidation, liquidation, reconstitution or reorganisation, unless :
 - (i) the transferee or the successor expressly assumes the obligations of the Company under this Agreement,
 - (ii) such transfer or dissolution does not affect adversely the ability of the resulting entity to perform its obligations under this Agreement, in the sole and reasonable opinion of the Board;or such transfer or dissolution constitutes or is the direct result of a Change in Law or event of Political Force Majeure
- (d) The Company abandons the construction or operation of the Project, other than as a result of Force Majeure, for a period of forty-five (45) consecutive days or more.
- (e) The Company
 - (i) fails to commence construction by (i) issuing a notice to proceed to the construction contractor, (ii) commencing substantial continuing work on the foundation for the first

generating unit and/or (iii) delivering to the site and commencing installation of major components of the project within ten (10) months of the signature of this agreement, provided that such period shall be extended as provided in Article 10.4 for delay in the achievement of such date which is caused by a Force Majeure event, or

- (ii) fails to achieve Project COD on or before the **Scheduled Date of Completion plus six months** as extended in accordance with Article 1.1.54
- (f) The Project fails to issue an Availability Declaration providing for Declared Capacity which is in excess of 50% of the Installed Capacity for a continuous period of one hundred and twenty (120) days (excluding any period of major overhaul undertaken in accordance with the manufacturer's recommendations, any period of Force Majeure; any act or omission of the Board or any Emergency directly causing or contributing to the shortfall in the Declared Capacity).
- (g) The failure of the Company either :
 - (i) to demonstrate in tests conducted in accordance with Schedule F (including any permitted retests) that the Project has an Installed Capacity of at least 90% of the output initially guaranteed by the manufacturer or supplier of the Generating Units as at Project COD.
 - (ii) to maintain thereafter during the term of this Agreement, reliable capacity equal to 98.5% of the Installed Capacity as at Project COD as such reliable capacity shall be determined by testing pursuant to paragraph 2.7 of Schedule D and the Company is not able to demonstrate such reliable capacity in any subsequent retest during the next succeeding twelve (12) months.
- (h) The Company commits a breach of Article 7.1(f).
- (i) The serious breach by the Company of any material term of this Agreement (other than with respect to Articles 9.2 (a) through (h) above), where the Company shall fail to cure such breach within ninety (90) days of notice thereof by the Board.

9.3 Remedies of the Company

Upon the occurrence and continuance of a Board Default set forth in Article 9.1 above and the failure of the Board to cure such default within the applicable cure periods, if any, specified in Article 9.1, the Company shall, at its option, have the right to

- (i) elect to terminate this Agreement by issuing a termination notice in accordance with procedures set forth in Article 9.5, or
- (ii) receive damages or have recourse to such other remedies as are available under Law.

9.4 Remedies of the Board

Upon the occurrence and continuance of a Company Default set forth in Article 9.2 above and if the Company fails to cure such default within the applicable cure periods, if any, specified in Article 9.2, the Board shall, at its option, have the right to

- (i) elect to terminate this Agreement by issuing a termination notice in accordance with procedures set forth in Article 9.5, or
- (ii) receive damages or have recourse to such other remedies as are available under Law.

9.5 Termination Procedures

- (a) In the event that the Board gives a termination notice to the Company in accordance with Article 9.4, the following procedures and cure periods shall be observed and shall have expired, respectively, prior to this Agreement actually being terminated and of no further effect (the date of such termination being the Termination Date):

- (i) A termination notice issued in respect of a Company Default under Article 9.2.(c) shall result in the Termination Date occurring on the twentieth (20th) day from the date of receipt by the Company of such termination notice without any further requirement for further action by the Board or any opportunity to cure by the Company. In case of a termination notice received in respect of any other Company Default under Article 9.2, the Company may within ninety (90) days from the date it receives the termination notice attempt to either

- (A) cure the Company Default which gave rise to the termination notice, or
- (B) transfer, sell and/or assign the Project to the Board, the lenders or any third-party purchaser, in which case, if such sale is effected (which shall only be with the prior consent of the Board which consent will not be unreasonably withheld), then such new owner of the Project shall have a full additional ninety (90) day period to cure the Company Default.

The Board shall not be deemed to have unreasonably withheld its approval if in the sole and reasonable opinion of the Board, the new owner does not possess equivalent financial standing and technical capability to that of the Company as on the Commercial Operation Date of the first Generating Unit. If such new owner fails to so cure the Company event of default within such ninety (90) day period, or if the Board fails to provide its consent to such new owner, then the subparagraph (ii) below shall apply.

- (ii) for a period of ninety (90) days from the date on which the lenders are able to fully exercise their right to possess the Project or effectively gain control over operation of the Project in accordance with the Financing Documents (subject to the Board's right under sub-section (iv) and Article 9.6), the lenders shall be entitled to attempt to cure any Company Default (including, Without Limitation, by selling or transferring the Project to a third party, which shall only be with the prior consent of the Board which consent will not be unreasonably withheld, who shall have ninety (90) days from the date of transfer to attempt to cure the Company Default if such sale by itself does not effect such cure). If the lenders or such third party are unable to cure such Company Default by the end of the applicable periods specified above, then the Termination Date shall occur at the expiration of such period;
- (iii) If a cure is effected in accordance with the procedures described in (i) and (ii) above, on notification to the Board by the Company and reasonable verification by the Board, the termination notice shall be and will be deemed to be withdrawn on the date of such cure
- (iv) Notwithstanding anything contained in Article 9.5(a)(i) and (ii) above to the contrary, at all times during the

continuance of a Company Default and during which the Company maintains actual possession and control over the Project, the Company shall use its reasonable efforts to operate and maintain the Project as generally required hereunder.

- (v) If the Project is sold to any third party in accordance with the provisions of this Article 9.5, then such third party shall become a party hereto in place of the Company and the Board shall execute such documents as may reasonably be required by the Company, the lenders or such third party to give effect to the substitution of such third party as a party hereto in place of the Company.
- (vi) The Board shall, if so requested by the Company, give an undertaking to the lenders or any agent or trustee acting on their behalf in such form as they may reasonably require to perform the obligations set out in this paragraph (a).
- (b) In the event that the Company gives a termination notice to the Board in accordance with Article 9.3, the Board may within ninety (90) days from the date it receives the termination notice attempt to cure the Board Default which gave rise to the termination notice. However, such cure period of ninety (90) days shall be reduced to thirty (30) days in case of a termination notice due to a Board Default under Article 9.1 (a). If such cure is effected, on notification to the Company by the Board and on reasonable verification by the Company, the termination notice shall be and will be deemed withdrawn, or otherwise the Termination Date shall occur at the expiry of such period.
- (c) Any Party which has been served with a notice of termination under Article 9.4 shall use all reasonable endeavours to cure the Company Default or the Board Default as the case may be, as soon as practicable. Both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement and shall not, whether by act or omission impede or otherwise interfere with any Party's endeavours to cure the Company Default or the Board Default, as the case may be, during such cure.

9.6 Right to Operate the Project

Notwithstanding anything in Article 9.5 (a) (i) and (ii) or otherwise in this Agreement to the contrary, if the Board gives a termination notice under

Article 9.4 with respect to a Company Default, during the applicable cure period in Article 9.5(a), neither the Company nor the Lenders under the Financing Documents nor any third party to which the Project has been sold or transferred in accordance with Article 9.5(a) are using all reasonable endeavours in the assessment of the Board to cure such Company Default as soon as reasonably practicable, the Board shall have the right, but not the obligation, if for reasons of the security or integrity of the Board's system or security of supply, the Board considers it necessary, upon seventy-two (72) hours notice to the Company (a "Step-In Notice"), subject to the lender's consent, to require the operator to operate the Project or, where the operator is unwilling or unable to do so, to operate the Project itself in accordance with Prudent Utility Practice for such period(s) up to the date of any transfer of the Project pursuant to a Buy-out or otherwise, as the Board deems necessary, at the expense of the Company. During such period of step-in, the Board's payment obligations to the Company shall be restricted to the payment of 65 % of Capacity Charges computed in the manner described in Article 5.2(b) except that such charges shall be based (rather than on the Installed Capacity) on the capacity which could reasonably be made available, by the Board having regard to the condition of the Project, but the Board shall be responsible for all costs of Fuel. The rights of the Board under this Article 9.6 shall cease upon the earliest of the cure of such Company Default, the transfer of the Project to a third party pursuant to Article 9.5 (a) and the occurrence of the Termination Date.



ARTICLE 10

FORCE MAJEURE

10.1 Force Majeure Events

For the purposes of this Agreement, Force Majeure means any act, event or circumstance, or combination of acts, events or circumstances, which materially and adversely affects the affected Party's performance of its obligations pursuant to the terms of this Agreement, but only if and to the extent that such acts, events or circumstances are not within the affected Party's reasonable control, were not reasonably foreseeable and could not have been prevented or overcome by the affected Party through the exercise of reasonable skill or care. Any act, event or circumstance or combination thereof meeting the description of Force Majeure that has the same effect upon the performance of any Contractor, which directly, materially and adversely affects the performance by the Company or the Board respectively of their obligations in whole or in part under this Agreement shall constitute Force Majeure with respect to the Company or the Board respectively. Where such performance is affected in part, after applying any damages or compensation from the parties involved or insurance to remedy the effect of such event, the affected Party shall not be relieved of the performance of that part which is not so materially and adversely affected. Force Majeure shall comprise the following acts, events and circumstances to the extent that they or their consequences satisfy the above requirements.

- (i) Political Force Majeure Events, which shall comprise the following acts, events and circumstances.
 - (1) Act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism or sabotage, in each case occurring inside or directly involving India;
 - (2) Any act, failure to act, restraint or regulation, of any Government Agency (excluding actions that constitute remedies or sanctions lawfully exercised as a result of breach by the Company of any Law which is neither expropriatory nor discriminatory in nature), comprising :

- (a) any act, omission, regulation or restraint constituting a Change in Law (as defined in Article 11.2);
 - (b) any Change in Permits (as defined in Article 11.3);
or
 - (c) the expropriation by any Government Agency or compulsory acquisition of any shares in, or assets or rights of, the Company or its Contractors.
- (3) Strikes, lockouts or other labour difficulties, which are politically motivated (rather than motivated primarily by a desire to improve compensation or working conditions of those involved) or are caused in whole or part by another event of Political Force Majeure or are part of a nation-wide or regional strike, or other generalised labour action occurring within India; (excluding such events which are site specific and attributable to the Company);
- (4) Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Political Force Majeure Event;
- (5) Any act, event or circumstance of a nature analogous to the foregoing;
- ii) Non-Political Force Majeure events comprising the following acts, events and circumstances;
- (1) Flood, cyclone, lightning, earthquake, drought, storm or any other extreme effect of the natural elements;
 - (2) Epidemic, or plague;
 - (3) Fire or explosion.
 - (4) Strikes, lockouts or other labour difficulties not included in Article 10.1(i) (3); (excluding such events which are site specific and attributable to the Company)
 - (5) Catastrophic failure of major components or equipment excluding however, normal wear and tear or inherent defects or flaws in materials or equipment;
 - (6) Air crash, shipwreck or trainwreck or loss of or damage to any major component of the Project arising in the course of

marine transit other than due to the fault of the transporting party;

- (7) Any act, event or circumstance of a nature analogous to the foregoing.

Provided, however, that for the avoidance of doubt, lack of funds shall not be construed as an event of Force Majeure.

10.2 Notification Obligations, etc.

- (a) Any Party claiming a Force Majeure event shall formally notify in writing in the manner specified in (b) below and seek to satisfy the other Party of the existence of such a Force Majeure event and shall use its reasonable endeavour to resume performing its normal obligations as soon as possible after the cessation of such a Force Majeure event.
- (b) The Party claiming Force Majeure shall give notice to the other Party of any event of Force Majeure as soon as reasonably practical after becoming aware of its existence, but not later than five (5) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. Notwithstanding the above, if the event of Force Majeure results in a breakdown of communications rendering it not reasonably practicable 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 the reinstatement of communications, but not later than seven (7) days after such reinstatement.
- (c) The Party claiming Force Majeure shall give notice to the other Party of;
- i) The cessation of the relevant Force Majeure act, event or circumstance ; and,
 - ii) The cessation of the effects of such Force Majeure events on the enjoyment by such Party of its rights or the performance by it of its obligations under this Agreement;

as soon as practicable after becoming aware thereof.

10.3 Mitigation: Co-operation: No obligation to settle Strikes

Any Party claiming Force Majeure shall use its reasonable efforts to mitigate and overcome the effects of any act, event or circumstance of Force Majeure as soon as practicable after the occurrence of a Force Majeure event, including through the expenditure of reasonable sums of money, and to co-operate with the other Party to develop and implement a plan of remedial and reasonable alternative measures to remove the event of Force Majeure; provided, however, that no Party shall be required under this provision, to settle any strike or other labour dispute on terms it reasonably considers to be unfavourable to it. The Party claiming Force Majeure shall furnish weekly written reports to the other Party with respect to its progress in overcoming the effects of the act, event or circumstance of Force Majeure together with such supporting documentation and information as the other Party reasonably requires regarding the claim of Force Majeure.

10.4 General Consequences of Force Majeure

Subject to the other provisions of this Agreement, no Party shall be in breach of its obligations under this Agreement due to its failure or delay in performing its obligations hereunder to the extent that such failure or delay has been caused by one or more acts, events or circumstances of Force Majeure, for so long as such act, event or circumstance or its effects are continuing and any dates specified herein for such performance shall be extended to the extent necessary to compensate for the delay which shall be on a day-for-day basis (unless the circumstances justify a longer or shorter period); provided that if the Party claiming Force Majeure fails to give notice thereof to the other Party within the period and in the manner specified in Article 10.2(b), such Party shall only be entitled to relief on account thereof from the date it gives such notice.

10.5 Financial Consequences of Force Majeure

- (a) The Company shall not be entitled to claim any adjustments for increased costs incurred as a result of an event of Force Majeure except to the extent provided in Article 11
- (b) Except as provided in this Article 10.5, an act, event or circumstance of Force Majeure shall not excuse the payment obligations of either Party which shall be determined in accordance of the terms of this Agreement.
- (c) Payments to the Company by the Board in respect of periods of Political Force Majeure shall be limited as follows:

(i) In case of any event of Political Force Majeure affecting either Party as per Article 10.1(i) (2) occurring after the COD of the first Unit claimed by the affected party, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, Capacity Charges, until the earlier of the (x) the date the effects of such Political Force Majeure event cease to exist and (y) 180 days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 180 days.

(ii) On the occurrence of any other Political Force Majeure event affecting either Party as per Article 10.1(i), occurring after the COD of the first Unit, claimed by the affected party, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, 75 % of Capacity Charges, until the earlier of the (x) the date the effects of such Political Force Majeure event cease to exist and (y) one hundred and eighty (180) days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 180 days.

(d) Non-Political Force Majeure affecting the Board after Project COD

In case of any Non-Political Force Majeure event affecting the Board as per Article 10.1(ii) occurring after the COD of the first Unit, the Board shall pay, for each Settlement Period for which such Force Majeure is in effect, 65% of the Capacity Charges, until the earlier of the (x) date the effects of such Non-Political Force Majeure event cease to exist and (y) one hundred and eighty (180) days from the date of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be

calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 day period any period of Force Majeure or Scheduled Outages) or such lesser period in case the relevant data is not available for a period of 180 days.

- (e) In case of Political Force Majeure Events described under Article 10.1(i)(2) affecting the Fuel supplier or transporter, which prevents delivery of Fuel to the Project and for which the Fuel supplier or transporter is excused under Fuel Supply Agreement(s), the Board shall pay for each settlement period for which such Force Majeure is in effect 65% of the Capacity Charges, commencing, however, on the date 30 days after the date on which a notice of commencement of such event is delivered by the Fuel supplier or transporter to the Company under the Fuel Supply Agreement(s) as communicated to the Board and the Board having satisfied itself that the Company made best efforts to provide alternate fuel supplies during this 30 day period, until the earlier of the (X) date the effects of such Force Majeure Event cease to exist and (Y) one hundred and eighty (180) days from 31st day of commencement of such event. The Capacity Charges shall be computed in the manner described in Article 5.2(b) except such charges shall be calculated for the period only described above and shall be based (rather than on the Installed Capacity) on the average Availability Declaration of the past 180 days (excluding from such 180 days period any period of Force Majeure or Scheduled Outages) or such lesser period in case relevant data is not available for a period of 180 days.

10.6 Termination for Force Majeure

- (a) Either Party may issue a notice of termination of this Agreement if (i) an event of Political Force Majeure as described in Article 10.1(i) has continued for more than one hundred and eighty (180) days or (ii) the Company following damage to the Project resulting from such event fails or is unable to or elects (subject to Article 10.7) not to restore the Project. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").
- (b) The Board may issue a notice of termination of this Agreement if the effects of a Non-Political Force Majeure Event as described in Article 10.1 (ii) affecting the Board or Force Majeure affecting Fuel supplier or transporter as described in Article 10.5(e) have continued for more than one hundred and eighty (180) days and

the Company may issue a notice of termination of this Agreement of the effects of a Non-Political Force Majeure Event as described in Article 10.1(ii) affecting the Board or Force Majeure affecting Fuel supplier or transporter as described in Article 10.5 (e) have continued for more than two hundred and seventy (270) days.. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").

- (c) Either Party may issue a notice of termination of this Agreement if (i) the effects of a Non-Political Force Majeure Event as described in Article 10.1(ii) affecting the Company has continued for more than one hundred and eighty (180) days or (ii) the Company following damage to the Project resulting from such event fails or is unable to or elects (subject to Article 10.7) not to restore the Project. Such notice shall become effective twenty (20) days from the date of issuance thereof (the "Termination Date").

Provided that in case of a Non-Political Force Majeure event affecting the Company, Article 12 shall not apply to such termination and the Agreement shall terminate at the end of the cure period specified in Article 10.6 (c) without any liability to either Party.

10.7 Obligation to Restore Project

The Company shall not be entitled to relief under this Article 10 unless, following the occurrence of any damage or destruction of the Project arising from any event of Force Majeure, the Company shall have used all reasonable efforts to commence the restoration of such Project as soon as reasonably practicable taking into account the circumstances of the Force Majeure and thereafter has diligently pursued such restoration, unless (i) the damage or destruction to the Project constitutes a total or constructive loss or (ii) the Project would be incapable following such repair of resuming operation at the levels required under the Agreement; or (iii) such loss is not insured against in whole or in part and the Company is unable despite its best efforts to raise the necessary financing (taking into account any payments received by the Company under this Agreement).



ARTICLE 11

CHANGE IN LAW

11.1 Definition of Law

For the purposes of this Agreement, "Law" means the constitution of India and any act, rule, regulation, directive, notification, order or instruction having the force of Law enacted or issued by any competent legislature, or Government Agency.

11.2 Definition of Change In Law

For the purposes of this agreement, "Change in Law" means

- (i) any enactment or issue of any new Law,
- (ii) any amendment, alteration, modification or repeal of any existing Law or any new or modified directive or order thereunder ,
- (iii) any change in the application or interpretation of any Law by a competent legislature or Government Agency in India which is contrary to the existing accepted application or interpretation thereof, in each case coming into effect after the date of this Agreement, provision for which has not been made elsewhere in the Agreement.

11.3 Definition of Change in Permits

For the purpose of this Agreement, "Change in Permits" means

- (i) any failure or refusal to grant or renew any Permit (other than for Cause) or;
- (ii) the imposition (other than for Cause) of any material requirement in connection with the issuance of any Permit or the renewal, extension or modification of any Permit after such Permit was issued, in either case subsequent to the date of this Agreement ;
- (iii) the imposition (other than for Cause) of a requirement for a Permit which did not exist as of the date of this Agreement, or
- (iv) the revocation or cancellation (other than for Cause) of any Permit;

Provided that any such change establishes requirements that are materially more restrictive than the most restrictive requirements (A) in effect as of the date of this Agreement, (B) specified in any applications for any Permit filed by the Company or other documents filed in connection with such applications by the Company on or before the date of this Agreement; or (C) agreed to by the Company in any Financing Document or in any agreement with any Contractor, supplier of Fuel or transporter of Fuel, provision for which has not been made elsewhere in this Agreement.

11.4 Additional / Reduced Expenditures or Other Increased / Reduced Costs due to a Change in Law or Change in Permits

- (a) Within sixty (60) days after the COD of the first Generating Unit or the end of any Tariff Year, the Company shall determine after accounting for the net economic effects on the Company during the period prior to the COD of the first Generating Unit or, as the case may be, such Tariff Year of any Changes in Law or Changes in Permits , based on an accounting conducted by an independent chartered accountant reasonably acceptable to the Board. If as a result of such accounting, the Company suffers an increase in costs or a reduction in after-tax cash flow or any other net economic burden which it would not have experienced but for such Changes in Law or Changes in Permits (taking into account the reasonable costs of financing of any capital improvement in the period prior to the COD of the first Generating Unit or , as the case may be, such Tariff Year), the aggregate economic effect of which exceeds the equivalent of Rupees three (3) crores per 100 MW or pro-rata for any part thereof during the period prior to the COD of the first Generating Unit and Rupees one (1) crore per 100 MW or pro-rata for any part thereof during the period after the COD of the first Generating Unit, during any Tariff Year (excluding cost adjustments in respect of Changes in Law or Changes in Permits from any prior period), the Company may notify the Board of any proposed amendments to this Agreement required to put the Company in the same economic position it would have occupied in the absence of such cost increase, reduction in the net after-tax cash flow or any other economic burden. Such notice shall be accompanied by a certification of the Company's independent chartered accountant and a reasonably detailed explanation of certification of an officer of the Company respecting the basis for such net economic burden increase. The amount of any net economic burden claimed by the Company shall be net of any insurance proceeds received in respect thereof.

- (b) Within sixty (60) days after the COD of the first Generating Unit or the end of any Tariff Year, if after accounting as provided in subsection (a) for the net economic effects on the Company during the period prior to the COD of the first Generating Unit or, as the case may be, such Tariff Year of any Changes in Law or Changes in Permits , the Company experiences a reduction in costs or an increase in after-tax cash flow or any other net economic benefit which it would not have experienced but for such Changes in Law or Changes in Permits, the aggregate economic effect of which exceeds the equivalent of Rs. 3 crore per 100 MW or pro-rata for any part thereof during the period prior to the COD of the first Generating Unit or Rupees one (1) crore per 100 MW or pro-rata for any part thereof, following the COD of the first Generating Unit, during any tariff Year, the Company shall provide to the Board results of such accounting together with a certificate of the independent chartered accountant and the Board, in response thereto, may notify the Company of any proposed amendments to this Agreement required in its good faith judgement to put the Company in the same economic position it would have occupied in the absence of such cost reduction, increase in the net after-tax cash flow or any other economic benefit. Such notice shall be accompanied by a reasonably detailed explanation of a certification of an officer of the Company respecting the basis for such decrease.
- (c) Only increased costs which are necessarily and unavoidably incurred in complying with or as a direct result of the Changes in Law or Changes in Permits taking into account, all reasonable steps which may be taken by the Company to minimise such increased costs, shall be considered as increased costs for the purposes of this Article.
- (d) As soon as practicable during the period prior to the COD of the first Generating Unit or any Tariff Year after the Company becomes aware of any Change in Law or Change in Permits which could reasonably be expected to give rise to an increase/reduction in costs or reduction/increase in after-tax cash flow pursuant to paragraph (a) and (b), the Company shall provide an interim notice thereof to the Board describing, to the extent possible, the expected effect on the costs and the cash flow of the Company. The Company shall consult with the Board regarding such increased expenditures and the Company shall use all reasonable efforts to implement the Board's recommendations, if any, to minimise such increased

expenditures consistent with Prudent Utility Practices and the Company's obligations under this Agreement. If prior to the end of any Tariff year the Company demonstrates on the basis of a certification of its chartered accountant that any Change in Law or Change in Permits would result in the Company's being unable to meet its payment obligations to its lenders under the Financing Documents on a current basis, then in addition to the Company's rights under sub-section (a) but notwithstanding the time period for exercising such rights specified therein, the Company shall be entitled to propose amendments to this Agreement as provided in subsection (a) and the Parties shall consider such proposal as provided in subsection (e) below, provided that any benefits which the Company is eligible to receive under subsection (a) shall be reduced by any benefits received by the Company prior to the end of the relevant period under this subsection.

- (e) Within thirty (30) days after receiving any proposal pursuant to paragraph (a), (b) or (d), the Parties shall meet and agree on either amendments to this Agreement or alternative arrangements to implement the foregoing. If no such agreement has been reached within ninety (90) days after any meeting pursuant to Article 11.3 (a), (b) or (d), as the case may be, the proposals of the Parties shall be submitted to the independent chartered accountant referred to in paragraphs (a), (b) and (d), as the case may be.

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ARTICLE 12

BUYOUT

12.1 Buyout Events: For the purpose of this Agreement, each of the following shall be a Buyout Event:

- (a) The occurrence of a Termination Date as a result of a termination notice issued by the Board pursuant to a Company Default which becomes effective in accordance with Article 9.5(a);
- (b) The occurrence of a Termination Date as a result of a termination notice issued by the Company pursuant to a Board Default which becomes effective in accordance with Article 9.5(b);
- (c) The occurrence of a Termination Date as a result of any event of Political Force Majeure pursuant to Articles 10.6 (a);
- (d) The occurrence of a Termination Date as a result of an event of Force Majeure pursuant to Article 10.6 (b).

12.2 Remedies to the Company

If a Buyout Event under Article 12.1(b),(c) or (d) occurs, the Company may require the Board to purchase the Project upon giving the Board a notice of the same (the "Buyout Notice") at the "Buyout Price" as defined in Schedule G.

12.3 Remedies of the Board

In case of a Buyout Event described in Article 12.1(a), (c) or (d) (and in case of a Buyout Event described in Article 12.1(a), subject to the lenders cure rights as set forth in Article 9.5), the Board shall have the right to purchase the Project upon giving the Company notice of the same (the "Buyout Notice") at a "Buyout Price" as defined in Schedule G.

12.4. Buyout Price

The Buyout Price shall be as determined in Schedule G.

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[Signature]

12.5 Independent Appraiser

The Buyout Price shall be determined in accordance with Schedule G by an internationally recognised accounting firm listed in Schedule C hereto (the "Independent Appraiser") appointed in accordance with paragraph 4 (a) of Schedule G. All fees and expenses of any technical or other consultants which the Independent Appraiser reasonably believes are necessary to retain, shall be paid by the Party other than the Party validly claiming the Buyout Event.



ARTICLE 13

NOTICES

13.1 Delivery

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

If to the Company:

Attention: Sri Y. Harish Chandra Prasad,
Director & CEO

Tele Fax No. +91-40-3395177

Telephone +91-40-3316756, 3316736.

If to the Board:

Attention: Chairman
Andhra Pradesh State Electricity Board
Vidyut Soudha, Hyderabad- 500 049, India.

Telex No 0425 - 6318 APSEB IN

Tele Fax No 040 - 3393317

Telephone (040)3317643

All notices or communications given by telefax, telex or telegram shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate party for delivery by registered or certified mail. All notices shall be deemed delivered upon receipt.

13.2 Address Changes

Any Party may by notice change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.



ARTICLE 14

ARBITRATION

14.1 Informal Dispute Resolution

- (a) Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner.
- (b) If the designated representatives are unable to resolve a dispute under this Agreement within fifteen (15) days, such dispute shall be referred by such representatives to a senior officer designated by the Company and a senior officer designated by the Board, respectively, who shall attempt to resolve the dispute within a further period of fifteen (15) days.
- (c) The Parties hereto agree to use their best efforts to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.

14.2 Arbitration

- (a) In the event that any dispute is not resolved between the Parties pursuant to Article 14.1, then such dispute shall be settled exclusively and finally by arbitration. It is specifically understood and agreed that any dispute that cannot be resolved between the Parties, including any matter relating to the interpretation of this Agreement, shall be submitted to arbitration irrespective of the magnitude thereof, and the amount in dispute or whether such dispute would otherwise be considered justiciable or ripe for resolution by any court or arbitral tribunal. This Agreement and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in such arbitration proceedings, which award shall determine whether and when termination of this Agreement if relevant shall become effective.
- (b) Each arbitration shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Laws from time to time (the "Rules") except to the extent the rules conflict with the provisions of this Article 14.2,

in which event the provisions of this Article 14.2 shall prevail. Any award rendered pursuant to arbitration hereunder shall be a "foreign award" within the meaning of the Arbitration and Conciliation Act, 1996 (the "Act") to the extent consistent with such Act.

- (c) Each arbitral tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator for each arbitration, and the arbitrators appointed, within thirty (30) days after the appointment of the second arbitrator, shall appoint the third arbitrator for such arbitration, or if the two arbitrators cannot agree, the third arbitrator shall be appointed in the manner specified in the Arbitration and Conciliation Act, 1996. No arbitrator shall be a present or former employee or agent of, or consultant or counsel to, either Party or any affiliate of either Party, or in any way related or closely connected with the promoters, partners, or beneficiaries of the Parties.
- (d) Each arbitration shall be conducted in New Delhi, India. The Parties agree, to the fullest extent permitted by law, to waive any right of application to any court or tribunal of competent jurisdiction in connection with any question of law arising in the course of any arbitration, including any arbitration within the provisions of the Act or with respect to any arbitration award.
- (e) The language to be used on all written documents provided in each arbitration and in all arbitration proceedings shall be English.
- (f) Any decision or award of an arbitral tribunal appointed pursuant to this Article 14.2 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators. The Parties waive any rights to appeal or any review of such award by any court or tribunal of the competent jurisdiction. The Parties agree that any arbitration award made may be enforced by the Parties against assets of the relevant Party wherever those assets are located or may be found, and judgement upon any arbitration award may be entered by any court of competent jurisdiction thereof. The Parties expressly submit to the jurisdiction of any such court.
- (g) All arbitration awards shall be denominated in Indian Rupees. If the arbitration award (or part thereof) consists of any currency other than Indian Rupees, then the award (or part thereof) shall be converted to Indian Rupees based on the applicable market

rate (s) of foreign exchange, not exceeding such TT selling rate(s) as published by the State Bank of India on the date of such payment. Interest at a rate equal to the Working Capital Rate plus two percent (2%) shall be due and payable to the Party on receipt of an arbitration award from the date thirty (30) days after the date such award is made pursuant to this Article 14.2 through the date of payment.

- (h) Any arbitration proceedings or award rendered hereunder and the validity, effect and interpretation of this Article 14 shall be governed by the laws of India and (to the extent applicable) the New York Convention on the Recognition and Enforcement of Arbitral Awards, June, 10, 1958, to which England and India are parties.
- (i) The Parties agree that any amount due under this Article 14.2 shall be due as a separate debt and shall not be affected by or merged into any judgement being obtained for any other sum due under or in respect of this Agreement.

14.3 No Arbitration of Buyout Price

Notwithstanding the generality of the provisions of Article 14.1 and 14.2 any determination of the Buyout price described in Schedule G shall be made exclusively by the Independent Appraiser in accordance with Article 12.5, and neither Party shall have the right to cause any such determination to be resolved by arbitration or otherwise.



ARTICLE 15
SPECIAL PROVISIONS

15.1 Variations, Waivers and Modifications

No variation, waiver or modification of any of the terms of this Agreement shall be valid unless communicated in writing and signed by or on behalf of the Parties.

15.2 Severability

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.

15.3 Assignment

Neither Party shall assign or part with any of its rights or obligations under this Agreement to any third party, except as expressly contemplated in Article 9 or this Article 15.3, without the prior approval in writing of the other Party. For the purpose of obtaining financing for the Project, the Company may assign or create security over its rights and interests under or pursuant to this Agreement. The Board shall execute all such consents to assignment and/or acknowledgments of any security created in accordance with this Article 15.3, and shall deliver such opinions of counsel regarding the same, as are reasonably requested by the Company to give effect to the foregoing.

15.4 No Waiver

The failure of any Party to insist in one or more instances upon the strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or relinquishment of any such rights but the same shall continue in full force and effect.



15.5 Mutual Agreement

Unless the context otherwise requires, every arrangement, procedure or any other matter which is, under any of the provisions of this Agreement, required to be mutually agreed upon between the Parties, shall be concluded by a written agreement between the Parties not later than the date specified in the concerned clause of this Agreement and where no such date has been specified, not later than the later of the date of Financial Closing and thirty (30) days after the date upon which either Party first requests such matter to be agreed.

15.6 Governing Law

Except as provided in Article 14, this agreement shall be governed by, and construed in accordance with, the Laws of India as in effect from time to time.

15.7 Waiver of Immunity

The Board and the Company are subject to civil and commercial law with respect to their obligations, under this Agreement. The execution, delivery and performance hereof by the Parties constitutes (for the purpose of the Foreign Sovereigns Immunities Act of USA, applicable Indian Law and otherwise) private and commercial acts rather than governmental or public acts. To the extent that the Board or the Company may claim in any jurisdiction for itself, or any of its assets or revenues, immunity from a suit, execution, attachment (whether in aid of execution, before judgement or otherwise) or other legal process or to the extent that in any jurisdiction there may be attributed to the Board or its assets or reserves any such immunity (whether claimed or not) the Board and the Company hereby agree not to claim and irrevocably waive such immunity.

15.8 Limitation of Liability

Subject to any express liability provided for in this Agreement, but notwithstanding any other provisions hereof, neither Party shall be liable in any circumstances whatsoever to the other Party, whether under this Agreement, or at law, for any special, indirect, incidental or

consequential loss or damage of any nature arising at any time, including without limitation loss of profit or revenue, loss of use (whether full or partial) of any equipment, facility or property, loss of production, loss of contracts, loss of goodwill, loss of productivity and/or loss of anticipated savings. Notwithstanding any other provision of this Agreement, the remedies of the Board under the definition of Scheduled Date of Completion and in Articles 3.6 and 7.1(g) and the Company's remedies under Article 7.2(a) shall be in place of and to the exclusion of any other remedy which that Party may have in relation to any damage, loss or liability it may suffer or incur under such Articles and under Article 7.1 (i).

15.9 General Indemnity

Each Party shall indemnify and hold harmless the other Party from any and all claims, proceedings, demands, judgements, losses, damages, costs, charges, expenses and liabilities of whatever kind and nature for personal injury, death to persons and damage to property arising out of any negligent or intentional act or omission of the indemnifying Party in connection with this Agreement.

15.10. Security Deposit

Notwithstanding any other provision of this Agreement, the Company shall submit a Security Deposit in form of a Bank Guarantee for an amount equivalent to 1% of the cost estimate of the Project substantially in the form attached hereto as Schedule 'K' within 30 days after the conclusion of this Agreement failing which this Agreement will be terminated by the Board without further notice or liability of any kind to the Board, forfeiting the Earnest Money Deposit. Such Bank Guarantee shall be issued for a minimum period of one (1) year and shall be renewed each year by the Company not less than 30 days prior to the expiration thereof for additional minimum periods of one (1) year; provided that the Bank Guarantee shall expire 30 days after the Commercial Operation Date of the Project.

15.11 Relationship to Other Agreements

Except as expressly set forth herein and save to the extent otherwise expressly agreed in writing by the Parties, this Agreement contains the entire agreement of the Parties respecting the subject matter hereof and supercedes any prior conflicting or inconsistent written or oral agreements or understandings of the Parties with respect thereto,

including Without Limitation in any submittals, representations, statements and other subject matter of Bid No. CE/plg 1/95-96, and documents submitted or created by the Board or the Company with respect thereto.

FOR AND ON BEHALF OF
THE COMPANY
LANCO POWER LIMITED.

WITNESSES
1 M. TRIVHAR PRINIVAS
2 Manager - Infrastructure
Lanco Power Ltd
Visaka towers
S.P. Road, Sec. 14d.

V. Harish Chandra Prasad.
Director. & CEO.

2) *B. V. P. SASTRI*
Chief Public Relations
Officer
Lanco Industries Ltd,
S.P. Road
Secundrabad.

FOR AND ON BEHALF OF
ANDHRA PRADESH STATE ELECTRICITY BOARD

J. Parthasarathy
CHAIRMAN

WITNESSES

1 *A. V. Subba Rao*
2
A. V. SUBBA RAO, s.e.
MEMBER (PROJECTS)
A.P.S.E.B., Vidyut Soudha,
HYDERABAD-500 049.

J. PARTHASARATHY
CHAIRMAN
A.P. STATE ELECTRICITY BOARD
VIDYUT SOUDHA, HYDERABAD - 500 049
INDIA.

2. *S. Chandrasekaram*
S. CHANDRASEKARAM,
MEMBER (ACCOUNTS)
A.P.S.E.B., Vidyut Soudha,
HYDERABAD-500 049.

Schedule A

TECHNICAL LIMITS

[Details under the headings listed in paragraphs 1 and 2 will be provided by the Board and the Dynamic Parameters shall be provided by the Company finalisation of the EPC contract]

1. Board System Parameters

(I) Frequency and voltage fluctuations

- (a) permitted short term frequency excursions
- (b) permitted short term voltage variation
- (c) permitted combined short-term simultaneous frequency excursions and voltage variations

(II) Subsynchronous reactance/resonance

(iii) Short circuit

(iv) Basic insulation levels (BIL)

2. Board Grid Requirements

- (i) Maximum levels of harmonics that the Project may impose on the Grid System
- (ii) Phase voltage unbalance
- (iii) Negative phase sequences
- (iv) Unsystematical faults (C.J. 2)
- (v) Fault clearance time
- (vi) Breaker back-up protection
- (vii) Protection dependability
- (viii) kV line breakers
- (ix) Protective equipment and settings
- (x) Short circuit ratio
- (xi) Automatic voltage regulation system and load frequency control

3. Dynamic Parameters

The Dynamic Parameters are the essential operating characteristics which will define the limits within which a Unit or the Project is required to operate during normal operation.

The Dynamic Parameters of each Unit and the Project will initially be those projected in the EPC Contract. During testing under the EPC

Contract, the Company will establish Dynamic Parameters and it will supply details of these to the Board. Subject to the Dynamic Parameters being adjusted and verified prior to the COD of each Unit and the Project COD, the Dynamic Parameters established by the Company shall replace those projected in the EPC Contract and shall be deemed incorporated into this Schedule.

The Dynamic Parameters shall comprise :

- (i) nominal capacity ;
- (ii) starting conditions ;
- (iii) minimum load;
- (iv) reactive power capability;
- (v) minimum notice to synchronisation;
- (vi) minimum block load on synchronisation;
- (vii) maximum run-up rates and loading rates;
- (viii) normal maximum unloading rates;
- (ix) turbine governor over speed trip;
- (x) voltage control range and
- (xi) generator protection settings.



Schedule B

**ELECTRICITY (SUPPLY) ACT, 1948
(AS AMENDED UP TO ACT NO.50 OF 1991 W.E.F. 15.10.1991)**

Definitions :

- (1) "Authority" means the Central Electricity Authority constituted under Section 3;
- (2) "Board" means State Electricity Board constituted under Section 3;
- (3) "Bulk-licensee" means a licensee who is authorized by his license to supply Electricity to other licensees for distribution by them;
- (3-A) "Competent Government" means the Central Government in respect of a Generating Company wholly or partly owned by it and in all other cases the Government of the State in which the generating station of a Generating Company is located or proposed to be located;
- (4) "Controlled Station" means a generating station designated in the scheme sanctioned under Chapter-V as a controlled station;
- (4-A) "Generating Company" means a Company registered under the Companies Act, 1956 (1 of 1956) and which has among its objects the establishment, operation and maintenance of generating stations;
- (5) "Generating Station" or "station" means any station for generating electricity, including any building and plant (with step-up transformer, switchgear, cables or other appurtenant equipment, if any) used for that purpose and the site thereof, a site intended to be used for a generating station, and any buildings used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulics works, but does not in any case include any sub-station;
- (6) "Licensee" means a person licensed under Part II of the Indian Electricity Act, 1910 (9 of 1910), to supply energy or a person who has obtained sanction under Section 28 of that Act to engage in the business of supplying energy but, the provisions of Section 26 or 26-A of this Act notwithstanding does not include the Board or a Generating Company);

- (7) "main transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch gear and other works and the operating staff thereof;
- (8) "maximum demand" in relation of any period shall, unless otherwise provided in any general or special order to the State Government, mean twice the largest number of kilowatt-hours or kilo-volt-ampere-hours supplied and taken during any consecutive thirty minutes in that period;
- (8-A) "power system" means a system under the control of the Government or any Board or Generating Company or other agency and having one or more -
- (i) Generating station; or
 - (ii) main transmission lines and sub-stations; or
 - (iii) Generating station main transmission lines and sub-stations;
- (9) "Prescribed" means prescribed by rules made under this Act;
- (9-A) "Regional Electricity Board" means any of the Boards as constituted immediately before the commencement of the Electricity Laws (Amendment) Act, 1991, by resolution of the Central Government for ensuring integrated operation of constituent system in the region;
- (9-B) "Regional Load Despatch Centre" means the Centre so designated where the operation of each of the Regional Electricity Grids constituting the country's power system is co-ordinated;
- (10) "Regulations" means regulations made by the Board under Section 79;
- (11) "Reserve Bank" means the Reserve Bank of India;
- (11-A) "sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switch-gear, capacitors, synchronous condensers, structures, cables and other appurtenant equipment and any buildings used for that purpose and the site thereof, a site intended to be used for any such purpose and any buildings used for housing the staff of the sub-station;

- (11-B) "tie-line" means a line for the transfer of electricity between two power systems together with switch-gear and other works necessary to, and used for the control of such line;
- (12) "transmission lines" means all works mentioned in sub-section (7) used wholly or partially for the purposes of distribution;
- (13) "year" means, in relation to the Board, or a generating company, the year commencing on the 1st day of April;
- (14) "year of account" means, in relation to a licensee, his financial year;
- (15) other expressions have the meanings respectively assigned to them in the Indian Electricity Act, 1910 (9 of the 1910).



INDIAN ELECTRICITY ACT, 1910
(AS AMENDED UP TO ACT NO.50 OF 1991 W.E.F. 15.10.1991)

Definitions :

- (a) "appropriate Government" means in relation to any work or electric installations belonging to, or under the control of, the Central Government or in relation to any mines, oil-fields, railways, aerodromes, telegraphs, broadcasting stations and any works of defence, the Central Government, and in any other case, the State Government;
- (b) "area of supply" means the area within which along a licensee is for the time being authorized by this license to supply energy;
- (c) "consumer" means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of licensee, the Government or such other person, as the case may be;
- (d) "daily fine" means a fine for each day on which an offence continues after convictions therefor;
- (e) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;
- (f) "electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy (whether by overhead line or underground cable), together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy and includes any support, cross-arm, stay, strut or safety device erected or set up for that purpose;
- (g) "energy" means electrical energy -
 - (i) generated, transmitted or supplied for any purpose, or
 - (ii) used for any purpose except the transmission of a message;
- (h) "licensee" means any person licensed under Part II to supply energy;
- (i) "main" means any electric supply line through which energy is, or is intended to be, supplied to the public;

- (j) "overhead line" means an electric supply-line which is placed above ground and in the open air but does not include live rails of a traction system;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "public lamp" means prescribed by rules made under this Act;
- (m) "service-line" means any electric supply-line through which energy is, or is intended to be, supplied (I) to a single consumer either from a distributing main or immediately from the supplier's premises, or (II) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main;
- (n) "State Electricity Board" in relation to any State means the State Electricity Board, if any, constituted for the State under Section 5 of the Electricity (Supply) Act, 1948 (54 of 1948), and includes any Board which functions in that State under Sections 6 and 7 of the said Act;
- (o) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway; and
- (p) "works" includes electric supply-line and any building, plant, machinery, apparatus and any other thing of whatever description required to supply energy to the public and to carry into effect the objects of a license or sanction granted under this Act or any other Law for time being in force.

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Schedule C

INDEPENDENT APPRAISER

The Independent Appraiser shall be selected from the following list :

- Arthur Andersen & Company
- Coopers & Lybrand
- Ernst & Young
- KPMG Peat Marwick
- Price Waterhouse LLP

If any or all of the above firms cease to exist at any point of time, other firms may be added by Mutual Agreement.

If any of the above firms is in any capacity providing services to the Parties and their associate/ subsidiary companies (for example, such as consultancy, audit, taxation advice, etc.), such firm will not be considered eligible to act as Independent Appraiser.

If the Independent Appraiser is required to be appointed for any reason other than that specified in paragraph 4 (a) of Schedule G, it shall be appointed by the Parties within fifteen (15) days following the application of either Party and otherwise using the procedure and on the same terms as set out in paragraph 4(a) of Schedule G.

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[Signature]

Schedule D

SCHEDULING, CO-ORDINATION AND DESPATCH PROCEDURES

1. Pre-Commissioning Period

- 1.1 Within one month of the date of signing of this Agreement, the Company shall submit to the Board a detailed monthly schedule of implementation of the Project. This schedule shall conform to the Scheduled Date of Completion of each Unit and shall be periodically updated by the Company to the extent required due to delays, events of Force Majeure, or other unanticipated events requiring changes to such Schedule.
- 1.2 For the period prior to the Commercial Operation of the Unit (or the last Unit, if more than one Unit is constructed), (the "Pre-Commissioning Period") the Company shall submit to the Board monthly status reports on the project. These status reports shall compare the progress on the Project vis-à-vis the implementation schedule provided pursuant to Section 1.1 above. At the Board's request, the Company shall also provide the Board with a reasonable opportunity to meet with personnel of the Company to discuss any such monthly status report.
- 1.3 The Company shall afford the Board the reasonable opportunity to visit the site during regular business hours upon at least twenty-four (24) hours notice to the Company, provided that the representatives of the Board shall abide by all site rules applicable to the Company's and its contractors personnel and shall not interfere with on-going construction activities.
- 1.4 Each party will identify one executive for monitoring the progress of the Project during the Pre-Commissioning Period and for any other co-operation which may be necessary.
- 1.5 The Board will during the Pre-Commissioning Period, provide the Company and the lenders under the Financing Documents with quarterly status reports in reasonable detail on the progress of the design, financing, construction and commissioning of the Inter Connection Facilities and will afford their representatives the reasonable opportunity to visit the Inter Connection Facilities during regular business hours upon at least twenty-four (24) hours notice to the Board, provided that the representatives shall abide by all site rules applicable to the Board's employees and

contractors and shall not interfere with ongoing construction activities.

2. Post-Commissioning Period

2.1 At least sixty days (60) prior to the Scheduled Date of Completion of the first Generating Unit, each Party shall nominate one executive for co-ordination regarding the operation of the Project. The role of these executives would be to jointly :

- (a) Determine the annual plan for Scheduled Outages in accordance with Sections 2.3 to 2.5 below;
- (b) Undertake dispute resolution as per Article 14.1 (a) of this Agreement
- (c) Receipt of bills and verification of the same in accordance with Article 5 of this Agreement;
- (d) Nominate the representatives of each Party to deal with the issues relating to metering in accordance with Article 4 of this Agreement;
- (e) Undertake any other general co-ordination required.

2.2 At least one month prior to the Scheduled Date of Completion, each Party shall nominate one senior executive for dispute resolution as per Article 14.1 (b) of this Agreement.

2.3 The Company shall by March 31 (or at least sixty (60) days prior to the Commercial Operation Date of the first Generating Unit) and each succeeding March 31 thereafter, submit to the Board its proposed schedule of Scheduled Outages for the twelve (12) month period commencing on July 1 through June 30 of the following year or such shorter period from the Commercial Operation Date of the first Generating Unit through June 30 of the following year; provided that the Company will use its reasonable endeavour not to schedule any Scheduled Outages during the months of November to July, unless otherwise agreed by the Board or unless required to comply with the Technical Limits, Prudent Utility Practices, or other requirements of any construction contract for the project or any manufacturer of major components of the Project for maintaining in effect any guarantees with respect to the Project or for achieving the level of Project performance required under this Agreement.

2.4 On or prior to May 1, the Board shall agree to the final schedule of Scheduled Outages submitted by the Company provided that if the Board fails, within the foregoing period, to object to any Scheduled Outage of which it receives notice or fails within such period to advise the Company of a substitute time, the Company may adhere to its schedule of Scheduled Outages. In case the Board proposes any amendments to the Company's schedule of scheduled outages, the Company and the Board shall then endeavour to agree upon a revised schedule of Scheduled Outages within fifteen (15) days.

2.5 If the Board does not accept any one or more of the proposed Scheduled Outages proposed by the Company, the Board shall, by the date referred to in Section 2.4 above advise the Company of a time when the Board determines any such unacceptable Scheduled Outage can be rescheduled and the Company shall reschedule such outage unless (subject to the proviso of Section 2.3 above) (a) such rescheduled outage would begin or end in a different Tariff Year, (b) such rescheduled outage is not in accordance with the Technical Limits, Prudent Utility Practices, or the requirements of any construction contractors for the Project and/or any manufacturer of major components of the Project for maintaining in effect any manufacturer's guarantees with respect to the Project or for achieving the levels of Project performance, operating procedures and parameters required under this Agreement or (c) the Board otherwise agrees.

2.6 The Board may, upon sixty (60) days notice prior to any Scheduled Outage, request that such Scheduled Outage be rescheduled giving the reasons for such request and the Company shall, unless it has reasonable grounds for objection, comply with such requests consistent with the proviso under Section 2.5 above.

2.7 Availability , Testing and Monitoring

2.7.1. The Board may from time to time after the Commercial Operation Date of the last Unit (but not more frequently than once every twelve (12) months for each Unit) require the Company to demonstrate the Project's reliable capacity in accordance with the procedures for such testing followed in the original testing of the Project as per Schedule F. Such test shall be conducted upon not less than seven (7) days notice and not during any period when the Unit to be tested is due to undergo Scheduled Outage or during any period of Force Majeure. The Board shall be

entitled to be present and to receive and verify the results of such test. If such test fails to demonstrate that the Company is capable of reliably achieving as at the Project COD the Installed Capacity, the Company shall not be entitled to issue an Availability Declaration in excess of the demonstrated level unless and until it has conducted a re-test which demonstrates the reliable capacity and the Installed Capacity shall be reduced until a subsequent re-test conducted in accordance with this paragraph demonstrates a higher Installed Capacity.

2.7.2 The Board may from time to time issue a notice to the Company upon one (1) hour's notice requiring it to demonstrate over a limited period (not exceeding ten (10) hours) the Project's capability to achieve a specified level of capacity which is equal to - the Declared Capacity in the Company's then-existing Availability Declaration. In response to such a notice, the Company shall either generate energy equivalent to the level of capacity specified in the Board's notice or promptly redeclare its Declared Capacity in a further availability notice which is less than the specified level of capacity. If the Company fails to so generate electricity or redeclare its Declared Capacity, the Company shall be deemed not to have complied with the Board's request and shall, save as otherwise provided herein, be treated as a Misdeclaration of Availability thereby incurring the penalties associated with the same.

2.7.3 If the Project fails repeatedly over a sustained period of six (6) or more months to meet the Prescribed Parameters on the basis of tripping of protective devices on the Boards side of the Inter Connection Point directly caused by material non-performance of the Project, or to deliver Availability Declarations (accounting for any Misdeclaration of Availability) equivalent to at least 90% of the Installed Capacity claimed by the Project during any month (other than for reasons of Scheduled Outages, identified causes of power reductions, Force Majeure, or an act or omission of the Board), the Board may request that the Company conduct reasonable performance tests to identify the cause of such reported failures. The Board may request that such test be conducted (at the Company's expense) not more frequently than once per year.

3. Despatch Procedures and Availability Declarations

- 3.1 Despatch of the Project will be controlled by the appropriate Load Despatch Centre of the Board or the Regional Electricity Board. The Board will identify and notify the Company regarding the appropriate body and the names of the designated officers for the despatch of the Project at least one month prior to the Scheduled Date of Completion of the first Unit. Within one week of receipt of such notification, the Company shall notify the names of its designated officers to receive the despatch.
- 3.2 The nominated executives will despatch the Project in accordance with Section 2.4 above, this schedule and the merit order operation of the grid. A Despatch Instruction can either be conveyed orally or in writing (by fax or otherwise) provided that each oral despatch instruction will have to be confirmed in writing within eight (8) hours. The receipt of any Despatch Instruction will be acknowledged by the designated officers of the Company within one hour of receipt of the same.
- 3.3 **Definitions.** For the purpose of this Schedule:
- (i) "Availability Declaration" means the declaration made by the Company regarding the Project's capacity that is available for generating power, provided that in no case shall the Declared Capacity in any Availability Declaration exceed the Installed Capacity or such lesser amount of capacity as shall be demonstrated by the Company as per Section 2.7.
 - (ii) "Availability Failure Period" has the meaning given in the definition of "Misdeclaration of Availability" in Section 3.3(vi)
 - (iii) "Cumulative Available Energy" means the sum, over a Tariff Year, of (A) for all Settlement Periods during which no Force Majeure event has been declared by either Party, the sum of the Declared Capacities for each such Settlement Periods, expressed in kWhr, plus (B) for all settlement periods during which a Force Majeure event (other than a non-political Event affecting the Company) has been declared by the affected party, the sum of the average Declared Capacity determined for each period in accordance with Article 10.5(c) or (d), whichever is applicable plus (C) for non delivery of fuel to the Project arising from an event of Force Majeure under Article 10.1(i)(2) affecting the fuel supplier or transporter for which the fuel supplier or transporter is excused under the fuel supply agreement(s), the sum of the average Declared

Capacity determined for each period in accordance with Article 10.5(e) less

any penalties for Mis-declaration of Availability.

- (iv) "Day" shall mean the twenty-four (24) hour period beginning at 00.00 hours (Indian Standard Time) by reference to which the Board schedules generating plants;
- (v) "Declared Capacity" for any Settlement Period shall mean the maximum output the Project is capable of generating in that Settlement Period at the generator terminals in MW at an ambient temperature of 29 degrees centigrade and a Grid System frequency of 50 Hz.
- (vi) "Misdeclaration of Availability" means an event in which the Board has given the Company a Despatch Instruction to increase generation over the amount then being generated by the Company, which amount of excess generation is within the then-effective Availability Declaration of the Company and conforms to the Ramp-up Rate, and: the Company fails to deliver during the next Settlement Period the energy corresponding to the despatched capacity (subject to a tolerance of 2.5 % of the Declared Capacity) as requested in such Despatch Instruction, except where such failure is caused by a Board Default, Emergency, the condition of the Grid System or any event of Force Majeure (in which case the Company shall be deemed to have complied with such Despatch Instruction). Provided that, if at any time the Company becomes aware that it is or would be unable to comply with (or it would not be in accordance with Prudent Utility Practices to comply with) any Despatch Instructions as a result of any requirement for unscheduled maintenance or repair of any equipment, then the Company shall forthwith amend the then effective Availability Declaration by telephone (to be confirmed in writing within one hour) and, so long as such Availability Declaration had been issued in good faith, no Misdeclaration of Availability shall be treated as having occurred as a result of such an amendment and such Availability Declaration (as so amended) shall thereafter apply for all purposes hereof.

In the event of a Misdeclaration of Availability by the Company;

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- (a) The Declared Capacity shall be reduced to the capacity corresponding to the actual level of Net Electrical Energy supplied during the first settlement period adjusted to take into account Auxillary Consumption following the Company's receipt of the Despatch Instruction in which the Company fails to comply with such Despatch Instruction, which reduction shall continue until the first Settlement Period in which the Company delivers capacity corresponding to the Net Electrical Energy adjusted to take into account Auxillary Consumption delivered by the Company in such Settlement Period which is equal to or greater than the level of despatched capacity specified in (i) the Board's then applicable Despatch Instruction or (ii) any revised Availability Declaration issued by the Company (the "Availability Failure Period") in accordance with Schedule D, and
- (b) A penalty shall be calculated, expressed in kWh (the Mis-declaration penalty) as follows : The number of Settlement Periods from the commencement of the Availability Failure Period until (x) the last preceding Settlement Period during which the Project delivered Net Electrical Energy adjusted to take into account Auxillary Consumption corresponding to capacity which is equal to or greater than the level specified in the Despatch Instruction or (y) 720 hours, whichever is less shall be multiplied by an amount (in kW) equal to 200% of the difference between the Declared Capacity specified in the applicable Availability Declaration and the level of capacity actually supplied in the first Settlement Period of the Availability Failure Period as per (a) above.
- (vii) "Prescribed Time" shall mean the latest time prescribed by regulation of the delivery of Availability Declarations or, if no time is prescribed, 10.00 AM on the day prior to the relevant Day or such other time as the Parties may agree;
- (viii) "Scheduled Outage" means a planned interruption of the generating capability of the Project that has been scheduled and allowed by the Board in accordance with this Schedule D and is for inspection, testing, preventive

maintenance, corrective maintenance, repairs, replacement or improvement.

- (ix) "Settlement Period" shall mean a sixty minute period beginning on the hour.

3.4 Despatch Rights

- (i) In despatching the Project, the Company shall follow the directives of the Board to back down generation and to resume generation of Net Electrical Energy in each case consistent with the Project's Technical Limits, Prudent Utility Practices, the recommendations of the manufacturers of major equipment, this Agreement and other arrangements between the Company and the Board regarding communication and co-ordination of operations (each such directive being called a "Despatch Instruction"). (The Board shall not be required to reimburse the Company for any incremental costs or damages in respect of Despatch Instructions issued in compliance with the foregoing and with the following provisions.)

- (ii) No Despatch Instruction shall require the Company to:

- (a) Operate the Project at a gross generating capacity below 60% of the Project's Installed Capacity or such lower Declared Capacity for any period of time except in an Emergency;

- (iii) The aggregate duration of back down of generation pursuant to Despatch Instructions (including ramping time) shall not exceed twelve hundred (1200) hours in any Tariff Year.

- (iv) The number of Despatch Instructions shall not exceed one (1) per day. However if the Company re-declares its Declared Capacity, the Board is entitled to one more Despatch Instruction.

- (v) Any Despatch Instruction issued by the Board in violation of the Technical Limits specified in Schedule A shall not constitute a Despatch Instruction for the purpose of this Agreement.

3.5 Availability Declarations.

- (i) **Generally:** As soon as practicable before the Commercial Operation of the Unit (or of the first Unit, if there is more

than one Unit) and from time to time thereafter, but not later than the Prescribed Time each day, the Company shall deliver to the Board an Availability Declaration containing the following information:

- (a) The date and time that such Availability Declaration is issued;
 - (b) The period to which such Availability Declaration relates; and
 - (c) The Declared Capacity of the Project and expected temperature for each of the Settlement Periods throughout the relevant period (and where such Declared Capacity changes, the time at which any change is expected to take effect).
- (ii) **Changes.** The Company shall take reasonable care in preparing Availability Declarations with a view toward declaring accurately the Company's expectations regarding the performance of the Project and each Unit in accordance with this Agreement. If the Company becomes aware of any circumstance (other than a change in ambient temperature) that would change the Declared Capacity for any Settlement Period, the Company shall promptly issue a revised Availability Declaration. The Company shall have the right to change any Availability Declaration at least twenty-four (24) hours prior to the time when such change is to become effective and at any other time expressly permitted under this Agreement. A Misdeclaration of Availability shall result in a change in the Availability Declaration in the manner, and for the purpose, specified in the definition of "Misdeclaration of Availability".
- (iii) **Declared Capacity of Zero.** A declaration in an Availability Declaration increasing the Declared Capacity of a Unit from zero shall mean that such Unit is capable of being synchronised to the Board's transmission system at the time that the increase is stated to be effective (or if no such time is stated, then immediately) assuming that Despatch Instructions are issued in sufficient time to allow Synchronisation at such time in accordance with the Technical Limits. Any increase in the Declared Capacity of a Unit above zero must reflect the Ramp-up Rate of such Unit.

- (iv) **Board-Directed Shutdowns.** During any period of Board-directed shutdown or backing down (other than those requested by the Company) or any reduction in generating capacity resulting from a condition of the Grid System, the Company shall state its Declared Capacity as the amount of available capacity at the generator terminals, measured in MW, that the Company expects could be delivered to the Board if the Project were fully loaded.
- (v) **Force Majeure Periods.** In the event of any Force Majeure event which prevents the Project in whole or in part from generating electrical energy in accordance with Article 10 of this Agreement, the Company shall promptly issue revised Availability Declarations which shall state the Declared Capacity as the amount of electrical capacity measured at the generator terminals, if any, that the Company expects can be delivered, the precise nature of the Force Majeure (including whether it is a Political Force Majeure Event or other Force Majeure) and the expected duration of the effects of such Force Majeure on Declared Capacity; provided that the Board shall have such rights to require verification of the event and its contribution to the revised available capacity at the generator terminals, measured in MW, as are provided generally with respect to Force Majeure events under Article 10 of this Agreement.



Schedule E

PERMITS

[A list of all Permits required for the financing, construction, completion, ownership and operation of the Project shall be prepared by the Company and submitted to the Board whereupon such list shall be deemed incorporated into this Schedule by mutual consultation]



Schedule F
TEST PROCEDURES

[Subject to final review]

The Company shall conduct acceptance and characteristics tests as described below. Provisional performance acceptance test for the combustion turbines (open cycle) as well as the final performance acceptance test for the combined cycle Project shall be conducted as part of the construction contract.

The Company shall give the Board at least fifteen (15) days prior written notice of the date on which any of these tests will commence. The Company and the Board shall designate representatives to witness and observe each test, and to ensure that the tests are being performed in accordance with the agreed test procedures. The Generating Unit shall be operated within the manufacturer's specified limits and in accordance with Prudent Utility Practices for the duration of the test.

All required instrumentation shall be properly calibrated and installed to predefined international standards.

1. **Performance Acceptance Test for Combustion Turbine:** shall be the basis for demonstrating the gross generating capacity of each combustion turbine.

- 1.1 **Test Procedure :** The tests shall be conducted in accordance with standard international test codes and practices and include applicable sections of various codes as on date of signing of the construction contract. The codes to be used in determining gross generation capacity as required by the EPC Contract

- 1.2 **Site Reference Conditions :** The gross generation capacity is related to the following conditions:

Fuel	:	
Ambient Temperature (Dry bulb)	:	29°C
Absolute Atmospheric Pressure	:	1013 mbar
GT Intake Pressure Loss	:	As per EPC Contract
GT Exhaust Pressure Loss	:	As per EPC Contract
Power Factors	:	As per EPC Contract
Frequency	:	50 Hz

Load Factor : Base Load
Humidity : 70 %

Note: Correction curves from the above parameters shall be as per the EPC Contract and shall be provided prior to testing.

2. **Performance Acceptance Test for Combined Cycle Project** : shall be the basis for establishing the demonstrated gross generation capacity of the combined cycle of the Project of at least 90% of the gross generation capacity initially guaranteed under the EPC Contract for the purpose of (i) the provisional performance acceptance of the Project by the Company from the construction contractor for the Project and (ii) the final performance acceptance of the Project by the Company from the construction contractor for the Project.

2.1 **Test Procedure**: The tests shall be conducted in accordance with standard international test codes and practices and include applicable sections of various codes as on date of signing of the construction contract. The codes to be used in determining gross generation capacity will be as required by the EPC Contract :

2.2 **Site Reference Conditions** : The gross generation capacity is related to the following conditions:

Fuel	:	
Ambient Temperature (Dry bulb)	:	29 ⁰ C
Relative Air Humidity	:	70 %
Absolute Atmospheric Pressure	:	As per EPC Contract
GT Intake Pressure Loss	:	As per EPC Contract
Exhaust Pressure Loss for combined cycle	:	As per EPC Contract
Cooling Water Inlet Temperature	:	As per EPC Contract
Power Factors	:	As per EPC Contract
Frequency	:	50 Hz
Load Factor	:	Base Load
Water Injection	:	As per EPC Contract

Note: Correction curves from the above parameters shall be as per the EPC Contract and shall be provided prior to testing.

3. **Electrical System Characteristic Tests** : shall demonstrate the Project's ability to operate within the limits of the electrical system

characteristics as described in Schedule A. Electrical System Characteristics shall be deemed to be achieved in case of :

- (a) Voltage, provided the Project operates within the voltage levels described in Schedule A for the duration of the acceptance test. If during the test, voltage tests cannot be performed due to the Board's constraints, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers shall be used to establish the ability of the Project to operate within the specified voltage limits.
 - (b) Grid Frequency, provided the Project operates within the frequency level described in Schedule A for the duration of the acceptance test.
 - (c) Power Factor, provided the Project operates within the power factor range described in Schedule A for the duration of the acceptance test. If during the acceptance test, power factor tests cannot be performed due to the Board's constraints, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers shall be used to establish the ability of the Project to operate within the specified voltage limits.
4. **Project Characteristics Tests** : Not later than one hundred and eighty (180) days after Project COD, the Company shall conduct project characteristics tests. Such tests may, at the Company's option, be conducted, as applicable, concurrently with the acceptance tests. The project characteristics tests shall be conducted as described for load changes so as to check the open cycle and combined cycle ramp rates to be consistent with the Technical Limits.
5. **Emission Level**: Emission levels shall comply with applicable Law and Permits.
6. **Sound Pressure Level** : Emission levels shall comply with applicable Law and Permits.
7. **Liquid Effluent** : The liquid effluents shall be treated in accordance with applicable Law and Permits.
8. **Test results** :
- 8.1 Within five (5) days after the conclusion of any test, the Company shall submit a written report to the Board which shall contain :

- (i) sufficient data to demonstrate the level of performance during such test;
- (ii) if a Generating Unit has passed the performance acceptance test, the date and time for commencement of Commercial Operation for such Generating Unit for the purposes of this Agreement.

8.2 If the Board disputes any or all of the results contained in the report provided by the Company pursuant to paragraph 8.1 above, then the matter shall be referred to the Independent Engineer.

9. **Correction Curve List for Open Cycle Testing : As per the EPC Contract**

10. **Correction Curve List for Combined Cycle Testing : As per the EPC Contract**



Schedule G

BUYOUT PROCEDURE AND CALCULATION

1. Introduction

This Schedule outlines:

- (i) the procedures to be adopted in the event that a Buy-out Notice is issued by the Company or the Board as described in Article 12 pursuant to this Agreement; and
- (ii) the methodology to be followed for calculating the purchase price payable under a Buy-out Notice ("Buy-out Price").

The provisions of this Schedule G shall survive expiry or termination of this Agreement.

2. Definitions

For the purposes of this Schedule G, the following terms shall have the following meanings:

"Buy-out" means a purchase by the Board of the Project pursuant to the issue of a Buy-out Notice.

"Completion" means the receipt by the Company of the Buy-out Price in immediately available funds and the transfer of the Project to the Board.

"Debt" : means any loan, debenture or other facility contemplated by the Financing Documents which has been raised or received by the Company, but only to the extent that the proceeds of such capital contribution are exclusively utilised (or expected to be utilised) on the Project."

"Equity" : means the amount contributed towards the paid-up share capital of the Company, but only to the extent that the proceeds of such capital contribution are exclusively utilised (or expected to be utilised) on the Project.

"Statement of Practice" means the Statement of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors.

"Terminal Value" or **"TV"** shall equal 50% of the depreciated replacement cost (**"Depreciated Replacement Cost"** or **"DRC"**) which shall assume that the useful life of the Project remaining at the time TV

falls to be calculated is as determined by the Independent Appraiser having regard to the condition and relative obsolescence of the Project and which shall be the sum of:

- (i) the value of the Project's right, title and interest in land, buildings and fixtures calculated on the Depreciated Replacement Cost basis, as detailed in the Statement of Practice; and
- (ii) the value of all plant, machinery and equipment owned by the Project calculated by reference to the net current replacement cost thereof, as detailed in the Valuation of Plant and Machinery Assets practices set out in the Statement of Practice.

"Transfer Date" means the date of Completion fixed pursuant to paragraph 4 (d) below..

3. Scope of the Sale

- (a) The Board shall purchase all the assets of the Company required to operate the Project including land, buildings, plant and equipment, fuel stockpiles, spare parts, records, drawings, operating manuals and instructions and all other consumables, and the Company shall use its reasonable endeavours to deliver them in good operating condition, subject only to reasonable wear and tear.
- (b) The Board shall not purchase any cash in hand and or in bank accounts, trade and book debts nor receivables accruing to the Company prior to the Transfer Date unless due consideration for these can be mutually agreed between the Parties.
- (c) All other assets existing at the Transfer Date that are not included in clauses (a) and (b) above shall be for the benefit of the Company including the proceeds of any insurance or warranty claims made prior to the Transfer Date, but, excluding the proceeds of any insurance or warranty claims relating to the Buyout Event which insurance or warranty claims shall be to the account of the Board.
- (d) The Company shall fully discharge and shall indemnify the Board against all liabilities and obligations of the Company that have accrued prior to the Transfer Date but excluding any such liabilities arising as a result of any Political Force Majeure Event.

- (e) No warranties as to the condition of the property and assets of the Project shall be given except that the Company agrees to assign to the Board the benefit of any warranties from third parties existing at the Transfer Date.
- (f) No Debt or other liability relating to the Project and incurred before the Transfer Date will be assumed by the Board unless it chooses to and can reach agreement of the same with the Company and, if necessary, the Lenders or other creditors (where such agreement is necessary in order to give legal effect to the assumption thereof by the Board), subject to clause (g) below. The Buy-out Price shall be paid net of any such liabilities assumed by the Board.
- (g) The Company shall, if so required by the Board, procure the novation or assignment to the Board of any relevant fuel contract or EPC Contract relating to the Project on such terms as the Board may reasonable require and shall ensure that such contracts shall contain terms that expressly permit such novation or assignment.
- (h) The Company shall transfer the assets defined in paragraphs 3(a) and 3(b) of this Schedule G free and clear of all mortgages, charges, liens and encumbrances (together "Encumbrances") whatsoever. Any payments by the Board under this Schedule shall only be made against the release of all Encumbrances.

4. Procedure for Determination of the Buy-out Price

- (a) Within fifteen (15) days following issue of a Buy-out Notice, an Independent Appraiser shall be mutually appointed in good faith by the Company and the Board and shall begin work in order to carry out a determination of the Buy-out Price (the "Valuation"). Such Independent Appraiser shall be provided with all necessary data and information by each Party in order to carry out the Valuation. Failing agreement of a mutually acceptable Independent Appraiser within ten (10) days of the issue of the Buy-out Notice, an Independent Appraiser shall be nominated by the President or Acting President for the time being of the Institute of Chartered Accountants of England. However, in the event that the Debt under the Financing Documents has been repaid and the majority of the Company's shares are held by Indian domestic investors, the nomination of the Independent

Appraiser in the case of disagreement shall be the President of the Institute of the Chartered Accountants of India.

- (b) The Independent Appraiser shall prepare the Valuation in accordance with the methodology described in paragraphs 5 and 6 of this Schedule G. Throughout the process, the Independent Appraiser shall consult with both Parties, update them of progress and analyse any commentary they may have on the Valuation.
- (c) The Independent Appraiser shall complete the Valuation within forty-five (45) days of the issue of the Buy-out Notice and deliver a copy to both Parties.
- (d) The Transfer Date shall occur within fifteen (15) days after receipt of the Valuation by both Parties at a time and place that is mutually agreeable to both Parties (or failing agreement, selected by the Party serving the Buyout Notice, acting reasonably). The Board shall pay the Buy-out Price to the Company in immediately available funds, and simultaneously therewith, the Company shall transfer and assign to the Board all of its right, title and interest in the Project except to the extent excluded pursuant to paragraph 3 of this Schedule G. All payments shall be made in Rupees.
- (e) Following Completion, the Board and the Company may each submit a "Post Closing Adjustment" to the other Party in line with normal industry practice for asset acquisitions to reflect differences between the assumptions used in the Valuation and the actual asset position on the Transfer Date, for example, a difference in inventory levels. Any dispute over the Post Closing Adjustment will be referred to the Independent Appraiser, whose sole judgement will be final and binding and shall not be open to dispute or arbitration.
- (f) The contract of the Independent Appraiser shall require him to act impartially between the parties.

5. Calculation of the Components of the Buy-out Price

- (a) The general guidelines for determining the Buy-out Price shall be as follows:
 - (i) The Buy-out Price will be stated in the Valuation in Rupees and shall be paid in Rupees. The Independent Appraiser shall ascertain the portion of the Buy-out Price which needs to be converted into foreign currency to repay any outstanding Foreign Debt and/or any Equity ("Foreign

Equity") originally subscribed in any currency other than Indian Rupees and such portion will be calculated in such foreign currency and converted into Rupees at the Current Rate of Exchange (Actual) prevailing on the date of payment to the Company. The Board shall assist the Company in receiving any clearance required from any Government Agency for converting and remitting this amount. Any late payment shall bear interest at a rate equal to the weighted average rate of interest applicable to the Debt of the Company.

- (ii) The Valuation will be conducted on the following assumptions:
- (a) this Agreement will continue in full force and effect until the end of its full fifteen year term,
 - (b) all other contracts in connection with the Project will continue in full force and effect until their natural expiry (which assumption the Independent Appraiser can depart from for good reason, especially if any contract is not novated or assigned to the Board),
 - (c) the Board meets its future payment obligations under this Agreement and that there is an end to any events of Force Majeure that led directly to the issue of the Buy-out Notice,
 - (d) the Project performs in all respects as it did historically, adjusting for expected deterioration of the technical performance of the Project over the term of this Agreement. If the Independent Appraiser deviates from the assumption that future performance will mirror past performance, an explanation of all such deviations shall be provided to the Parties.

Provided that no account will be taken of any loss or damage suffered by the Project remaining unrepaired as at the date of the Buy-Out Notice, insofar as such loss or damage is directly attributable to a Political Force Majeure Event or a Board Default.

- (iii) Any reduction to the value of the assets of the Project due to a Political Force Majeure Event, a material breach by the Board of its obligations hereunder or a Board Default

shall not be for the account of the Company and shall not reduce the Buy-out Price from that which would have pertained if such Political Force Majeure Event, material breach or Board Default had not occurred.

- (b) The discounted cash flow valuation ("DCFV") shall be an estimate of the net present value of the expected cash flows accruing to the Company (after all debt service and all other Project costs and expenses) as a result of operating the Project over the remainder of the term of this Agreement (as if it were not terminated until its expiry at the end of fifteen years). The DCFV shall be carried out in line with normal industry practice, following the guidelines below:

- (i) Annual cash flow ("ACF") projections in Rupees shall be prepared on an after-tax basis according to the following formula:

$$ACF(i) = Rev(i) - Opex(i) - Capex(i) - Debt(i) - dNWC(i)$$

where, for the calendar year i:

Rev(i) = All revenues determined under this Agreement as per the Capacity Charge payments based on Declared Capacity on a historical basis as determined by the Independent Appraiser.

Opex(i) = Operating and Maintenance Expenses of the Project including all interest and fees on borrowings except that any expenses required as a result of Political Force Majeure Events, material breaches by the Board of its obligations hereunder shall not be included in Opex.

Capex(i) = Any capital expenditure not already included in Opex, including the estimated cost of repairing any defect or physical loss or damage to the Project, except that any capital expenditure required as a result of Political Force Majeure Events,

material breaches by the Board of its obligations hereunder shall not be included in Capex.

Debt(i) = All principal and interest repayments pursuant to the Capital Cost of the Project, and any reduction or increase in any loans taken for the purpose of working capital, increases in such being treated as a negative number.

dNWC(i) = Any increase or decrease in net working capital required each year. Reductions in net working capital shall be treated as negative. The net working capital shall be the sum of inventories and trade receivables minus payables.

- (ii) ACF(i)s should be considered to occur on average at the middle of each year.
- (iii) Inflation and exchange rate movements should be applied to the components of the forecast where appropriate. Any exchange rate forecasts should be based on purchasing power parity, i.e. forecast movements in exchange rates will be determined by forecasts of the differential inflation rates in the respective countries.
- (iv) The Independent Appraiser will have sole regard to the future operation of the Project considering all factors that are likely to affect it, including but not limited to the following:
 - (a) net availability and Plant Load Factors for the calculation of the Tariff should be based on historical performance unless there is a reason to believe that this is not a reliable indicator of future performance;
 - (b) plant heat rates should also reflect historical performance of the Project but should also take into account future heat rate degradation of the Project; and

(c) operating and maintenance costs should be based on Prudent Utility Practices and should reflect historical performance levels as well as any factors, which in the judgement of the Independent Appraiser are likely to affect future cost levels.

(v) The discount rate will be a nominal discount rate (i.e. including inflation) and will be determined by the Independent Appraiser to be the weighted average cost of capital of the Company based on the cost of equity of electrical generating companies that are publicly quoted in India but adjusted to take into account the location and size of the Project, the fact that it may be a private company without a diversified portfolio of assets, the length of operating history, the predictability of the cash flows and their limited growth potential and any other factors that the Independent Appraiser judges to be appropriate, weighted by the quantity of Equity as per the Financing Documents. The real discount rate to which inflation shall be added to obtain the Nominal Discount Rate, shall not in any event be less than 11% per annum or more than 15% per annum.

(vi) The DCFV must be determined by the following formula:

DCFV = Summation of $ACF(i)/(1+NDR/100)^{(i-1)}$ over the remaining term of this Agreement.

NDR = the Nominal Discount Rate,

ACF(i) = the Annual Cash Flow for calendar year i;

(d) The "Total Debt Amount" shall be stated in Rupees and shall equal all outstanding principal repayments of Debt of the Company pursuant to the Financing Documents plus any working capital loans (which shall be only to the extent of the market value of current assets less current liabilities as assumed in the Valuation) and any accrued interest and financing fees as at the Transfer Date.

(e) The "Transfer Taxes" shall equal all stamp and additional stamp duties and any other taxes (including any sales or value added taxes but not capital gains tax or income tax) and any registration

fees that become payable by the Company as a result of the purchase of the Project by the Board.

- (f) The "Transfer Cost" shall equal all reasonable costs and liabilities of the Company which are a result of the purchase of the Project by the Board, including without limitation, the fees and out-of-pocket expenses of the Independent Appraiser, any termination payments, compensation, costs, expenditure or novation fees on contracts in connection with the Project whose terms are reasonable and customary for private power projects such as the Project or in connection with the project documents, specifically approved by the Board, and capital gains taxes and income taxes but excluding Transfer Taxes as defined in paragraph (e) above.

6. The Buy-out Price

A. Prior to Project COD

Prior to Project COD, for all Buyout Events other than those arising due to a Company Default, the "Buyout Price" will be an amount equal to the sum of (a) all outstanding Debt excluding any outstanding Debt arising due to payment defaults by the Company to the lenders or breach of other obligations of the Company to the lenders under the Financing Documents (b) the Equity invested in the Project under any shareholder/subsorption agreement and (c) all amounts due and payable, but not paid to the EPC contractor, equipment supplier, operators or any other party in respect of the right, title, right of use, occupation, or access or easement with respect to the Project, supplies made, work done or services rendered in relation to the Project for which no drawal of Debt or Equity has taken place and (d) the percentage of Transfer Taxes and Transfer Costs which would have been applicable to such Buyout Event under paragraph B below after Project COD. Provided that in case of a Buy-out Event due to a Board Default an additional amount equal to an annual return of 12% applied to the Equity invested shall be added to such Buy-out price.

Prior to Project COD, if the Buyout Event is due to a Company Default, then the "Buyout Price" will be an amount equal to the sum of all outstanding Debt excluding any outstanding Debt arising due to payment defaults by the Company to the lenders or breach of other obligations of the Company to the lenders under the Financing Documents plus any Transfer Taxes in excess of 5.5% of the Buyout Price.

B. After Project COD

The Buy-out Price shall equal the sum of the following elements, adjusted if appropriate under paragraph 3 (f) of this Schedule G:

- (a) A times the DCFV;
- (b) B times the Total Debt Amount;
- (c) C times the Transfer Taxes; and
- (d) D times the Transfer Cost.

where A, B, C, and D are determined depending on the reason for termination as shown in the table below. The note to the table should also be taken into account when calculating the relevant variable.

Reason for Termination	A DCFV	B Total Debt Amount	C Transfe r taxes	D Transf er costs
Board purchase option following a Company Default	0 %	100 %	see Note	0 %
Company sale option or the Board purchase option following a Political Force Majeure Event referred to in Article 10.1 (l) (2) or Company sale option following a Board Default.	100 %	100 %	100 %	100 %
Company sale option or the Board purchase option following a Political Force Majeure Event other than that referred to in Article 10.1 (l) (2).	75 %	100 %	100 %	75 %
Board purchase option or Company sale option following a Non-political Force Majeure Event affecting the Board or Force Majeure Event affecting Fuel supplier or transporter described in Article 10.5 (e)	75 %	100 %	100 %	75 %

Note: In the event termination is a result of a Company Default, the Board shall pay all Transfer Taxes in excess of 5.5% of the Buy-out Price.

Schedule H

FORMAT FOR MONTHLY BILLS

[The format for the monthly bills will be supplied by the Company to the Board prior to Financial Closing, whereupon such format shall be deemed to be incorporated in this Schedule by mutual agreement]



Schedule I

FUEL SUPPLY COMMITTEE

The following procedures shall be followed by the Board and the Company in co-ordinating the procurement of Fuel:

1. The Board and the Company shall constitute a committee at least thirty (30) days after the issuance of the Fuel Linkage prior to the Financial Closing to co-ordinate procedures regarding the procurement of Fuel and other matters related to Fuel and shall be referred to as "Fuel Supply Committee or FSC".
2. The Fuel Supply Committee shall be comprised of five members, of which two shall be nominated by the Company, two shall be nominated by the Board and one shall be an independent expert qualified and experienced in regard to global Fuel markets mutually agreed to by the Parties or failing agreement, appointed by the President from time to time of the International Chamber of Commerce's International Centre for Expertise upon the application of either Party. The Board and the Company shall each bear 50% of the reasonable costs and expenses of such independent expert. Each Party that nominates a member of the Fuel Supply Committee may replace its nominee on such committee upon notice to the other members of the Fuel Supply Committee. The Chairman of the Fuel Supply Committee shall be one of the members nominated by the Board. The Fuel Supply Committee shall act by unanimous agreement except as otherwise unanimously agreed or provided herein. The Committee shall meet at least once per year unless the Company and the Board otherwise agree.
3. Unless otherwise determined by the Fuel Supply Committee, the Company shall, to the extent reasonably practicable, procure the Fuel requirements of the Company on the basis of competitive bidding pursuant to tender documents which shall be prepared by the Company and shall be subject to review and approval by the Fuel Supply Committee. The Fuel Supply Committee shall review the bids received by the Company pursuant to the foregoing tender. Following such review, the Fuel Supply Committee shall award the bid based upon consideration of the cost of Fuel and the reliability, financial strength and the capabilities of the proposed Fuel supplier(s). The Fuel Supply Committee shall, subject to paragraph 4 below, be required to approve any Fuel Supply Agreements entered into with any Fuel supplier(s) and any material amendments to such agreements.

4. If the Fuel Supply Committee fails to reach unanimous agreement in respect of any matter falling to be decided by it hereunder, then such matter may be determined in accordance with Article 14. Notwithstanding any provision hereof to the contrary, the Company shall be entitled at any time to enter into any Fuel Supply Agreement without the consent or approval of the Fuel Supply Committee if the Company to the reasonable satisfaction of the Fuel Supply Committee projects that it will require the Fuel to be supplied pursuant to such Fuel Supply Agreement during the next succeeding thirty (30) days and the terms and conditions applicable to such Fuel Supply Agreement are fair and reasonable. Provided that the duration of such Fuel Supply Agreement shall be limited to a maximum term of three (3) months, unless otherwise required due to market conditions.
5. To the extent required by the Fuel Supply Committee, any Fuel Supply Agreements entered into by the Company shall provide that the Company shall have the right to reduce the quantities taken under such agreements or terminate such agreements upon notice to the Fuel supplier(s). The Company shall not be required to exercise any such right unless the Board has consented to the payment of any damages or other amounts to the Fuel suppliers in respect of such reduction or termination.
6. The Fuel Supply Committee shall periodically review the reasonableness of the Fuel pricing under the existing Fuel Supply Agreements in light of the availability and feasibility of using alternate Fuel supplies including, inter alia (a) domestic Fuel supplies which might become available at a lower Delivered Cost to the Project or (b) short-term spot market Fuel supplies. If permitted under the relevant Fuel Supply Agreements and the Financing Documents, the Fuel Supply Committee may require the Company to utilise such alternative Fuel supplies to meet all or part of the Fuel requirements of the Project if it determines such use to be feasible and cost effective (taking into account any minimum Fuel offtake charges and other penalties, liquidated damages and other costs of changing the Fuel supplier) subject as provided in paragraph 4 above. Provided that the duration of such Fuel Supply Agreement shall be limited to a maximum term of three (3) months, unless otherwise required due to market conditions. ✓
7. The Company shall provide the Fuel Supply Committee members with all material documents, notices, amendments and modifications of Fuel Supply Agreements and other matters. ✓

8. The Fuel Supply Committee may at any time during the term of this Agreement, mutually agree to a change in the Fuel used for this Project and accordingly, amend, if required and in conformity with the GOI guidelines the parameters used for the calculation of the Energy Charge.
9. In case of any interruption in supply or transportation of fuel due to an event of Force Majeure, the Company shall be obligated to use all reasonable efforts to obtain alternate Fuel including obtaining any permits relating thereto, with the reasonable assistance of the Board, and any Fuel Supply Agreements pertaining thereto shall be provided as soon as practicable (subject to paragraph 4, hereof).



SCHEDULE J

FORMAT OF THE "GUARANTEE OF THE STATE OF ANDHRA PRADESH"

This GUARANTEE is made at Hyderabad on the day of 1997 by the GOVERNOR OF ANDHRA PRADESH on behalf of THE STATE OF ANDHRA PRADESH (herein after referred as "the Guarantor")

In consideration of a company organised and existing under the laws of India (the "Company") undertaking to develop, procure, finance for, construct, own operate and maintain a based electric power generating facility of MW capacity at in the State of Andhra Pradesh, INDIA (hereinafter referred to as the "Project") and to make sales of capacity and net electrical output from the Project to Andhra Pradesh State Electricity Board (hereinafter referred to as "APSEB") under a Power Purchase Agreement (hereinafter referred to as the "PPA") dated as the same may be amended, supplemented or modified from time to time and made between the Company and the APSEB, and in order to induce financial institutions to finance the project, the Guarantor hereby covenants and agrees as follows:

1. GOVERNMENT OF ANDHRA PRADESH GUARANTEE

(A) Guarantee of APSEB Monthly Payment Obligations:

The Guarantor hereby irrevocably and unconditionally guarantees to the Company (as a secondary obligor) to pay to the Company, within 21 (twenty one) calendar days following submission by the Company on demand of monthly bills, which APSEB is liable to pay to the Company under or pursuant to the PPA and fail to pay in accordance with the terms of the PPA. The company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee if the APSE Board has failed to pay, within 7 days of the due date for payment thereof, any sum of money which it is liable to pay to the Company under or pursuant to the Power Purchase Agreement. The payment obligation covered under the State Guarantee would include energy charges, capacity charges and other supplemental bills.

(B) Guarantee of APSEB Buy-out obligations:

The Guarantor further hereby irrevocably and unconditionally guarantees (as a secondary obligor) to pay to the company, within 90 (Ninety) calendar days following submission by the company, on demand of payments for a sum covering the outstanding debt exposure both on foreign and domestic borrowings of the company as per the PPA, in the event of a Buyout taking place as per the terms and conditions of the PPA. The company shall be entitled to make a demand

for payment, upon the Guarantor pursuant to this clause if APSEB has failed to pay within 30 (thirty) calendar days from the due date of payment of the Buyout price, an amount at least equivalent to the outstanding debt exposure both on foreign and domestic borrowings of the company as per the PPA. The State Guarantee covers for buy-out would be restricted to outstanding debt obligations alone and would not include equity.

2. Payments

All payments made by the Guarantor hereunder shall be made without set off or counter claim and without any deduction or withholding for any reason except as required by law. If in compliance with the laws of India, any deduction or withholding on account of any tax, impost or levy of whatever nature and by whomsoever imposed is required to be made from any sum paid or payable by the Guarantor to the Company, the Guarantor shall pay any such amount as shall be necessary to ensure that the Company receives on the due date and retains a net sum equal to what it would have received and so retained had no deduction or withholding been required or made.

3. Other Provisions of the Guarantee

- (A) **Waiver:** No obligation of the Guarantor hereunder shall be in any way discharged or impaired by reasons of any time or other indulgence granted by the Company to APSEB, by any variation of the PPA or by any other act or thing (except the fulfilment by APSEB) of the obligation Guaranteed hereunder or thereunder).
- (B) **Continuing guarantee:** This Guarantee shall be a continuing security and accordingly:
- (1) it shall extend to cover the balance due at any time from APSEB to the Company under the PPA; and
 - (2) it shall not be discharged by an intermediate discharge or repayment by or for the account of APSEB or any settlement of accounts between APSEB and the Company
 - (3) it shall extend to the payment obligations (referred in paragraph 1) of any successor or assignee of APSEB if such successor company or assignee is one where the Government of Andhra Pradesh exercise managerial control with more than 51% of voting rights.
- (C) **Additional Security:** This guarantee shall be in addition to, and not in substitution for, or derogation of, any other security which the Company may at any time hold in respect of the obligations of APSEB under the PPA.

(D) **Immediate Recourse:** Subject to clause I, the Company shall not be obliged before taking steps to enforce this Guarantee to:

- (1) take action or obtain judgement against APSEB in any court; or
- (2) make or file any claim in bankruptcy of APSEB; or
- (3) exercise diligence against APSEB; or
- (4) exercise any legal remedies which may be available to it under or in respect of the PPA.

(E) **Indemnity:** The Guarantor undertakes as primary obligor, to indemnify and keep indemnified the Company against any loss sustained or incurred by the Company by reason of the invalidity, illegality or unenforceability or any of this Guarantee or the provisions of this Guarantee or the PPA and the amount of such loss shall be the amount which, but for such invalidity, illegality or unenforceability, the Company would otherwise have been entitled to recover hereunder or thereunder.

4. **Guarantor's Representations and Warranties**

The Guarantor hereby represents, warrants and undertakes to the Company as follows:

- (A) **Power and Authority:** The Guarantor has full power authority and legal right to incur the obligations provided for in this Guarantee, to execute and deliver this Guarantee and to perform and observe the terms and provisions hereof.
- (B) **Legal Validity:** This Guarantee constitutes legal, valid, binding and enforceable obligations of the Guarantor in accordance with its terms.
- (C) **Approvals:** All necessary action has been taken under the Law of India to authorise the execution, delivery and performance of this Guarantee.
- (D) **Direct Obligations:** All of the obligations and the covenants of the Guarantor contained herein constitute unconditional direct obligations of the Guarantor.

5. **Notices**

All notices, demands or other communications required to be given shall be in writing, in English language and addressed to the Guarantor or the Company as the case may be, at the following address (or to any other address as provided by either party to the other in writing:

Guarantor

Finance Secretary,
Government of Andhra Pradesh,
Hyderabad, India.

Company

6. Failure of the Government to maintain and honour its guarantee for a continuing period of more than 180 days would be deemed to be a Board event of default under the PPA.

7. **Miscellaneous Provisions**

- (A) **Waiver, remedies cumulative:** No failure on the part of the Company to exercise, and no delay on the part of the Company in exercising, any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Company shall be effective unless it is in writing. The rights and remedies of the Company herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- (B) **Assignment by the Company:** The Company shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor in its sole discretion exercised reasonably.
- (C) **Assignment by Guarantor:** The Guarantor undertakes to consult the Developer before assignment or modification of the obligations under the present Guarantee agreement.
- (D) **Governing Law:** The rights and obligations of the parties under or pursuant to this Guarantee shall be governed by and construed according to Indian Law.
- (E) **Arbitration: Reference to Arbitration:**
- (1) Any dispute or difference arising out of or in connection with this Guarantee shall (regardless of the nature of this dispute or difference) be referred to arbitration under a specified system of international arbitration rules (the Rules), to be agreed by parties to the guarantee and one or more arbitrators be appointed in accordance with the said Rules.

- (2) As from the date on which no amount is owed or capable of being owed to the Lenders under the relevant Financing Agreements, then the dispute shall be finally settled by arbitration under the Arbitration Acts of India.
- (3) Arbitration proceedings pursuant to paragraph shall be held in London, England. Any award given pursuant to arbitration in London, England, under paragraph 1 above shall be governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Arbitration proceedings conducted pursuant to paragraph 2 shall be held in New Delhi, India.
- (4) The language of any arbitration under the clause shall be English.

F. The Guarantor

- (1) agrees that, should any proceedings be brought against it or its assets in any jurisdiction in relation to this Guarantee or any transaction contemplated by this Guarantee, no immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the law of India, be claimed by or on behalf of itself or with respect to its assets;
- (2) Waives any right of immunity which it or any of its assets now has or may acquire in the future in any jurisdiction; and
- (3) consents generally in respect of the enforcement of any judgement against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use).

AS WINESS WHEREOF, the Guarantee has been executed, this the
_____ day of _____, 1997.

SIGNED SEALED AND DELIVERED BY:

Sri _____
Secretary to Government, Finance Department for an on behalf of the
Government of Andhra Pradesh in the presence of:

Secretary to Government
Energy Department

Joint/Dy. Secretary to Government
Energy Department

Accepted and Agreed By

(_____)
Chairman & M.D.,
(Name of the Company)

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Schedule K

BANK GUARANTEE PROFORMA FOR SECURITY DEPOSIT

Whereas the Andhra Pradesh State Electricity Board hereinafter called the 'Board' has selected M/s.....(Company's name and full address) (hereinafter called the 'Developer'), the successful bidder against the Bid No.CE/Plg/1/95-96 for setting up of private sector power project in Andhra Pradesh and whereas the Board has issued a Letter Of Intent (LOI) vide letter No.CE/IPC/211/Bid No.CE/plg/1/95-96/..... dt.24.7.96 in favour of the Developer for setting up ofMW liquid fuel based Power Project/ Barge mounted power project at.....on "Build, Own and Operate Basis" and whereas the Developer, having entered into a Power Purchase Agreement (herein after called "PPA" and "the Contract") with the Board, and whereas the Commercial Operation Date of the project shall occur not later than..... months from the date of signing of PPA.

Whereas the Developer is required to submit Security Deposit to the Board equivalent to one percent of the cost estimate of the project, as already intimated in the LOI, which is accepted by the Developer and as also incorporated in PPA within _____ days after conclusion of PPA valid till the Commercial Operation Date of the power project.

Whereas the Board has afforded a facility to submit the Security Deposit in the form of a Bank Guarantee in lieu of cash, valid initially for a period of one year and renewable every year until the Commercial Operation Date of the said power project.

Whereas the Developer, in pursuance of the aforesaid facility offered by the Board, intends to furnish the required Bank Guarantee of this Bank M/s.....(Name of the Bank and full address) towards the Security Deposit.

Now, therefore, We (Bank) furnishes hereby the guarantee to an amount of Rs..... effective from the for a period of 12 months initially and renew thereafter as required by Board from time to time without allowing it to lapse upto Commercial Operation Date of the Project with a claim period of six (6) months thereafter.

We.....Bank , do hereby undertake to indemnify and keep indemnified the Board to the extent of Rs....., against any breach by the Developer of any of the terms and conditions in the said Contract.

WeBank , further agree that the guarantee herein contained shall remain initially in full force and effect for a period of one year from the date of the Contract i.e upto and keep it renewed thereafter and that it shall continue to be enforceable till all the dues of the Board under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged or till the Chief Engineer, Investment Promotion Cell, A.P.S.E.Board, certifies that the terms and conditions of the said Contract have been fully and properly carried out by the Developer and accordingly discharges the guarantee . We, the guarantor Bank undertake to pay the amount guaranteed hereunder or such part thereof as required within one week of the sum being demanded by the Board without reference to the Developer and without questioning the right of the Board to make such demand or the propriety or legality of the demand. We..... Bank , lastly undertake not to revoke this guarantee during its currency and until the discharge Certificate is issued by Chief Engineer/Investment Promotion Cell, APSE Board, Hyderabad., in writing.

Notwithstanding anything contained in the foregoing, our liability under this guarantee is restricted to Rs.....(Rupees.....only). Our guarantee shall remain in force until the discharge certificate is issued by Chief Engineer/Investment Promotion Cell/APSE Board, in writing

Dated the.....day of1997

ForBank

Signature of the
Bank's authorised Officer
&
Seal

Note: The Bank Guarantee should be furnished on Non-judicial stamp paper of value Rs.100/- purchased in the State of Andhra Pradesh.

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