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20 MAR 2004

श्री कल्पेश प्रेमजी गाला

संयुक्त टेलीफोन कार्ड, ग्राम नं. १,
१४४, एम. जी. रोड, एलएनए मंजरा, पाल जोड़ा,
मुंबई-२१, फोन : २२३७ ५७५५

29 MAR 2004

परवानाधारित मुद्रांक विक्रेता

मुद्रांक नं. २०७३

क्रमांक २२००६ Powerlinks Transmission Ltd

HA/MA/0517

प्राप्त न्यायिक मुद्रांक विक्रेता

परवानाधारित मुद्रांक विक्रेता

**AMENDED AND RESTATED
TRANSMISSION SERVICE AGREEMENT**

for

**Specific Transmission Lines Associated with
Tala Hydro Electric Power Project**

between

Power Grid Corporation of India Ltd,

and

Powerlinks Transmission Limited

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THIS AMENDED AND RESTATED TRANSMISSION SERVICE AGREEMENT (hereinafter referred to as "TSA" or "Agreement" or "the Agreement" or "this Agreement"), (amending and restating the provisions of the Transmission Service Agreement dated July 4, 2003 entered into between the parties hereto) is made on the 9th of April Two Thousand Four

Between:

"Power Grid Corporation of India Limited", a company incorporated under the Companies Act, 1956, having its registered office at B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi- 110 016 (hereinafter referred to as "POWERGRID" which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as party of the one part;

and

"Powerlinks Transmission Limited", a company incorporated under the Companies Act, 1956, having its registered office at B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi- 110 016 (hereinafter referred to as "Joint Venture Company" or "COMPANY" which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as party of the other part;

AND WHEREAS:

- a) The COMPANY proposes to set up the Project on a Build, Own, Operate and Transfer (BOOT) basis for the purpose of selling all the Project's available capacity exclusively to POWERGRID on the terms and conditions contained in this Agreement and the Implementation Agreement (hereinafter referred to as IA);
- b) The COMPANY shall apply for a Transmission License from CERC for setting up the Project on a BOOT basis and for selling its entire available transmission capacity exclusively to POWERGRID;
- c) POWERGRID is a company promoted and owned by Government of India and is the Central Transmission Utility (CTU) and operates the Regional Load Despatch Centre (RLDC). It is responsible for undertaking the planning, coordination, supervision & control of the inter-state transmission system so as to facilitate inter-state bulk transfer of power with reliability, security and with technical and economic efficiency;
- d) As per the provisions of Section 38 (2) (b) of the Electricity Act, 2003, the CTU is required to discharge all functions of planning & co-ordination relating to inter-state transmission system including with respect to transmission licensees;

- e) As per the provisions of Section 27(2) and 28(3)(d) of the Electricity Act, 2003, the RLDC is required to exercise supervision and control over the inter-state transmission system;
- f) COMPANY acknowledges the above provisions of Sections 27, 28 and 38 of the Electricity Act 2003 and agrees to abide by them;
- g) POWERGRID agrees, on the terms and subject to the conditions of this Agreement, to use the available transmission capacity of the Project and pay the COMPANY the charges as determined in accordance with the terms of this Agreement; and
- h) The terms and conditions stipulated in the Transmission License issued by CERC to COMPANY shall also be applicable to this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENT, COVENANTS AND CONDITIONS SETFORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO TO AMEND AND RESTATE THE PROVISIONS OF THE TRANSMISSION SERVICE AGREEMENT DATED JULY 4, 2003 ENTERED INTO BETWEEN THE PARTIES, AS FOLLOWS:

WJ

[Signature]

SECTION-1

1.0 DEFINITIONS & INTERPRETATIONS

1.1 Definitions

Terms shall bear those meanings when used in this Agreement as defined in Schedule-1 (Definitions) unless the context requires otherwise.

1.2 Interpretations

This Agreement shall be interpreted in accordance with Schedule-2 (Interpretation) unless the context requires otherwise.

1.3 Agreement Documents

All documents forming part of the Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Agreement shall be read as a whole.

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

- i) words importing the singular shall include the plural and vice versa;
- ii) a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests. Words importing persons or parties shall include firms, corporations and government entities;
- iii) this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- iv) a statute or enactment shall be construed as a reference to such statute as it may have been or may from time to time be modified, amended or re-enacted;
- v) a time of day shall be construed as a reference to Indian Standard Time;
- vi) references to Clauses and Sections shall be to Clauses and Sections of this Agreement.

1.5 Table of Contents and Headings

The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

1.6 Interest

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

1.7 General Clauses Act

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement shall bear the meaning in General Clauses Act failing which it shall bear its ordinary English meaning.

1.8 Language

All agreements, all correspondence and communications to be given and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with that language.

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

1.9 Discretion

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

1.10 Discrepancy

In case of discrepancy between terms and conditions stipulated in Transmission License issued by CERC to COMPANY and the agreement(s) executed between POWERGRID and COMPANY, the terms and conditions of Transmission License shall prevail

1.11 Independent Entity

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

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

WA

[Signature]

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SECTION-2

2.0 EFFECTIVENESS AND TERM

2.1 Effective Date

This Agreement shall become effective from July 4, 2003 when the original Transmission Service Agreement was executed and delivered by the parties.

2.2 Term and Termination

2.2.1 Subject to Clause 2.2.2, this Agreement shall continue to be effective in relation to each Phase Under Operation until the Expiry Date (subject to Clause 2.3), when it shall automatically terminate.

2.2.2 Subject to para 4.1.3 of Schedule 4, this Agreement shall terminate before the Expiry Date:

- i) If the conditions precedent referred to in Section 3 are neither satisfied nor waived and either party serves a notice to terminate in accordance with Clause 3.3;
- ii) If a Termination Notice is served in accordance with Section 12
 - a) by POWERGRID following a COMPANY Event of Default; or
 - b) by the COMPANY following a POWERGRID Event of Default;
- iii) If POWERGRID or the COMPANY serves a notice to terminate in accordance with Clause 12.1.5.

2.3 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the parties under this Agreement including but not limited to those specifically provided in this Agreement nor shall it affect any continuing obligations which this Agreement provides either expressly or by necessary implication, which are to survive its expiry or termination including those arising under Section 13, Section 15, Section 16 and Schedule 4 to this Agreement.

SECTION-3

3.0 CONDITION PRECEDENT

3.1 The respective obligations of the parties (other than those set out in Clause 4.2(v) and 4.2(vi)) under this Agreement in connection with each Phase Under Operation are subject to the satisfaction in full of the following condition precedent as brought out in clause 3.1.1 for which both the parties shall be responsible for satisfying the same at their own cost and expenses:

3.1.1 The Expiry Date of the relevant Phase shall have been achieved under the IA.

3.2 Obligation to satisfy/Waive Condition Precedent

3.2.1 Parties shall use their reasonable endeavors to ensure either the satisfaction or waiver of the condition precedent relating to the effectiveness of their obligations under this Agreement.

3.2.2 Each party shall take all reasonable efforts to satisfy the conditions to which its obligations are subject to as soon as practicable and notify the other party, when such condition is satisfied or waived.

3.3 Right to Terminate

This Agreement shall automatically terminate on the termination of the IA under Clause 2.2.2 of the IA.

3.4 Reports

Each party shall notify the other party in writing at least once a month on the progress made in satisfying the condition precedent referred in Clause 3.1 and shall promptly inform in writing if any condition precedent for which it is responsible has been satisfied.

WA

1/1/2024

SECTION-4

4.0 OPERATION & MAINTENANCE OF PROJECT

4.1 COMPANY's obligations in operation and maintenance of the Project

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

- i) for procuring and maintaining in full force and effect the Consents, required by it pursuant to this Agreement and in accordance with Law.
- ii) to maintain and repair the Project as set out in this Agreement and in accordance with the Technical Specifications and the Technical Particulars stipulated in Schedule 5 of Implementation Agreement, Prudent Utility Practices and the Law;
- iii) for owning the Project throughout the term of this Agreement free and clear of encumbrance except those permitted under this Agreement and the IA;
- iv) to make available the total transmission capacity of the Project to POWERGRID for safe transmission of power at POWERGRID's discretion as per the TSA. Provided, however, it is agreed and understood between the parties hereto that other than the use of transmission capacity which is governed under the TSA, POWERGRID and COMPANY shall review use of Project for installation of OPGW subject to the terms and conditions to be mutually agreed upon;
- v) to appoint an O&M Contractor (in case the COMPANY so decides and notifies POWERGRID to that effect in writing) at least one month before the applicable Required Commercial Operation Date; [PT-2]
- vi) for providing all assistance to the Adjudicator and arbitrator as they may require for the performance of their duties and services; and
- vii) to comply with its obligations under this Agreement.

4.2 POWERGRID's obligations in Operation of the Project

Subject to the terms and conditions of this Agreement, POWERGRID, at its own cost and expense (other than in the case of paragraph (vi) below, for which POWERGRID shall be reimbursed in accordance with

clause 3.1.3(iii) of the Implementation Agreement) undertakes to be responsible:

- i) to ensure that the Project remains connected with the Interconnection Facilities. However, the COMPANY shall be required to coordinate and liaise with the concerned agencies in this regard;
- ii) for complying with its obligations under this Agreement;
- iii) to operate the Project, and Inter-connection Facilities in accordance with Prudent Utility Practices;
- iv) providing all assistance to the Adjudicator and Arbitrator as they may require for the performance of their duties and services;
- v) for assisting and supporting the COMPANY in obtaining the necessary Consents and wayleaves required for the Project by providing letters of recommendation to the concerned Indian Governmental Instrumentalities, as may be requested by the COMPANY from time to time;
- vi) for providing reasonable support and assistance to the COMPANY in connection with the finalisation of the Financing Agreements by giving due consideration to the requirements of the prospective lenders (who shall be developmental financial institutions and leading banks) including without limitation, to any amendments to this Agreement suggested by them; and
- vii) for assisting and supporting the COMPANY in obtaining the approval of Competent Authority for TSC, if required.

4.3 In case of emergencies, in order to facilitate that the Project remains optimally available, POWERGRID shall be entitled to carry out repair and maintenance of the Project in accordance with Prudent Utility Practices, if in its opinion the situation so warrants. While doing so, it may use the resources at its own disposal or those belonging to the COMPANY. The COMPANY shall be obliged to provide its full co-operation, without demur and free of cost.

It is hereby agreed between the parties hereto that the COMPANY shall reimburse POWERGRID its reasonable costs and expenses including direct and indirect overheads of such actions, as may be incurred by POWERGRID from time to time, duly certified by a Chartered Accountant within 30 (thirty) days from the date of a notice to that effect by POWERGRID to the COMPANY.

POWERGRID shall install, operate and maintain a hourly record of load flow and voltage systems at the Interconnection Points and shall

furnish copies of the readings thereof to the COMPANY every month. COMPANY shall have access to such measuring equipment as and when required by the COMPANY in order to ensure that it is functioning accurately and is being operated by POWERGRID in accordance with Prudent Utility Practices.

4.4 Operating Procedures

4.4.1 Not later than one hundred and eighty (180) days prior to the Required Commercial Operation Date of Phase 1, the COMPANY shall provide POWERGRID with a draft of the operating procedures (the "Operating Procedures") dealing with all operational interfaces between the COMPANY and POWERGRID including, but not limited to:

- i) methods of round the clock communication between the COMPANY and POWERGRID;
- ii) safety co-ordination;
- iii) seeking permits to work for attending to outages;
- iv) contingency planning in the event of a partial or total shutdown of the grid;
- v) incident reporting;
- vi) testing, inspection and monitoring of the Project;
- vii) maintenance & repair during Scheduled Outages, Unscheduled Outages, Forced Outages and during Force Majeure Events;
- viii) reckoning of unavailability of the element(s) of the Project.

4.4.2 The Operating Procedures shall be consistent with;

- i) the terms and conditions of this Agreement;
- ii) the Technical Specifications;
- iii) Prudent Utility Practices;
- iv) the Indian Electricity Grid Code (IEGC); and
- v) the Laws.

in case of any conflict amongst the above, the matter shall be mutually resolved between the parties.

4.4.3 Within sixty (60) days after receiving the draft of the Operating Procedures POWERGRID shall notify COMPANY in writing specifying its objections to COMPANY's draft and the deletions, amendments or additions that it requires, and both parties shall meet to discuss the draft Operating Procedures and try to reach agreement on the Operating Procedures. If the parties have failed to reach agreement within twenty (20) days after COMPANY's receipt of the POWERGRID's notice pursuant to this Clause, the matter shall be referred to an Independent Engineer and determined in accordance with Section 15. The decision of Independent Engineer in this regard shall be final and binding on the parties.

4.4.4 Either party may from time to time propose amendments to the Operating Procedures in any manner consistent with Clause 4.4.2 by giving written notice to the other party stating the reasons for the proposed amendment. The process in Clause 4.4.3 shall apply if one party objects within sixty (60) days to any proposed amendment.

4.4.5 The Operating Procedures shall take effect on the date agreed by the parties or determined by the Independent Engineer or, if there is no objection to the Operating Procedures proposed by the COMPANY pursuant to Clause 4.4.1, the expiry of the sixty (60) day objection period or such later date as may be set out in the proposal.

4.4.6 The parties shall comply with the Operating Procedures.

4.4.7 POWERGRID and the COMPANY shall jointly identify five technical expert organizations of repute and experience, prior to Financial Close. The parties shall mutually appoint an Independent Engineer from the above organizations sufficiently in advance of the Independent Engineer having to carry out its obligations under this Clause 4.4 and this Agreement.

4.5 Operation and Maintenance of the Project

4.5.1 The COMPANY shall be responsible at its own cost and expense for ensuring that the Project is fit to be operated and is maintained in accordance with the Indian Electricity Grid Code (IEGC), Operating Procedures, Regional Load Despatch Centres' instructions, Prudent Utility Practices, legal requirements including the terms of Consents so as not to have an adverse effect on the safety, expected life, operation and maintenance expenses and Availability of the entire transmission capacity of the Project.

4.5.2 In case COMPANY decides to engage other Contractor(s) for maintenance & repair of the Project, COMPANY shall appoint only recognized agencies/contractors with significant experience in relation to the maintenance and repair of equipment and facilities similar to those forming part of the Project.

4.5.3 The COMPANY shall ensure that for maintenance and repair of the Project, twenty four (24) hours a day, seven (7) days a week throughout the year, competent and qualified personnel are employed. Personnel employed by the COMPANY shall meet applicable Laws.

4.5.4 POWERGRID shall have the right but not obligation to exercise supervision and control over operation & maintenance of the Project provided that such right does not interfere with the exercise by the COMPANY of its rights and the performance of its obligation, under this Agreement.

4.6 Information to POWERGRID

COMPANY shall provide to POWERGRID, on a monthly basis, all reasonable information with regard to operation and maintenance of the Project as required by POWERGRID to ensure optimum Availability of the Project and quality of maintenance and repair work.

4.7 Inspections by POWERGRID

POWERGRID shall designate from time to time by a written notice to the COMPANY, any of its employees who shall inspect the Project for the purpose of verifying the COMPANY's compliance with Operating Procedures and who shall have access to the Project.

4.8 Scheduled Outages

4.8.1 By such date in each year as POWERGRID may from time to time prescribe for the submission of outage plans from COMPANY for the Project and, as prescribed in the Operating Procedures, the COMPANY shall submit to POWERGRID in writing, its firm proposals in advance for the Scheduled Outages to be taken in the next Contract Year and its provisional proposals for Scheduled Outages to be taken in the subsequent Contract Years, during the months of low demand. Months of high and low demand shall be informed to the Company at least one year in advance, by POWERGRID.

4.8.2 Unless otherwise requested to do so by POWERGRID, the COMPANY shall not plan to take any Scheduled Outages during the months of high demand (of electricity) and will use all reasonable endeavors to plan to take Scheduled Outages during the months of low demand.

4.8.3 Within two (2) months after receiving the COMPANY's proposals, POWERGRID shall notify the COMPANY in writing whether its proposed Scheduled Outages are acceptable and, if not, and after discussing the matter with the COMPANY, shall indicate the periods that would be acceptable, which shall be:

- i) of the same duration as the periods requested by the COMPANY; or
- ii) within the time limits required by any legal requirement relating to routine maintenance; or
- iii) within the time limits required or recommended by the manufacturer or supplier of the Project equipment which is to undergo maintenance.

4.8.4 The COMPANY may only object to a revised proposal for Scheduled Outages by POWERGRID on the grounds that it would be inconsistent with the requirements of Clause 4.8.3. Unless the COMPANY objects in writing within twenty (20) days after receiving the revised proposal, it

shall be deemed to have agreed to the Scheduled Outages proposed by POWERGRID. If the COMPANY does object to the proposed Scheduled Outages within that period and the parties cannot reach agreement within ten (10) days after the COMPANY's objection was sent to POWERGRID, the matter shall be referred to the Independent Engineer and determined in accordance with Section 15. The decision of Independent Engineer in this regard shall be final and binding on the Parties.

4.8.5 The Scheduled Outages accepted by POWERGRID or agreed to by the COMPANY pursuant to Clause 4.8.4 shall be confirmed to the extent that they relate to the next Contract Year and shall be provisionally confirmed to the extent that they relate to subsequent Contract Years. Provisionally confirmed Schedule Outages may be changed by either party for good cause.

4.8.6 In an emergency, POWERGRID may require the COMPANY to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time.

4.8.7 POWERGRID shall give notice to the COMPANY of its maintenance program for the Interconnection Facilities and shall use its reasonable endeavours to coordinate such maintenance with the Scheduled Outages approved pursuant to this Clause 4.8 so as to minimize the disruption to the operation of the Project.

4.9 Unscheduled Outages (including those due to Force Majeure Events)

4.9.1 Whenever the COMPANY needs a Unscheduled Outage it shall advise POWERGRID in accordance with the Operating Procedures of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the COMPANY's opinion the work should begin consistent with Prudent Utility Practices.

4.9.2 After discussing the matter with the COMPANY, POWERGRID shall advise the COMPANY when the requested Unscheduled Outage is scheduled to begin (which shall be not later than the latest time indicated by the COMPANY). The COMPANY shall use its reasonable endeavors consistent with Prudent Utilities Practices to carry out the maintenance in accordance with the time schedule set out in its request for the Unscheduled Outage.

4.10 Supervision of Operation & Maintenance

The COMPANY shall provide all necessary superintendence for maintenance and repair of the Project and its supervisory personnel shall be constantly available on the Site to provide full time superintendence in accordance with Prudent Utility Practices. The COMPANY shall provide and employ only skilled personnel who are experienced in their respective fields.

4.11 Taxes and Duties

4.11.1 Except as otherwise specifically provided in the Agreement, the COMPANY shall bear and pay all taxes, duties, levies and charges assessed on the COMPANY, its Contractors or their employees by all municipal, state or national government authorities in connection with the Project.

4.11.2 The COMPANY shall bear and promptly pay all customs and import duties as well as other local taxes including all Value Added Tax (VAT), works contract taxes and tax on earnings (including the earning of its employees) that are required to be paid by the COMPANY as per the Law.

4.11.3 POWERGRID shall be indemnified and held harmless by the COMPANY against any claims that may be made against POWERGRID in relation to the matters set out in Clauses 4.11.1 and 4.11.2 above.

4.11.4 POWERGRID shall not be liable for any payment of dues, taxes, duties, levies, cess whatsoever for work done by POWERGRID on behalf of COMPANY or its personnel provided the COMPANY has consented in writing to POWERGRID for such work, which consent shall not be unreasonably withheld.

4.12 Changes in the Project

4.12.1 Subject to the provisions under this Agreement, POWERGRID may propose (subject to approval of Competent Authority) to the COMPANY from time to time during the performance of the Agreement to make any change, modification, addition or deletion to, in or from the Project (hereinafter called "Change"), provided that such Change falls within the general scope of the Project.

4.12.2 The COMPANY may from time to time during its performance of the Agreement propose to POWERGRID any Change that the COMPANY considers necessary or desirable to improve the quality, efficiency or safety of the Project. POWERGRID may at its discretion approve or reject any Change proposed by the COMPANY.

4.12.3 In the event of a Change which shall need to be performed in accordance with Prudent Utility Practices, the modalities of execution of such Changes, the party to this Agreement responsible for performing such Change and its impact on TSC and Availability shall be mutually agreed by the parties.

4.12.4 Notwithstanding Clauses 4.12.1 and 4.12.2 above no Change necessitated because of any default of the COMPANY in the performance of its obligations under the Agreement shall be deemed to be a Change, and such Change shall not result in any adjustment of the TSC or the Availability of the Project favourable to the COMPANY.

4.13 Remedial Measures

The COMPANY shall take necessary actions for remedying the lapses or shortfalls, if any, as intimated by POWERGRID with regard to maintenance of the Project. However, such intimations by POWERGRID shall not relieve the COMPANY of its obligations in the Agreement.

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[Signature]

SECTION: 5

5.0 AVAILABILITY OF SYSTEM

5.1 Availability of Elements of the Project

For the purpose of calculating Availability, each circuit of the 400 kV D/C Siliguri-Purnea, Purnea-Muzzaffarpur (New), Muzzaffarpur(New)-Gorakhpur(New), Gorakhpur(New)-Lucknow(New), Bareilly-Mandola transmission lines and the 220 kV D/C Muzaffarpur (new)-Muzaffarpur(BSEB) transmission lines (as more fully described in schedules 4 and 5 of the Implementation Agreement) shall be considered as an "element" of the Project and shall be considered to be "Available" when it is capable or deemed capable of transmitting electricity at its rated voltage from the supply point to the delivery point.

- 5.2 An element shall be considered unavailable, on the occurrence of outages caused by events listed in paragraph 1 of Schedule 5 and shall be deemed to be Available on the occurrence of outages caused by events listed in paragraphs 2.1 to 2.8 of Schedule 5. The total number of hours during the occurrence of outages caused by events listed in paragraphs 2.9 to 2.10 of schedule 5 shall be excluded from the calculation of Availability, as set out in Clause 5.3.

5.3 Measurement of Availability of the Project

Subject to the provisions of this Section-5, the "Availability" of the Project in any Contract Year shall be:

$$\text{Availability of the Project} = \left[\left(\sum_{i=1}^o W_i (T_i - T_{\text{excl}}) \right) / T_i \right] / \sum_{i=1}^o W_i \times$$

100

where,

o = Total number of elements in the Project

W_i = Weightage factor for ⁱth element. The weightage factor for each category of element shall be as under:

Surge Impedence Loading for Uncompensated Line ("SIL") multiplied by Circuit Kms in such element

SIL rating for various voltage levels and conductor configurations shall be as provided below:

S. No.	Line Voltage (kv)	Conductor Configuration	SIL (MW)
1	400	Quad Bersimis	691
2	400	Twin Moose	515
3	400	Twin AAAC	425
4	400	Quad Zebra	647
5	400	Quad AAAC	646
6	400	Triple Snowbird	605
7	400	ACKC (500/26)	556
8	400	Twin ACAR	557
9	220	Twin Zebra	175
10	220	Single Zebra	132

T_i = The total hours of i^{th} element during the period under consideration (excluding the period of outages caused by events listed in paragraphs 2.9 to 2.10 of Schedule 5)

T_{Nai} = The unavailable hours (excluding the period of outages caused by events listed in paragraphs 2.1 to 2.8 of Schedule 5) for i^{th} element.

5.4 Normative Availability

The normative Availability of each element shall be 98%.

5.5 Reckoning of unavailability of Elements

Subject to the provisions of this Agreement and rules/regulations/codes/methodology as may be made/prescribed by Competent Authority, from time to time, the unavailability of an element of the Project shall be reckoned as follows:

(i) In case of Scheduled Outages and Unscheduled Outages:

~~The period of unavailability shall commence from the time the element was de-energised by POWERGRID to facilitate the actions by the COMPANY for which Scheduled Outage or Unscheduled Outage is taken. Upon completion of the activities undertaken by the COMPANY, it shall communicate to POWERGRID that the element is ready to perform its duty. Within 10 (ten) minutes of such intimation, POWERGRID may elect to energise the element and successful energisation of the element shall mean the end of the unavailability period. In case POWERGRID elects not to energise the element, the element shall be deemed to be Available from the end of that 10 (ten) minutes period, thus ending the unavailability period.~~

- (ii) In case of Forced Outages necessitating investigation of cause of unavailability and consequent maintenance and repair work by the COMPANY:

The period of unavailability shall commence from 10 (ten) minutes after the time when the element of the Project had to be de-energised for reasons solely attributable to the COMPANY. During this 10 (ten) minutes period, POWERGRID shall communicate to the COMPANY, by fax, the commencement of such period of unavailability. The COMPANY shall take up necessary investigation and/or corrective measures to bring the element of the Project in readiness to perform and communicate the same to POWERGRID. Within 10 (ten) minutes of such intimation by the COMPANY, POWERGRID may elect to energise the element and successful energisation of the element shall mean end of the unavailability period. In case POWERGRID elects not to energise the element, the element shall be deemed to be Available from the end of that 10(ten) minutes period, thus ending the unavailability period. In case at a later date, it is determined that the unavailability of such elements of the Project was not on account of reasons solely attributable to the COMPANY, such elements of the Project shall be deemed to be Available for the period for which such elements were considered unavailable.

Notwithstanding anything contained herein before, definitions, interpretations and the methods of calculations of Availability given above, shall not conflict with any orders of the Central Electricity Regulatory Commission (CERC) issued from time to time in this regard. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC orders shall prevail.

WJ

[Signature]

SECTION - 6

6.0 PAYMENT & BILLING OF TRANSMISSION SERVICE CHARGES —

6.1 Transmission Service Charges: Subject to the other provisions of this Section - 6, POWERGRID shall pay to the COMPANY, on a monthly basis, the Transmission Service Charge (TSC) from the date on which a Phase is first Commissioned until this Agreement expires or is terminated (such monthly payment, "Monthly TSC Payment").

6.2 Calculation of Monthly TSC Payment: The Monthly TSC Payment shall be calculated in accordance with Schedule 6. Notwithstanding anything contained in Schedule 6, the definitions, interpretations and the method of calculation of the Monthly TSC Payment shall not conflict with any orders of the Central Electricity Regulatory Commission (CERC) issued from time to time in this regard. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC tariff orders shall prevail.

6.3 Delivery of Invoices

6.3.1 COMPANY's Invoice

- i) Commencing with the month following the month in which the Commercial Operation Date of the Phase (which is first Commissioned) occurs, the COMPANY shall submit to POWERGRID by the fifth day of such and each succeeding month (or, if such day is not a business day, the immediately following business day) an invoice in the Agreed Form (the "Monthly TSC Invoice") setting out the computation of the Monthly TSC Payment payable by POWERGRID to the COMPANY in respect of the immediately preceding month in accordance with this Agreement; and
- ii) Each Monthly TSC Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as POWERGRID may require/ request, from time to time.

6.3.2 POWERGRID's Invoice

- i) POWERGRID shall, on the fifth day of each month (or, if such day is not a business day, the immediately following business day) submit to the COMPANY an invoice in the Agreed Form (the "POWERGRID Invoice") setting out POWERGRID's computation of any amount that may be payable to it by the

COMPANY for the immediately preceding month pursuant to this Agreement.

- ii) Each POWERGRID Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation as the COMPANY may require/request, from time to time.

6.4 Payment of Invoices

6.4.1 Subject to Clause 6.2, any amount payable under an invoice, shall be paid in immediately available and freely transferable cleared funds, for value on or before the Due Date, to such account of the COMPANY or POWERGRID as shall have been previously notified to POWERGRID or the COMPANY, as the case may be.

6.4.2 Where in respect of any month there is both:

- i) an amount payable by POWERGRID to the COMPANY pursuant to a Monthly TSC Invoice and
- ii) an amount payable by the COMPANY to POWERGRID pursuant to a POWERGRID Invoice pursuant to this Agreement,

the two amounts may, subject to clause 6.5.3, at the option of POWERGRID, be set off against each other and the balance, if any, shall be paid by POWERGRID to the COMPANY or by COMPANY to POWERGRID as the case may be.

6.4.3 If the COMPANY receives through direct payment or through a letter of credit the following amounts in respect of a Monthly TSC Invoice then POWERGRID shall be deemed to have paid such Monthly TSC Invoice in full, without prejudice to its right to recover any disputed amounts set out in that invoice in accordance with clause 6.5:

- (a) Within 5 (five) days of receipt by POWERGRID of such Monthly TSC Invoice, an amount equal to 97.5% of the invoiced amount, or, pursuant to Clause 6.5.3, the undisputed amount; or
- (b) later than 5 (five) days but within 30 days of receipt by POWERGRID of such Monthly TSC Invoice, an amount equal to 99% of the invoiced amount, or, pursuant to Clause 6.5.3, the undisputed amount.

The rebates shown above are based on the Tariff Order. In case of any change in the Tariff Order in this regard, the rebates shall also be correspondingly changed.

6.4.4 In case the COMPANY pays to POWERGRID in respect of a POWERGRID Invoice within the Due Date of such POWERGRID

Invoice, an amount equal to the amount due and payable under the POWERGRID Invoice except to the extent such amount as is subject of an Invoice Dispute Notice pursuant to Clause 6.5, then the full amount owing by the COMPANY under such POWERGRID Invoice, to the extent not the subject of an Invoice Dispute Notice pursuant to Clause 6.5, shall be deemed to have been paid by the COMPANY to POWERGRID.

- 6.4.5 Any amount properly due from one party to the another pursuant to this Agreement and remaining unpaid after the Due Date shall bear surcharge @ 1.5% (one and a half percent) per month. Such surcharge shall be calculated on simple rate basis and shall accrue from the Due Date until the amount due is actually received by the payee.

6.5 Disputed Invoices

- 6.5.1 If either party does not question or dispute an invoice within ninety (90) days of receiving it, the invoice shall be considered correct and complete and conclusive between the parties except in the case where that party could not reasonably have identified any error or omission in the invoice, taking into account the information then available to it during the above ninety (90) day period.

- 6.5.2 If either party disputes any item or part of an item set out in any invoice then that party shall serve a notice (an "Invoice Dispute Notice") on the other party setting out the item or part of an item set out in such invoice which is in dispute together with its estimate of what such item or part of an item should be.

- 6.5.3 In the event that either party has issued an Invoice Dispute Notice in accordance with Clause 6.5.2, it shall nonetheless be required to pay to the other party the full amount of such disputed invoice (except where there is manifest error), without prejudice to the disputing party's right to avail itself of the dispute resolution procedures set forth in this Agreement. Nevertheless, where (i) the COMPANY has issued Invoice Dispute Notices to POWERGRID for disputes arising out of three consecutive invoices, until such time as the dispute is resolved in accordance with this Agreement and provided the COMPANY has paid the full amount of each such disputed invoice, the COMPANY shall be entitled to pay only so much of each subsequent invoice during such financial year as the COMPANY reasonably estimates to be the amount owing; or (ii) POWERGRID has issued Invoice Dispute Notices to the COMPANY for disputes concerning three consecutive Monthly TSC Invoices, until such time as the dispute is resolved in accordance with this Agreement and provided that POWERGRID has paid the full amount of each such disputed invoice, barring manifest arithmetical error, POWERGRID shall be entitled to pay only so much of each subsequent disputed Monthly TSC Invoice as POWERGRID reasonably estimates to be the amount it owes.

6.5.4 If the party issuing the invoice agrees with the Invoice Dispute Notice to which it relates, it shall:

- i) In the case of the COMPANY being the issuing party, adjust the invoice (if POWERGRID has not paid) or refund the applicable amount within five (5) days (if POWERGRID has paid); or
- ii) In the case of POWERGRID being the issuing party, adjust the invoice (if COMPANY has not paid) or refund the applicable amount to the COMPANY within five (5) days (if COMPANY has paid).

6.5.5 In the event that the parties do not, within fourteen (14) days of the delivery of a Invoice Dispute Notice, resolve any dispute arising under Clause 6.5.2, either party may refer the matter to be determined in accordance with Section 15.

6.6 Credit Enhancement

6.6.1 Establishment of Letter of Credit

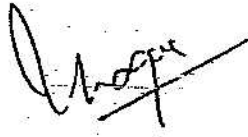
POWERGRID shall, not later than seven (7) days before the Required Commercial Operation Date of Phase 1 provide the COMPANY at its own cost with an irrevocable confirmed revolving letter of credit issued in favour of the COMPANY by a scheduled bank or banks in India, (such letter of credit, a "POWERGRID Letter of Credit"), to be in the form agreed to between POWERGRID and COMPANY and to be provided on the basis that:

- a) In respect of a Monthly TSC Invoice, in case the COMPANY fails to receive from POWERGRID within 30 (thirty) days of receipt of such Monthly TSC invoice by POWERGRID, an amount equal to the amount due and payable under the Monthly TSC Invoice except to the extent such amount as is, subject to an amount deductible on account of rebates admissible as per Tariff Order mentioned in Clause 6.4.3, set out in a POWERGRID Invoice and/or an Invoice Dispute Notice pursuant to Clause 6.5.4, the COMPANY may draw upon the POWERGRID Letter of Credit for payment of the Monthly TSC Invoice due to the COMPANY from POWERGRID by presenting to the relevant issuing bank a copy of the Monthly TSC Invoice that has been delivered by the COMPANY to POWERGRID in accordance with this Agreement, acknowledged by POWERGRID and accompanied by a declaration by the COMPANY that the amount due under such Monthly TSC Invoice has not been paid by POWERGRID as on the date of presentation of the Monthly TSC Invoice to the bank;

- b) The value of a POWERGRID Letter of Credit on the date of issue and on the first day of each Contract Year will be equal to the estimated value of one month's Monthly TSC Payment, assuming normative Availability;
- c) Any change required in the value of POWERGRID Letter of Credit shall be notified by COMPANY to POWERGRID not later than fourteen (14) days before such change is required;
- d) The POWERGRID Letter of Credit shall be fully revolving so that it will be renewed to its full value upon each call being made on the POWERGRID Letter of Credit; and
- e) The POWERGRID Letter of Credit shall be for a term of not less than twelve (12) months and shall be renewed for, or replaced with another letter of credit acceptable to the COMPANY for, a similar term, at least thirty (30) days prior to the date on which the current POWERGRID Letter of Credit is expressed to expire.

6.6.2 The COMPANY may transfer the POWERGRID Letter of Credit to or for the benefit of the Lenders' Representative.

6.6.3 The mere provision of the POWERGRID Letter of Credit shall not relieve POWERGRID of any of its payment obligations under this Agreement. POWERGRID shall only be relieved of such obligation to the extent that the issuing bank actually pays under the POWERGRID Letter of Credit in accordance with this Agreement.



SECTION-7

7.0 SAFETY RULES & PROCEDURES

7.1 Site Regulations and Safety

7.1.1 The COMPANY shall establish Site regulations as per Prudent Utility Practices setting out the rules to be observed in the execution of the Agreement at the Site and shall comply therewith.

7.1.2 Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Project, gate control, sanitation, medical care, and fire prevention.

7.2 Emergency Work

7.2.1 If, by reason of an emergency arising in connection with and during the execution of the Agreement, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Project, the COMPANY shall immediately carry out such work.

7.2.2 If the COMPANY is unable or unwilling to do such work immediately, POWERGRID may do or cause such work to be done as POWERGRID may determine is necessary in order to prevent damage to the Project. In such event POWERGRID shall, as soon as practicable after the occurrence of any such emergency, notify the COMPANY in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by POWERGRID is work that the COMPANY was liable to do at its own expense under the Agreement, the reasonable costs incurred by POWERGRID in connection therewith shall be paid by the COMPANY to POWERGRID. Otherwise, the cost of such remedial work shall be borne by POWERGRID.

7.3 Watching and Lighting

7.3.1 The COMPANY shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper maintenance/repair of the Project, or for the safety of the owners and occupiers of adjacent property and for the safety of the public, during such maintenance/repair.

SECTION-8

8.0 INSURANCE

8.1 Insurance during the Operating Period

3 Not later than three (3) months prior to the Required Commercial Operation Date of the Project, COMPANY shall take Operating Period Insurances against various risks, with suitable deductibles and with suitable endorsements and co-insured as may be necessary in accordance with Prudent Utility Practices and such insurances as may be required under:

- a) any of the Financing Agreements, and
- b) the Laws.

8.2 POWERGRID and the Lenders shall be named as co-insured on all liability policies and insurance policies over the Company's assets taken out by the COMPANY pursuant to Clause 8.1 except for insurance in respect of workers' compensation, and designated as loss payees for every insurance claim, and POWERGRID acknowledges that all such insurance policies will be assigned to the Lenders, subject to the application of proceeds in accordance with Clause 8.7.

8.3 The COMPANY may effect the insurances covering different risks, deductibles, endorsements, co-insured or other terms. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to POWERGRID by insurers prior to cancellation or material modification of a policy.

8.4 If the COMPANY fails to effect and/or maintain any insurance, POWERGRID may effect such insurance (but it shall have no obligation to do so), during the period the COMPANY does not, at the full cost and expense of the COMPANY. The amount paid by POWERGRID in this regard shall be paid to it by the COMPANY within a period of 30 days of issue of notice from POWERGRID. The COMPANY shall ensure that each policy of insurance contains an endorsement providing that each shall not be cancelled or reduced without at least 21 days prior written notice being given by the insurer to POWERGRID, provided that each such insurance shall provide:

- i) that the insurer may not cancel the coverage for non-payment of premium without first giving POWERGRID 10 days written notice that the COMPANY has failed to make timely payments of the premium (including details of the amount owing); and

- ii) that POWERGRID shall, after having received the notice referred to para (i) above have the option to pay such premium directly to the relevant insurer.

8.5 Evidence of Insurance cover

8.5.1 The COMPANY shall furnish to POWERGRID copies of certificates and policies of the Insurances as soon as they are effected and renewed by or on behalf of the COMPANY and from time to time (at the request of POWERGRID) shall furnish evidence to POWERGRID that all relevant premiums have been paid as soon as they have been so paid, and that the relevant policy or policies remain in existence.

8.5.2 Failure by the COMPANY to obtain the insurance coverage or certificates of insurance required pursuant to this Agreement shall not relieve the COMPANY of its obligations under this Section or in any way relieve or limit the COMPANY's obligations or liabilities under any other provision of this Agreement.

8.6 Preference for Indian Insurers

8.6.1 The Insurances shall be effected with Indian insurance companies to the extent that the Insurances can be effected with them in accordance with this Agreement.

8.7 Application of Insurance Proceeds

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

8.7.2 ~~If a Force Majeure Event or a similar natural event or circumstance renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" basis, the portion of the proceeds of such Insurance available to the COMPANY (after payment to the Lenders of the Total Debt Amount) shall be allocated between the shareholders in proportion to their equity contribution.~~

8.7.3 Subject to the requirements of the Lenders under the Financing Agreements, any dispute or difference between the parties as to whether the Project is no longer economically and technically viable due to a Force Majeure Event or a similar natural event or circumstance or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Section 15.

8.7.4. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense for which compensation is due to the COMPANY under any Insurance shall not be charged to or payable by POWERGRID.

8.8 Waiver of Subrogation

8.8.1 All insurance policies supplied by the COMPANY shall include a waiver of any rights of subrogation of the insurers thereunder against, inter-alia, POWERGRID and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

8.8.2 The COMPANY hereby further releases, assigns and waives any and all rights of recovery against, inter-alia, the POWERGRID and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the COMPANY may otherwise have or acquire in or from or in any way connected with any loss covered by the policies of insurance maintained in accordance with this Section 8 other than because of deductible clauses in or inadequacy of limits of any such policies of insurance.

8.9 Excuse in Failing to Insure

8.9.1 The COMPANY shall not be in breach of its obligations to procure an insurance under Clause 8.1 to the extent and only for the period that:

(i) The particular insurance is not available to it in the International and Indian insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the COMPANY or the COMPANY's Contractors;

(ii) The COMPANY effects and maintains for the period referred to in Clause 8.9.1 (i) complementary insurance cover having regard to the capacity of the Indian insurance markets.

8.9.2 In the event of any dispute between the COMPANY and POWERGRID as to the capacity of any insurance or reinsurance market for the purpose of this Clause 8.9 the matter shall be referred to a leading independent insurance agency in India experienced in the Indian insurance market and mutually acceptable to the COMPANY and POWERGRID and the agency so appointed shall be deemed to be an Adjudicator acting pursuant to the provisions of Section 15 of this Agreement.

SECTION-9

9.0 FORCE MAJEURE

9.1 Available Relief for a Force Majeure Event

Except as expressly provided in this Agreement, no party shall be in breach of its obligations pursuant to this Agreement or otherwise liable to the other party for any hindrance or delay in performance or any non-performance of any such obligations if and to the extent that such hindrance or delay or non-performance is due to a Force Majeure Event as defined in Clause 9.3 provided that:

- (i) the affected party could not have avoided the effect of Force Majeure by taking precautions which having regard to all matters known to it before occurrence of the Force Majeure Event and all relevant factors it ought reasonably to have taken but did not take; and
- (ii) the affected party has used its reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way that is reasonably practicable.

9.2 Duty to Report

9.2.1 Without prejudice to Section 9.1, upon the occurrence of a Force Majeure Event, the party wishing to claim relief for the Force Majeure Event shall notify the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the affected party knew, or ought reasonably to have known, of its occurrence.

9.2.2 Any notice pursuant to Clause 9.2.1 shall include detailed particulars of:

- i) the nature of each Force Majeure Event which is the subject of any claim for relief under this Agreement;
- ii) the effect which such Force Majeure Event is having on the affected party's performance of its obligations under this Agreement;
- iii) the measures which the affected party is taking, or proposes to take, to alleviate the impact of those Force Majeure Events; and
- iv) any other information relevant to the affected party's claim.

9.2.3 For so long as the affected party continues to claim to be affected by a Force Majeure Event, it shall provide the other party with regular written reports, atleast once in every month containing:

- i) the information called for by Clause 9.2.2; and
- ii) such other information as the other party may reasonably request about the affected party's claim.

9.2.4 Where the COMPANY is the affected party, it shall promptly notify POWERGRID in writing when any Force Majeure Event which is the subject of any claim under this Agreement ceases or when there is any material change in its impact on the COMPANY's performance of its obligations under this Agreement.

9.3 Force Majeure Events

A Force Majeure Event means any of the events or circumstances, or combination of events and circumstances, referred to below occurring in India but only to the extent that the person affected by such event or circumstance could not have reasonably foreseen the event or circumstance and mitigated its effects even with reasonable efforts / expenditure:

- i) to the extent that it could not reasonably have been expected to occur at the place, and at the time of year, in question, exceptionally adverse weather conditions, act of God, lightning, tempest, cyclone, hurricane, whirlwind, storm, flood, earthquake, any other similar natural disaster, volcanic eruption or fire or land slide;
- ii) epidemic, famine or plague;
- iii) strikes or boycotts interrupting supplies and services to the Project (but not involving the COMPANY, the COMPANY's Contractors or their respective employees, agents or representatives or any strike or boycott attributable to any unfair policy or practice of the aforementioned persons);
- iv) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, explosion, blockade, embargo, revolution, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage or chemical and radioactive contamination;
- v) politically motivated strikes or industrial action (other than those involving primarily the COMPANY's own employees or those of any of the COMPANY's Contractors);

vi) expropriation or compulsory acquisition by any Indian Government Instrumentality of any shares, material assets or rights of the COMPANY or the COMPANY's Contractors;

vii) (a) the unlawful, unreasonable or discriminatory revocation of delay in the grant or renewal of, modification of or refusal to renew, any Consent required by the COMPANY or any of the COMPANY's Contractors to perform their obligations under the Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any such Consent (other than a Consent the obtaining of which is a condition precedent of the parties' obligations);

(b) Change in Law (but only in cases where the provisions of Section-11 are not applicable other than because of Clause 11.1);

viii) any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality occurring after Financial Close which is directed against the Project (other than action taken in connection with or pursuant to a commercial agreement between the relevant Indian Government Instrumentality and the COMPANY or, as the case may be, the COMPANY's Contractors);

ix) any event or circumstance of a nature analogous to any of the above.

9.4 None of the following conditions shall constitute a Force Majeure Event unless due to a Force Majeure Event affecting the COMPANY's Contractors:

i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumable for the Project; or

ii) a delay in the performance of any of the COMPANY's Contractors.

9.5 Notwithstanding anything contained in this Section-9, insufficiency of funds shall not constitute a Force Majeure Event.

9.6 Duty to Mitigate

For so long as a Force Majeure Event which is the subject of any claim under this Agreement is continuing, the affected party shall use all reasonable endeavors to alleviate its effects on the affected party's performance of its obligations under this Agreement.

9.7 Breakdown of Communication

If a Force Majeure Event causes a breakdown of communications such that a party is unable to serve any notice under this Agreement, the period for the serving of such notice (if any) shall be extended for every day whilst such Force Majeure Event prevents the service of such notice.

9.8 Continuance of Financial Obligations

It is hereby expressly clarified and agreed between the parties hereto that the occurrence of a Force Majeure Event or its continuance shall not absolve the parties from their respective financial obligations due under the Agreement, including the obligation to pay Transmission Service Charges due to the COMPANY.

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SECTION-10

10.0 REPRESENTATIONS AND WARRANTIES

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

- (a) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of POWERGRID will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which POWERGRID is a party or to which POWERGRID is bound, which violation, default or power has not been waived;
- (d) POWERGRID is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against POWERGRID;
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of POWERGRID's knowledge, threatened in writing against POWERGRID at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement;

10.2 Representation and Warranties of the COMPANY

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

- (a) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of COMPANY will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which COMPANY is a party or to which COMPANY is bound which violation, default or power has not been waived;
- (d) COMPANY is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against COMPANY;
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of COMPANY's knowledge, threatened in writing against COMPANY at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.

SECTION-11

11.0 CHANGE IN LAW

11.1 This Section-11 shall apply only in the event that if directly due to one or more Changes in Law defined in Clause 11.3, during the term of this Agreement:

- i) the COMPANY's costs or revenues directly attributable to the Project are increased or decreased by not less than an aggregate of Rs. 10 million; or
- ii) the COMPANY is required to undertake capital expenditure directly attributable to the Project of not less than an aggregate amount of Rs. 10 million in order to perform its obligations or exercise its rights pursuant to this Agreement.

The amount mentioned in this Clause 11.1 shall be escalated on the first day of each Contract Year by the increase in the Indian Wholesale Price Index from that in the immediately preceding Contract Year.

11.2 Notification of Change in Law

11.2.1 If the COMPANY is affected by a Change in Law in accordance with Clause 11.1 and wishes to claim a Change in Law under this Section-11, it shall give notice to POWERGRID of such Change in Law as soon as reasonably practicable after becoming aware of the same.

11.2.2 Notwithstanding Clause 11.2.1, the COMPANY shall be obliged to serve a notice to POWERGRID under this Clause 11.2 if it is beneficially affected by a Change in Law.

11.2.3 Any notice served pursuant to this Clause 11.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the COMPANY.

11.3 Change in Law

Change in Law means the occurrence of any of the following after the date of this Agreement:

- the enactment or issuance of any new Indian Law,
- the repeal, modification or re-enactment in whole or in part of any existing Indian Law,
- the commencement of any Indian Law which has not yet entered into effect,

a change in the interpretation or application of any Indian law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law,
the Imposition (other than for cause) of a requirement for a Consent which did not exist as at the date of this Agreement,
a change (other than for cause) in the terms and conditions attaching to a Consent after it has been given or the attachment of any new terms or conditions to such Consent, or
the revocation or cancellation (other than for cause) of any Consent, provided that

For the purpose of any Change in Law relating to any introduction or any changes in the time, rate or incidence applicable to Taxes which have an effect on the Project Cost, Change in Law protection shall be provided only for those Taxes which had been considered by the Competent Authority, while awarding the Project Cost Approval for the Project and for Taxes which are not in existence at the time of award of such Project Cost Approval and are subsequently approved by the Competent Authority.

Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change

- (i) In any Tax on any income stream which is not proposed to be reimbursed as a part of Transmission Service Charge payable prior to such change unless such change is subsequently permitted by Competent Authority to be reimbursed as part of Transmission Service Charge.
- (ii) on account of regulatory measures by GERC,
- (iii) in any Tax applied on the income or profits distributed to shareholders unless allowed to be reimbursed by Competent Authority as part of Transmission Service Charge.

11.4 Amendment to this Agreement

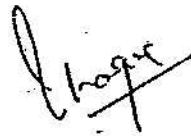
11.4.1 Within sixty (60) days of a notice being served pursuant to Clause 11.2, the parties shall meet and endeavor to agree on what amendments need to be made to this Agreement to ensure that the COMPANY is put into the same financial position as it would have been in but for the Change in Law.

11.4.2 Upon reaching agreement on the amendments required to this Agreement pursuant to Clause 11.4.1 the parties shall execute such amending agreement to give effect to that agreement within sixty (60) days thereof.

11.4.3 If within sixty (60) days of the commencement of the meetings between the parties pursuant to Clause 11.4.1:

- i) the parties are unable to reach agreement on the amendment required pursuant to Clause 11.4.1; or
- iii) having reached agreement on the amendment required pursuant to Clause 11.4.1, no amending agreement has been executed within a further sixty (60) days of such agreement.

either party may refer any areas of disagreement to be settled in accordance with Section 15 so that the necessary amendments to this Agreement pursuant to Clause 11.4.1 are executed. The parties shall execute such amending agreement so determined in accordance with Section 15 as soon as reasonably practicable.



SECTION-12

TERMINATION ON DEFAULT

Termination

COMPANY Events of Default

The occurrence and continuation of any of the following events shall constitute a COMPANY Event of Default, unless any such COMPANY Event of Default occurs as a result of a breach by POWERGRID of its obligation under this Agreement, a POWERGRID Events of Default, a Force Majeure Event:

- i) The failure of COMPANY to appoint an O&M Contractor, if the COMPANY so decides which decision has been notified to POWERGRID in writing, within one month of the applicable Commercial Operation Date or such date as mutually agreed;
- ii) The Material failure of COMPANY to maintain the Project in accordance with Prudent Utility Practices;
- iii) Any breach by the COMPANY of any of its Material obligations under this Agreement or the IA or termination of the SHA pursuant to a TATA POWER default other than in the case where the SHA has been terminated solely due to the exercise by the Lenders of their rights under the Financing Agreements over any shares of the COMPANY;
- iv) If, without the prior written consent of POWERGRID, any employee, agent or representative of the COMPANY or a COMPANY's Contractors tampers with and thereby causes damage to the Interconnection Facilities, except to take reasonable precautions to prevent an imminent material danger to persons or an imminent danger of material damage to property;
- v) If the COMPANY:
 - a) assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights in contravention to the provision of this Agreement; or
 - b) transfer or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement;
- vi) If any shareholder who is signatory to the Shareholders Agreement except POWERGRID (or any of its transferees)

ceases to be a shareholder in the COMPANY otherwise than in accordance with the Shareholders' Agreement and other than in the case where the SHA has been terminated solely due to the exercise by the Lenders of their rights under the Financing Agreements over any shares of the COMPANY;

vii) The transfer, pursuant to law, of either:

- (a) the rights and/or obligations of the COMPANY under this Agreement; or
- (b) all or a substantial portion of the assets or undertakings of the COMPANY,

except where such transfer

- (1) does not affect the ability of the transferee to perform, and such transferee has the financial and technical capability to perform, its obligations under this Agreement;
- (2) is to a transferee who assumes such obligations under this Agreement and this Agreement remains effective with respect to the transferee;

viii) The dissolution, pursuant to law, of the COMPANY except for the purpose of a merger, consolidation or re-organisation that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;

ix) Revocation of Transmission License of the COMPANY; and

x) ~~If the Availability of the Project is less than 90% except due to~~ Force Majeure Event(s) for any consecutive period of thirty days.

12.1.2 POWERGRID Events of Default

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

- i) a) The dissolution, pursuant to Law, of POWERGRID or all or a substantial portion of the assets or undertakings of POWERGRID, unless such dissolution is in connection with the reorganization or restructuring of the power sector and provided that (i) POWERGRID's successor

under this Agreement expressly assumes the obligations of POWERGRID under this Agreement and (ii) is either an owner or operator of a substantial portion of the transmission system for India and (iii) is otherwise capable of performing the obligations of POWERGRID under this Agreement;

- (b) The transfer pursuant to Law of either the rights and/or obligations of POWERGRID hereunder or all or a substantial portion of the assets or undertakings of POWERGRID, unless such transfer is in connection with the reorganization or restructuring of the power sector and the conditions set out in paragraphs (i) to (iii) in (a) above are satisfied;
- ii) POWERGRID is in breach of any of its Material obligations pursuant to this Agreement or the IA or termination of the SHA pursuant to a POWERGRID default, other than in the case where the SHA has been terminated solely due to the exercise by the Lenders of their rights under the Financing Agreements over any shares of the COMPANY;
- iii) provided the COMPANY has made a valid demand on the POWERGRID Letter of Credit and without satisfaction to the COMPANY, any payment under the Monthly TSC Invoice has remained unpaid for a period of 90 days from the Due Date of such Invoice;
- iv) Failure of POWERGRID to operate the Project in accordance with Prudent Utility Practices.
- v) If POWERGRID transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement.

12.1.3 Termination Procedure for COMPANY Events of Default

12.1.3.1 Upon the occurrence of a COMPANY Event of Default, POWERGRID may serve notice on the COMPANY of its intention to terminate this Agreement (a "POWERGRID Preliminary Termination Notice") which notice shall specify in reasonable detail, the circumstances giving rise to such POWERGRID Preliminary Termination Notice. Simultaneously with the delivery of any such notice, POWERGRID shall provide a copy thereof to the Lenders' Representative.

12.1.3.2 Following the giving of a POWERGRID Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Suspension

Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.1 (x), the Suspension Period shall be reduced to one month.

Provided further that during such period, the COMPANY shall not remove any equipment or any part of the Project, without the prior written consent of POWERGRID.

12.1.3.3 Both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement, until a POWERGRID Termination Notice is delivered.

12.1.3.4 Within the period of five (5) days following the expiry of the Suspension Period and unless the parties shall have otherwise agreed or the circumstances giving rise to POWERGRID Preliminary Termination Notice shall have ceased to exist or shall have been remedied, POWERGRID may terminate this Agreement by giving written notice ("POWERGRID Termination Notice") to the COMPANY (with a copy to the Lenders' Representative) whereupon:

- (i) subject to the terms and conditions of the Schedule 4 and Financing Agreements, this Agreement shall terminate on the date of such Termination Notice and
- (ii) POWERGRID shall purchase the Project pursuant to and at a Buy-out Price determined in accordance with provisions of Schedule 4.

12.1.4 Termination Procedure for POWERGRID Events of Default

12.1.4.1 Upon the occurrence of a POWERGRID Event of Default, the COMPANY may serve notice on POWERGRID of its intention to terminate this Agreement (a "COMPANY Preliminary Termination Notice") which notice shall specify in reasonable detail the circumstances giving rise to such COMPANY Preliminary termination Notice.

12.1.4.2 Following the giving of a COMPANY Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Suspension Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.2 (iii), the Suspension Period shall be reduced to one month.

12.1.4.3 During any Suspension Period, both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

12.1.4.4 Within the period of five (5) days following the expiry of the Suspension Period and unless the parties shall have otherwise agreed or the circumstances giving rise to the COMPANY Preliminary Termination Notice shall have ceased to exist or shall have been remedied, the COMPANY may terminate this Agreement by giving written notice ("COMPANY Termination Notice") to POWERGRID whereupon:

- (i) subject to the terms and conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice; and
- (ii) the COMPANY shall have an option, exercisable by notice served on POWERGRID within one hundred and twenty (120) days of such notice to require POWERGRID to purchase the Project pursuant to the provisions of Schedule 4.

12.1.5 Termination due to Force Majeure

In case, the Force Majeure Event or effects thereof, having adverse impact on the Project, cause the Availability of the Project to be reduced, for a continuous period of 180 days or longer (disregarding any deemed Availability during such period), below 85%, POWERGRID shall have the right to cause termination of the Agreement and to purchase the Project by giving a notice to the COMPANY in this regard. The COMPANY shall also have the right to cause termination of the Agreement and to sell the Project by giving a notice to POWERGRID in this regard. In case of both these events:

- (i) subject to the terms and conditions of Schedule-4 and the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice; and
- (ii) COMPANY and POWERGRID shall perform their respective obligations under the provisions of Schedule-4.

12.2 In case of termination of this Agreement, and if POWERGRID exercises its right to Buy-out the Project, the COMPANY shall provide to POWERGRID full names and addresses of its Contractors, Sub-Contractors as well as complete designs, design drawings, manufacturing drawings, material specifications and technical information, as required by POWERGRID.

12.3 Notwithstanding any other provision of this Agreement, a POWERGRID Preliminary Termination Notice, COMPANY Preliminary

Termination Notice, POWERGRID Termination Notice, COMPANY Termination Notice or a notice under Clause 12.1.5 shall be deemed to have been validly served on the service of any such notice under the corresponding provisions of the Implementation Agreement. Accordingly, the termination of the Implementation Agreement due to a POWERGRID Event of Default, COMPANY Event of Default or Force Majeure Event (as such expressions are defined in the Implementation Agreement) shall result in this Agreement being terminated due to a POWERGRID Event of Default, COMPANY Event of Default or Force Majeure Event, respectively. Whereafter provisions related to Buy-out under Schedule 4 shall be applicable to such termination.

SECTION-13

13.0 LIABILITY AND INDEMNIFICATION

13.1 Limitation of Liability

Notwithstanding any other term or provision of this Agreement, the aggregate liability which each of the parties shall have for all claims made under this Section-13 shall not exceed the limit fixed as per the terms of this Agreement.

13.2 Loss of or damage to property, death or injury to person

13.2.1 Indemnification by POWERGRID

POWERGRID agrees with the COMPANY (itself and as trustee on behalf of COMPANY's Contractors) to indemnify and hold harmless the COMPANY and each of the COMPANY's Contractors for loss of or damage to property, death or injury to person (or any related claim against the COMPANY and/or any of the COMPANY's Contractors) and all related expenses (including without limitation reasonable legal fees) suffered by the COMPANY and/or any of the COMPANY's Contractors in connection with this Project to the extent resulting from any negligent act or omission of POWERGRID and/or any of POWERGRID's contractors or their respective employees, without recourse to the COMPANY and/or any of COMPANY's Contractors and hold the COMPANY and/or the COMPANY's Contractors fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that:

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that:
 - a) it arose from a claim made outside India, or
 - b) it was caused by any act or omission of the COMPANY and/or any of COMPANY's Contractors or the failure of the COMPANY and/or any of the COMPANY's Contractors to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.1 shall apply to any loss, damage, cost or expense in respect of, and to the extent that, the COMPANY and/or any of the COMPANY's Contractors are compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.2.2 Indemnification by the COMPANY

The COMPANY agrees with POWERGRID to indemnify and hold harmless POWERGRID for loss of or damage to property, death or injury to person (or any related claim against POWERGRID) and all related expenses (including without limitation reasonable legal fees) suffered by POWERGRID in connection with this Project to the extent resulting from any negligent act or omission of the COMPANY and/or any of the COMPANY's Contractors or their respective employees, without recourse to POWERGRID and will hold POWERGRID fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that:

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that:
 - a) it arose from a claim made outside India; or
 - b) it was caused by any act or omission of POWERGRID or the failure of POWERGRID to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.2 shall apply to any loss, damage, cost or expense in respect of, and to the extent that POWERGRID is compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.3 Patent Indemnity

13.3.1 The COMPANY shall, subject to POWERGRID's compliance with Clause 13.3.2, indemnify and hold harmless POWERGRID and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which POWERGRID may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the installation of the Project by the COMPANY.

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

13.3.2 If any proceedings are brought or any claim is made against POWERGRID arising out of the matters referred to in Sub-Clause 13.3.1, POWERGRID shall promptly give the COMPANY a notice thereof, and the COMPANY shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The COMPANY shall promptly notify POWERGRID of all actions taken in such proceedings or claims.

If the COMPANY fails to notify POWERGRID within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then POWERGRID shall be free to attend the same on its own behalf at the cost of the COMPANY. Unless the COMPANY has so failed to notify POWERGRID within the twenty eight (28) day period, POWERGRID shall make no admission that may be prejudicial to the defense of any such proceedings or claims.

POWERGRID shall, at the COMPANY's request, afford all available assistance to the COMPANY in attending to such proceedings or claim, and shall be reimbursed by the COMPANY for all reasonable expenses incurred in so doing.

13.3.3 POWERGRID shall indemnify and hold harmless the COMPANY and its employees, officers and Sub-Contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the COMPANY may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement arising out of or in connection with any design, data, drawing specification, or other documents or materials provided or designed by or on behalf of POWERGRID.

13.3.4 If any proceedings are brought or any claim is made against the COMPANY arising out of the matters referred to in Clause 13.3.3 the COMPANY shall promptly give POWERGRID a notice thereof, and POWERGRID shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. POWERGRID shall promptly notify the COMPANY of all actions taken in such proceedings or claims.

If POWERGRID fails to notify the COMPANY within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then the COMPANY shall be free to attend the same on its own behalf at the cost of POWERGRID. Unless POWERGRID has so failed to notify the COMPANY within the twenty

eight (28) day period, the COMPANY shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The COMPANY shall, at POWERGRID's request, afford all available assistance to POWERGRID in attending to such proceedings or claim, and shall be reimbursed by POWERGRID for all reasonable expenses incurred in so doing.

13.4 Assertion of Claims

Each party shall notify the other party promptly of its entitlement, and intention, to make any claim for indemnification pursuant to this Section-13.

13.5 Defence of Claims

13.5.1 The person indemnified pursuant to this Section-13 shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such person in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Section-13 and the reasonable cost and expenses incurred by the person indemnified shall be subject to the indemnification obligation of the person indemnifying under this Section-13 provided that if the person indemnified is indemnified in respect of loss to the full extent provided by this Section-13, the person indemnifying shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the person indemnified and reimburses the person indemnified for the reasonable cost and expenses incurred by the person indemnified prior to the assumption by the person indemnifying of such defence.

13.5.2 The person indemnified which exercises its rights under Clause 13.5.1 shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the person indemnifying.

13.5.3 Any person indemnified which exercises its rights under Clause 13.5.1 shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such person indemnified, when and as incurred, unless:

- i) the employment of counsel by such person indemnified has been authorised in writing by the person indemnifying;
- ii) the person indemnified shall have reasonably concluded that there may be a conflict of interest between the person

indemnifying and the person indemnified in the conduct of the defence of such action;

- iii) the person indemnifying shall not in fact have employed independent counsel reasonably satisfactory to the person indemnified to assume the defence of such action and shall have been so notified by the person indemnified; or
- iv) the person indemnified shall have reasonably concluded and specifically notified the person indemnifying either that there may be specific defences available to it which are different from or additional to those available to the person indemnifying or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that If Clauses 13.5.3(ii), 13.5.3(iii) or 13.5.3 (iv) apply, counsel for the person indemnified shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the person indemnified and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses under this Section-13.

13.5.4 Any person other than the parties seeking the benefit of the indemnity provided pursuant to this Section-13 must acknowledge, on request and in writing to both parties to this Agreement, that, in consideration of receiving such indemnity, such person is bound by the terms of this Clause 13.5.

13.6 Consequential and Indirect Losses

Except as required by this Section-13 neither party shall be liable to the other party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages and neither party shall have any liability to the other party except pursuant to or for breach of this Agreement provided that this provision is not intended to constitute a waiver of any rights of one party against the other with regard to matters unrelated to this Agreement.

13.7 An act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Agreement shall be deemed to be an act or exercise by the delegating party.

13.8 Duty to Mitigate

The party entitled to the benefit of an indemnity under this Clause 13.0 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

SECTION-14

14.0 ASSIGNMENTS AND CHARGES

14.1 Assignments

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

Subject to Clause 14.2, this Agreement shall not be assigned or novated by the COMPANY other than by mutual agreement between the parties.

14.2 Permitted Charges

14.2.1 Notwithstanding Clause 14.1, the COMPANY may create any encumbrance over all or part of the Security Package or the other assets of the Project or the COMPANY in favour of the Lenders or the Lender's Representative as security for:

- i) amounts payable under the Financing Agreements; and
- ii) ~~any other amounts agreed by the parties~~

Provided that:

- ~~a) the Lenders or the Lender's Representative shall have entered into the Financing Agreements; and~~
- b) any encumbrance granted by the COMPANY in accordance with this Clause 14.2.1 shall contain provisions pursuant to which the Lenders or the Lender's Representative agrees unconditionally with the COMPANY to release such encumbrances upon payment by the COMPANY to the Lenders of all amounts due under the Financing Agreements.

14.2.2 Clause 14.2.1 does not apply to

- i) liens arising by operation of Law (or by an agreement evidencing the same) in the ordinary course of the COMPANY carrying out the Project;
- ii) pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the COMPANY carrying out the Project; and
- iii) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the COMPANY carrying out the Project.

14.3 Undertakings in relation to Permitted Charges

14.3.1 Until the COMPANY has no obligations to any of the Lenders under any of the Financing Agreements, neither the COMPANY nor POWERGRID shall do, or take any steps in furtherance of, any of the following without the prior written consent of the Lenders' Representative, such consent not to be unreasonably withheld:

- (a) the cancellation, suspension or termination of this Agreement except in accordance with section 12;
- (b) the waiver, amendment or supplementing of any of the provisions of this Agreement;
- (c) making any Changes in the Project;
- (d) granting, or consenting to the granting of, any interest in this Agreement to a third party (whether by assignment, novation, subcontracting or otherwise) except in accordance with sections 14.1 or 14.2 and, in the case of an assignment or novation pursuant to section 14.1, subject to the further condition that the assignee acknowledge in writing to the Lenders and the Lenders' Representative that it is aware of, and will honour, the rights granted to the Lenders and the Lenders' Representative in this Agreement; or
- (e) taking or supporting any action to wind up, appoint an administrator or receiver for, or the sanctioning of any insolvency procedure or voluntary arrangement in relation to, the COMPANY.

14.3.2 Until the COMPANY has no obligations to any of the Lenders under any of the Financing Agreements, POWERGRID shall make all

payments due to the COMPANY under this Agreement only to such account as the Lenders' Representative shall designate in writing from time to time. The COMPANY agrees that any payment made to such account shall be deemed to have been paid to the COMPANY. If, for any reason, the COMPANY shall receive any payments that ought, under the terms of this provision, to have been paid to an account designated by the Lenders' Representative, it shall hold such funds as trust funds and shall promptly pay them into the designated account.

14.3.3 The parties' obligations under clauses 14.3.1 and 14.3.2 shall continue until the COMPANY shall have indefeasibly paid in full all amounts owing to the Lenders under the Financing Agreements.

SECTION-15

15.0 GOVERNING LAW AND DISPUTES

15.1 Governing Law

The Agreement shall be governed by and interpreted in accordance with the Laws of India.

15.2 Settlement of Disputes

15.2.1 Mutual Consultation

15.2.1.1 Subject to Clause 15.2.1.2, if any dispute or difference shall arise between POWERGRID and the COMPANY in connection with or arising out of the Agreement, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Project, whether during the progress of the Project or after its completion and whether before or after the termination, abandonment or breach of the Agreement - the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within a period of (30) days, then the dispute shall be referred in writing by either party to the Adjudicator in accordance with Section 15.2.2 with a copy to the other party.

15.2.1.2 If any dispute shall arise between POWERGRID and the COMPANY under Clause 6.5.2, the parties shall seek to resolve such dispute or difference by mutual consultation during the fourteen (14) day period specified in Section 6.5.5. If the parties fail to resolve such dispute or difference by mutual consultation within such fourteen (14) day period, then the dispute shall be submitted to the Adjudicator to be determined by such Adjudicator in accordance with Clause 15.2.2.

15.2.2 Adjudicator

The following provisions shall apply between the parties in respect of any difference or dispute which has not been resolved by mutual consultation as provided in Clause 15.2.1:

- i). At least three months prior to the Required Commercial Operation Date of Phase 1, the parties shall agree on a panel of individuals from reputed institutes who may be appointed by

either party as Adjudicators for the purpose of adjudicating upon any dispute. Where any of the individuals identified in terms of this sub-clause are unable to be appointed as Adjudicator, for any reason whatsoever, the parties shall replace such person within fifteen (15) days of becoming aware of such person's unwillingness or inability to act as Adjudicator;

- ii) the party raising the dispute shall select one of the Adjudicators agreed upon in terms of sub-clause (i) above to adjudicate the dispute. In relation to technical matters, the Adjudicator shall be an Independent Engineer and in relation to financial matters, the Adjudicator shall be a Financial Expert of repute in their respective fields;
- iii) the parties shall finalise the points of such disputes or differences or the terms of reference before referring such disputes or differences to the Adjudicator;
- iv) the parties shall require the Adjudicator to resolve or settle such disputes or differences in accordance with Prudent Utility Practices, the Indian Electricity Grid Code and the Law, within sixty (60) days of such disputes or differences being referred to him and to convey his recommendations in writing to both the parties;
- v) in case of a payment dispute under clause 6.5.3, the parties shall comply with the Adjudicator's recommendation, and the party determined by the Adjudicator to owe payment shall pay amounts owed within thirty (30) days of such determination, together with interest thereon as decided by the Adjudicator;
- vi) no party shall be permitted to refer a dispute or difference submitted to an Adjudicator under clause 6.5.3 for arbitration under Clause 15.2.3 until it has fully complied with the Adjudicator's recommendation under sub-clause (v) above;
- vii) the parties shall require the Adjudicator to, subject to paragraph (viii), determine which party bears the costs (or a portion of the costs) of settling or determining such dispute or difference; and
- viii) if the Adjudicator settles or determine a dispute or difference in a manner entirely consistent with a party's initial position on such dispute or difference, the parties shall require the Adjudicator to determine that the other party bears the costs of settling or determining the dispute or difference.

15.2.3 Arbitration

- 15.2.3.1 Subject to Clauses 15.2.2(v) and 15.2.2(vi), if either POWERGRID or the COMPANY is dissatisfied with the Adjudicator's recommendation, or if the Adjudicator fails to give a

recommendation within sixty (60) days of a dispute or difference being referred to him or if the parties fail to appoint an Adjudicator or to finalise the terms of reference within sixty (60) days of the dispute or difference having first arisen, then either POWERGRID or the COMPANY may, within sixty (60) days of receipt of such recommendation give written notice to the other party of its intention to refer the dispute or difference for arbitration, as hereinafter provided.

15.2.3.2 Where neither POWERGRID nor the COMPANY has given notice of intention to commence arbitration of a dispute or difference within the period stated in Clause 15.2.3.1, then the related recommendation of Adjudicator, if any, shall become final and binding.

15.2.3.3 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Clause 15.2.3.1 shall be finally settled by arbitration, which arbitration award shall be final and binding upon the parties. Arbitration may be commenced prior to or after completion of the Project.

15.2.3.4 Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(a) POWERGRID and the COMPANY shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. In case a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party, or the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, the appointment shall be made on the basis of the recommendation of the Chief Justice of the High Court, New Delhi;

(b) The place of arbitration shall be New Delhi, India. The courts at New Delhi shall have the exclusive jurisdiction;

(c) Arbitration proceedings shall be conducted in English;

(d) The arbitrators shall give a reasoned award and shall notify the parties of their award within 60 days of such reference being made by either party;

(e) The arbitrators shall, subject to paragraphs (f) below, determine which party bears the costs (or a portion of the

costs) of settling or determining such dispute or difference;
and

- (f) The arbitrators settle or determine a dispute or difference in a manner entirely consistent with a party's initial position on such dispute or difference, the arbitrator shall determine that the other party bears the costs of settling or determining the dispute or difference.

15.2.4 Notwithstanding any reference to the Adjudicator or arbitration herein, the parties shall continue to perform their respective obligations under the Agreement unless they otherwise agree.

15.2.5 In the event that at the time of reference of any dispute to arbitration in accordance with this Section 15, a dispute has already been referred to arbitration under Section 15 of the Implementation Agreement, the parties agree that all such disputes shall be heard before the same set of arbitrators.

15.2.6 Notwithstanding the generality of the provisions of this Section 15, any determination of the Buy-out Price described in Schedule 4 shall be made exclusively by the Appraiser in accordance with Schedule 4.

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SECTION-16

16.0 CONFIDENTIALITY

16.1 Confidential Information

Subject to Clause 16.2, both parties shall at all times during the continuance of this Agreement and for a period of three years after its termination or expiry;

- i) use their reasonable endeavors to keep all information regarding the terms and conditions of this Agreement and any data or information acquired under or pursuant to this Agreement confidential and accordingly neither party shall disclose the same to any other person; and
- ii) not use any document or other information (whether technical or commercial) obtained by them respectively by virtue of this Agreement concerning the other's undertaking for any purpose other than performance of the party's obligations and exercise of its rights under this Agreement.

Provided that the provisions of this Clause 16.1 shall not apply to information which at the time of disclosure was in the public domain other than by breach of the foregoing obligations of confidentiality.

16.2 Disclosure of Confidential Information

16.2.1 Each of the parties shall hold in confidence the agreements relating to the Project and all documents and other information (whether technical or commercial) which is of a confidential nature disclosed to it by or on behalf of the other party relating to the Project and shall not, save as may be required by Law or appropriate regulatory or statutory authorities, or to any Indian Governmental Instrumentality, or to prospective Lenders to, or investors in the COMPANY or to the professional advisers of the parties or of those prospective Lenders or investors, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

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

- i) to any affiliate of such party, having made it aware of the requirements of this Clause 16.2 or to any Indian Governmental Instrumentality;
- ii) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, having made them aware of the requirements of this Clause 16.2;
- iii) to the Lenders, the Lenders' Representative, any security trustee, any bank or other financial institution and its advisers from which such party is seeking or obtaining finance, having made them aware of the requirements of this Clause 16.2;
- iv) to the extent required by the rules of a relevant and recognised stock exchange;
- v) to the extent required by any Laws of India or pursuant to an order of any court of competent jurisdiction;
- vi) to any insurer under a policy of insurance;
- vii) to directors, employees and officers of such party having made them aware of the requirements of this Clause 16.2;
- viii) to any person which the parties in their absolute discretion (exercised in good faith) considers such disclosures to be appropriate;

and is necessary to enable such party to perform this Agreement or to protect or enforce its rights under this Agreement or any other Project Document or to enable it to comply with any requirement referred to in Clauses 16.2.2 (iv) and 16.2.2(v) or to carry on its ordinary business.

SECTION-17

17.0 MISCELLANEOUS PROVISIONS

17.1 Amendments

This Agreement shall not be amended except by written agreement between the parties.

This Agreement is intended solely for the benefit of the parties and their respective successors and permitted assigns including the Lenders and the Lenders' Representative.

17.2 No Waiver

17.2.1 No waiver by either party of any default or defaults by the other party in the performance of any of the provisions of this Agreement:

- i) shall operate or be construed as a waiver of any other or further default or defaults; and
- ii) shall be effective unless in writing duly executed by a duly authorised representative of such party.

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

17.3 Relationship of the Parties

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

17.4 Entirety

17.4.1 This Agreement alongwith its sections, schedules and appendices are intended by the parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

17.4.2 All prior written or oral undertakings, offers or other communications of every kind pertaining to this Agreement under this Agreement between the parties are abrogated and withdrawn.

17.5 Successors and Assigns

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

17.6 Notices

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

If to the COMPANY : POWERLINKS TRANSMISSION LIMITED
Address : 4TH FLOOR, KANCHENJUNGA BUILDING
18, BARAKHAMBA ROAD
NEW DELHI 110 001
INDIA

Attention : Managing Director
Fax. No. : (011) 55306377
Telephone No. : (011) 55306380

If to POWERGRID :
Address : POWER GRID CORPORATION OF INDIA LTD.
"SAUDAMINI", PLOT NO. 2
SECTOR 29, GURGAON 122 001
HARYANA

Attention : Director (Operation)
Fax. No. : (0124) 2571932
Telephone No. : (0124) 2571930

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

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

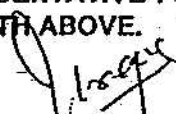
17.7 Compliance with Notifications

Despite anything contained in this Agreement but without prejudice to Section 11, if any provision of this Agreement shall be in deviation of, inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, such provision shall be deemed to be amended to the extent required to bring it into compliance with the relevant provisions of the Electricity Act, 2003 as amended from time to time.

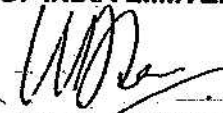
17.8 Private and Commercial Acts

The parties hereby agree and acknowledge that the execution, delivery and performance of this Agreement constitutes a private and commercial act done and performed for a private and commercial purpose.

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


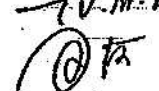

J. HARVE
EXECUTIVE DIRECTOR (DS)
Signed on behalf of

POWER GRID CORPORATION OF INDIA LIMITED


UTPAL DHAR
MANAGING DIRECTOR
Signed on behalf of

POWERLINKS TRANSMISSION LIMITED

WITNESSES:

1. 
(V.M. KAUL), GM (JV), Powergrid.
2. 
(S. Datta), Chief Accounts Officer & Powerlinks Company Secretary.

SCHEDULE 1

Definitions

In this Agreement, unless the context otherwise requires:

"Adjudicator" means a person appointed pursuant to Clause 15.2.2;

"Agreed Form" in relation to any document means the form of the document most recently agreed by the parties and initialed by them for identification;

"Appraiser" means a person appointed to determine Buy Out Price pursuant to Schedule 4;

"Available" shall have the meaning as in Clause 5.1 of this Agreement;

"Availability" shall have the meaning as in Clause 5.3 of this Agreement;

"Base Reference Exchange Rate" means in relation to any currency other than Rupees in which any component of the Project Cost may be financed the Reference Exchange Rate for the relevant currency on the days on which the COMPANY utilized such component towards the Project Cost, which rate shall be calculated as follows:

$$br_c = \sum_i (CA_i \times r_i) / \sum_i CA_i$$

Where

br_c is the Base Reference Exchange Rate for currency_c (or equal to 1.0 if currency_c is Rupees) in which the component is utilized towards the Project Cost

\sum_i means the sum of the relevant values for each day_i on which the COMPANY utilized the component denominated in currency_c.

CA_i means the amount of the component of the Project Cost which is utilized in currency_c on day_i

r_i is the Reference Exchange Rate for currency_c on day_i (or 1.0 if currency_c is Rupees)

"Bid Documents" means the tender documents containing Technical Specifications and other terms and conditions of contract pursuant to which POWERGRID acting on behalf of the COMPANY or the COMPANY itself, as

the case may be, shall invite proposals to facilitate procurement of goods and services for the Project;

"Buy-out" means the purchase by POWERGRID of the Project pursuant to a Buy-out Notice;

"Buy-out Price" means the amount payable on a Buy-out determined by Appraiser in pursuance of Schedule 4;

"CEA" means the Central Electricity Authority of India constituted under the Electricity (Supply) Act, 1948 and operating under the Electricity Act, and any successors which fulfil the same role;

"CERC" means Central Electricity Regulatory Commission of India constituted under "The Electricity Regulatory Commissions Act, 1998" and operating under the Electricity Act, and any successors which fulfil the same role;

"Change" means the change as defined in Clause 4.12 of this Agreement;

"Commercial Operation Date" in relation to each Phase means the date as declared under Clause 6.3 of the Implementation Agreement that the Phase is Commissioned and under commercial operation;

"Commissioned" in relation to each Phase means the date as declared under Clause 6.3 of the Implementation Agreement that the Phase is commissioned;

"Commissioning" means operation of each Project by COMPANY as provided under Clause 6.2 of the Implementation Agreement;

~~"Commissioning Tests" means such tests that are required to ensure successful and safe commissioning of each Phase and as defined in the Technical Particulars and the Technical Specifications;~~

~~"Completion" means the transfer of the Project to POWERGRID in accordance with Schedule 4 of this Agreement;~~

"Competent Authority" means any Indian Governmental Instrumentality which has legal right over the Project, but excluding POWERGRID;

"Contractors" means the engineering, procurement, construction, operation & maintenance contractors, surveyors, advisors, consultants, designers suppliers r to the COMPANY and each of their respective Sub-Contractors (and each of their respective successors and permitted assigns) in their respective capacities as such;

"Consent" shall mean and include all authorisations, consents, licenses, approvals, registrations, clearances, permits, waivers, privileges, acknowledgements, agreements, concessions and approvals from any Indian Governmental Instrumentality required for the Project;

"Construction Period" means the period from (and including) the earliest occurring date upon which COMPANY is instructed or required to take up work under the Agreement up to (but not including) the Commercial Operation Date of the Phase 3B;

"Contract Year" means:

- (i) the period beginning on the date of this Agreement and ending on the following March 31,
- (ii) each succeeding twelve (12) month period beginning on April 1 during the term of this Agreement, and
- (iii) if the last day of the term of this Agreement is not March 31, the period beginning on the immediately preceding April 1 and ending on the last day of the term of this Agreement;

"CTU" means Central Transmission Utility as referred to in "The Electricity Laws (Amendment) Act, 1998" and the Electricity Act, according to which POWERGRID has been specified as CTU by Govt. of India;

"Day" means Calendar day of Gregorian Calendar;

"D/C" means Double Circuit;

"Due Date" in relation to any invoice means the thirtieth day after that invoice is received (or, if that day is not a business day, the immediately following business day);

"Effective Date" means July 4, 2003, the date on which original Transmission Service Agreement was executed and delivered by parties;

"Electricity Act" means "Electricity Act, 2003 (Act No. 36 of 2003)" as amended from time to time;

"Electricity Rule" means the rules and regulations pursuant to Electricity Act, together with the rules and regulations framed under Indian Electricity Act, 1910, Electricity (Supply) Act, 1948, or Electricity Regulatory Commissions Act, 1998 as amended from time to time, for such period of time as they continue to be effective under the Electricity Act;

"Element" shall have the meaning as defined in Clause 5.1 of this Agreement;

"Equipment" means all plants, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Project that are to be arranged by the COMPANY, but does not include equipment, or other things intended to form or forming part of the Project;

"Event of Default" means the event as defined in Section 12;

"Expiry Date" is the date which is 25 (twenty five) years from the date of Transmission License, unless the term of the Transmission License is extended by the Competent Authority, provided that the Expiry Date shall be no later than 30 years from the Commercial Operation Date of the last Phase of the Project which has been Commissioned.

"Feasibility Report" means the report submitted by POWERGRID to Competent Authority on the basis of which the Techno-Economic Clearance was issued by the Competent Authority.

"Financial Close" means the first business day on which funds are made available to the COMPANY pursuant to the Financing Agreements;

"Financing Agreements" means the Agreements pursuant to which the COMPANY is to finance the Project including the loan agreements, security documents, inter-creditor agreements, co-ordination agreements and other ancillary agreements which are a condition to the availability of funds under any such financing agreements;

"Financial Expert" means a person appointed pursuant to Section 8 or 15, as the case may be;

"Financial Year" means period of twelve months at midnight Indian Standard Time (IST) between first April & thirty first March;

"Force Majeure" this term has the meaning assigned hereto in Section-9;

"Force Majeure Event" this term has the meaning assigned hereto in Section-9;

"Forced Outage" means any interruption in transmission of energy through the Project and consequent reduction in Availability of the Project which is not the result of a Scheduled Outage, Unscheduled Outage or a Force Majeure Event;

"Grid Code" means any set of regulations or codes binding on POWERGRID and/or COMPANY governing the operation of the transmission system;

"Implementation Agreement" means the Agreement so entitled entered into, or to be entered into, between POWERGRID and the COMPANY in the Agreed Form;

"Independent Engineer" means a person appointed pursuant to Clause 4.4 or Section 15, as the case may be;

"Indian Consumers Price Index" means the weighted price index of CPI for industrial workers (CPI-IW) published by Government of India.

"Indian Governmental Instrumentality" means Government of India, Government of any State of India or any Ministry, department, board, authority, instrumentality, agency, corporation or commission under the direct or indirect control of Government of India or any State Government or any political sub-division of any of them or any court or tribunal or judicial body in India but excluding POWERGRID;

"Indian Wholesale Price Index" means the weighted average of the relevant components (listed below) selected from the disaggregated WPI series (1993-94 = 100) published by Ministry of Industry and shall be calculated as follows:

$$WPITR = \frac{\sum_{i=1}^n w_i WPI_i}{\sum_{i=1}^n w_i}$$

where,

WPITR is the Wholesale Price Index to be applied to the O&M Expense

WPI_i is the Wholesale Price Index for the ith sub-group

w_i is the weight of the ith sub-group and shall be as follows:

	Commodities	Weight
>	Cotton Cloth	0.90306
>	Paper & Paper Products	2.04403
>	Rubber & Plastic Products	2.38819
>	Paints Varnishes & Lacquers	0.49576
>	Turpentine, Synthetic resins, plastic materials etc.	0.74628
>	Non-Metallic Mineral Products	2.51591
>	Basic Metals Alloys & Metals Products	8.34186
>	Machinery & Machine Tools	8.36331
>	Transport Equipment & Parts	4.29475

"Insurances" means the insurance cover to be obtained and maintained by the COMPANY in accordance with this Agreement;

"Interconnection Points" means the points, to be identified prior to the target date of Financial Close, where the Project is connected with the transmission systems that are outside the scope of the Project;

"Interconnection Facilities" means the facilities as may be set up for transmission of energy through the use of Project, on POWERGRID's side of the Interconnection Points in accordance with this Agreement and which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;

"Investors" at any time means all shareholders of the COMPANY at that time;

"Invoice Dispute Notice" is as defined in Clause 6.5.2 of this Agreement;

"Law or Laws" shall mean and include laws, ordinances, statutes, rules, Notifications & directives, regulations, judgements, decrees, injunctions, orders and stipulations enacted or issued by any Indian Governmental Instrumentality;

"Lenders" means the banks and other financial institutions who have agreed as at Financial Close to provide the COMPANY with the debt financing described in the Financing Agreements and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or to whom their obligations under the Financing Agreements may be novated;

"Lenders' Representative" means the person notified by the COMPANY or Lenders in writing as being the representative of the Lenders, as such person may from time to time be replaced by the COMPANY or the Lenders pursuant to the Financing Agreements by written notice from the COMPANY or any of the Lenders;

"Liability" means all claims made under Section 13 to be borne by the parties pursuant to the Agreement;

"Material" (and the meaning of such terms as "materiality" or "materially") in connection with the obligations of the COMPANY or POWERGRID shall be in each case determined in the context of the financial conditions, business, properties and assets of the COMPANY considered individually;

"Material Adverse Effect" shall mean an effect on the business, results of implementation, operations, financial condition, financial prospects or other conditions of the COMPANY which is adverse and Material;

"month" means calendar month of Gregorian Calendar;

"Notification" means any notification, issued in the Gazette of India;

"O & M Contractor" means the entity appointed from time to time by the COMPANY to maintain & repair the Project;

"OPGW" means Optical Fibre Ground Wire;

"Phase" means either of Phase 1, Phase 2A, Phase 2B Phase 3A or Phase 3B;

"Phase 1" means the transmission lines as set out in paragraph 4.1(i) of Schedule 4 of the Implementation Agreement, together with all associated equipment and facilities set up by the COMPANY;

"Phase 2A" means the transmission lines as set out in paragraphs 4.1(ii), of Schedule 4 of the Implementation Agreement, together with all associated equipment and facilities to be set up by the COMPANY;

"Phase 2B" means the transmission lines as set out in paragraphs 4.1(iii) and 4.1(iv) of Schedule 4 of the Implementation Agreement, together with all associated equipment and facilities set up by the COMPANY;

"Phase 3A" means the transmission lines as set out in paragraphs 4.1(v) of Schedule 4 of the Implementation Agreement, together with all associated equipment and facilities set up by the COMPANY;

"Phase 3B" means the transmission lines as set out in paragraphs 4.1(vi) of Schedule 4 of the Implementation Agreement, together with all associated equipment and facilities to be set up by the COMPANY;

"Phase Under Operation" means each Phase of the Project that has been Commissioned in accordance with Clause 6.3 of the Implementation Agreement;

"Preliminary Termination Notice" means a POWERGRID Preliminary Termination Notice or COMPANY Preliminary Termination Notice, as the case may be;

"Project" means the ownership, insuring, repair and maintenance of each Phase Under Operation;

"Project Cost" means the cost expressed in Indian Rupees and foreign currency (as applicable) actually incurred by the COMPANY in developing,

designing, building, financing, insuring and commissioning the Project and approved by Competent Authority. Provided that for determining the total cost of a Phase under Operation, apart from the actual costs incurred on that Phase within the approved cost for the scope of work to be performed in that particular phase, the costs which have not been specifically identified for a particular Phase in the Feasibility Report as approved by the Competent Authority, shall be allocated to such Phase in ratio of the specifically identified equipment cost of such Phase and the sum total of the specifically identified equipment costs of all Phases. Further for determining the debt and equity used for such Phases under Operation, the overall debt and equity ratio as approved under the Project Cost Approval shall be applied to the cost of the Phases Under Operation;

"Project Cost Approval" means the most recent approval (whether or not final) given by Competent Authority of the Project Cost;

"Project Document" shall include the (i) Shareholders Agreement, (ii) Implementation Agreement (iii) Transmission Service Agreement (iv) Financing Agreements and any other documents including without limitation construction contracts and operation and maintenance contracts which may be required or necessary for the implementation, operation & maintenance of the Project;

"Prudent Utility Practices" means the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of Project equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

(i) ~~operation, repair and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project,~~

(ii) ~~the requirements of Law, and~~

(iii) the physical conditions at the Site;

"Required Commercial Operation Date" means the date determined pursuant to IA;

"Reference Exchange Rate" means the quotation for TT selling rate for the relevant foreign currency given at approximately 11:00 hours Indian Standard Time 2 business days before the relevant date, by State Bank of India, Main Branch, Parliament Street, New Delhi for the rate (including all commissions,

charges, fees and expenses payable) at which it would sell foreign currency in exchange for Rupees on the relevant date;

"Scheduled Outage" means a planned reduction in any period of Availability of the Project;

"Security Package" means the security provided by POWERGRID against payments pursuant to TSA;

"Shareholders' Agreement or SHA" means the Agreement so entered into, or to be entered into, among POWERGRID, COMPANY and The Tata Power Company Limited;

"Site" means the land and other places upon which the Project is to be established and such other land or places as may be required to set up the Project;

"Sub-Contractor" including vendor means any person to whom execution of any part of the Project including preparation of any design or supply or erection of any equipment is subcontracted directly or indirectly by the Contractor and includes its legal successors or permitted assigns;

"Suspension Period" means a period pursuant to Section-12;

"Tariff" means the transmission tariff payable to COMPANY as may be determined by CERC from time to time;

"Tariff Order" shall mean the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 dated 26 March 2001 or any of its amendment/modification issued by CERC from time to time;

~~"Tax" means any Indian tax, duty, surcharge, cess, octroi, impost or levy of any nature (whether central, state or local) whatsoever and wherever and whenever charged, levied or imposed by any Indian Governmental Instrumentality together with interest and penalties in relation thereto;~~

"Technical Particulars" means the particulars of each Phase listed in Schedule 5 of the Implementation Agreement;

"Technical Specifications" means the provisions contained in the Bid Documents through which goods and services for the Project are procured;

"Termination Notice" means a POWERGRID Termination Notice or COMPANY Termination Notice, as the case may be;

"Techno-Economic Clearance" means the approval given by CEA on April 18, 2002 for the Project and the Project Cost pursuant to Indian Electricity Act, 1910;

" Total Debt Amount"

means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate on the Payment Date):

- (i) The principal amount of the debt incurred to finance the Project, as per the Project Cost Approval, which remains outstanding on the date that the Buy-Out Price is paid (the "Payment Date"), after excluding any debt repayments provided for in the Monthly TSC Payment received by the COMPANY on or before the Payment Date,
- (ii) All accrued interest and financing fees payable, including commitment charges, swap breakage costs, redeployment costs, unwinding costs and/or cost of carry, supervision fees, penal interest (but excluding penal interest/surcharge payable due to reasons which are solely attributable to the COMPANY and not due to Force Majeure Events or POWERGRID default and excluding any interest payments provided for in the monthly TSC received by the COMPANY on or before the Payment Date) under the Financing Agreements on the amounts referred to in paragraph (i) above immediately preceding the Payment Date, and

Notwithstanding the above, principal, interest, fee or expenses under any Financing Agreement entered into on refinancing or rescheduling of all or a part of debt shall be excluded from the Total Debt Amount to the extent that such amounts result in a financial liability on POWERGRID which is higher than the financial liability which would have resulted in case such debt had not been so refinanced or rescheduled and provided that such refinancing or rescheduling has occurred due to reasons which are solely attributable to the Company not due to Force Majeure Events or POWERGRID default;

"Transfer Costs" means:

- (i) all costs and liabilities of the COMPANY directly resulting from the purchase of the Project by POWERGRID pursuant to Schedule 4 including the fees and out of pocket expenses of the Appraiser, lenders fees for repayment of loans, any costs arising under a Project Document due to its early termination arising from the termination of this Agreement, and
- (ii) any taxes payable by the COMPANY as a result of the purchase by POWERGRID of the Project pursuant to Schedule 4 which are not Transfer Taxes;

"Transfer Date" means the date of Completion, such date to be sixty (60) days after the date of the Buy-out Notice, or such other date as the parties may agree;

"Transfer Taxes" means all stamp duties and other similar transfer taxes (excluding capital gains tax, income tax and any tax similar to the foregoing) and registration fee payable by the COMPANY solely as a result of the purchase by POWERGRID of the Project pursuant to Schedule 4.

"Transmission Licensee" or "Licensee" means the COMPANY to whom the Transmission License is granted by CERC;

"Transmission License" or "License" means the authority to be granted by CERC to act as licensee for the Project;

"Transmission Service Charges or TSC" means the charges payable to the COMPANY by POWERGRID as defined in this Agreement;

"Unscheduled Outage" means an interruption or reduction of the transmission capacity of the Project that (a) is not a Scheduled Outage, (b) has been scheduled in accordance with Clause 4.9 and (c) is for the purpose of performing work on specific components, which work could not be postponed till the next Scheduled Outage;

"Week" means a period of seven consecutive days beginning at midnight Indian Standard Time between Sunday and Monday;

WJ

[Signature]

SCHEDULE 2

Interpretation

Any reference in this Agreement to:

an "affiliate" of any person shall be construed as a reference to a subsidiary or holding Company, or a subsidiary of a holding Company, of such person;

"Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;

a "business day" shall be construed as a reference to a day other than Sunday on which bank are generally open for business; ,

"Dollars and \$" denote lawful currency of United States of America, and "Rupee" and "Rupees" denote lawful currency of India;

an "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

a "holding Company" of a Company or corporation shall be construed as a reference to any Company or corporation of which the other Company or corporation is a subsidiary;

"Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

a "person" shall be construed as a reference to any person, firm, Company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above;

a "subsidiary" of a Company or corporation (the first mentioned Company) shall be construed as a reference to any Company or corporation:

- (i) which is controlled, directly or indirectly, by the first-mentioned Company, or
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned Company, or
- (iii) which is a subsidiary of another subsidiary of the first-mentioned Company

and, for these purposes, a Company or corporation shall be treated as being controlled by another if that other Company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body; and

the "winding-up", "dissolution", "administration", "insolvency", or "re-organisation" of a Company or corporation and references to the "liquidator", "assignee", "administrator", "receiver", "administrative receiver", "receiver" and "manager", "manager" or "trustee" of a Company or corporation shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Company or corporation is incorporated or any jurisdiction in which such Company or corporation or, as the case may be, insolvency representatives or officers is incorporated or constituted or any jurisdiction in which such Company or corporation or, as the case may be, insolvency representatives or officers carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

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SCHEDULE 3

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SCHEDULE 4

Valuation and Transfer of Assets on Termination

4.1 Option to Purchase and Survival

4.1.1 In the event that:

- (i) the COMPANY serves a Termination Notice to POWERGRID due to a POWERGRID Event of Default pursuant to Clause 12.1.4, POWERGRID shall, at the COMPANY's option exercised within one hundred and twenty (120) days of such Termination Notice, purchase the Project at a Buy-out Price determined in accordance with this Schedule;
- (ii) POWERGRID serves a Termination Notice to the COMPANY due to the COMPANY Event of Default pursuant to Clause 12.1.3, POWERGRID shall, subject to CERC approval, within six (6) months of the date of such Termination Notice, purchase the Project in accordance with this Schedule 4;
- (iii) POWERGRID has served a notice pursuant to Clause 12.1.5 (for a Force Majeure Event) to terminate this agreement and purchase the Project from the COMPANY, the COMPANY shall, within 120 days of such notice, sell the Project to POWERGRID at a Buy-out Price determined in accordance with this Schedule;
- (iv) The COMPANY has served a notice pursuant to Clause 12.1.5 (for a Force Majeure Event) to terminate this Agreement and sell the Project to POWERGRID, POWERGRID shall, within 120 days of such notice, purchase the Project from the COMPANY at a Buy-out Price determined in accordance with this Schedule;
- (v) POWERGRID has served a notice to purchase the Project from the COMPANY, at the Expiry Date, the COMPANY shall sell the Project to POWERGRID at a Buy-out Price determined in accordance with this Schedule.

4.1.2 If a party wishes to exercise an option expressed to be in favour of it pursuant to Paragraph 4.1.1 above, it shall do so by serving a notice (a "Buy-out Notice") to the other party in accordance with this Schedule.

- 4.1.3 Subject to Paragraph 4.1.4 below, the provisions of this Schedule shall survive termination or expiry of this Agreement for a period of two (2) years following such termination or expiry.
- 4.1.4 Any periods after the termination during which a dispute between the parties is subject to adjudication or arbitration under Clause 15.2 shall not be included in the computation of the period during which the provisions of this Schedule shall survive termination or expiry of this Agreement as provided for in Paragraph 4.1.3 above.
- 4.2 Scope of the Sale
- 4.2.1 POWERGRID shall purchase all the assets of the COMPANY required to operate the Project including land, buildings, plant and equipment, spare parts, records, drawings and all other consumables.
- 4.2.2 POWERGRID 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.
- 4.2.3 All other assets existing at the Transfer Date that are not included in Paragraphs 4.2.1 and 4.2.2 above shall be for the benefit of the COMPANY, including the proceeds of any insurance or warranty claims duly made prior to the Transfer Date.
- 4.2.4 The COMPANY shall be responsible for all liabilities and obligations of the COMPANY that have accrued prior to the Transfer Date including any claim for damages made against the COMPANY.
- 4.2.5 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 POWERGRID the benefit of any warranties or guarantees from third parties (including the COMPANY's Contractors) existing at the Transfer Date.
- 4.2.6 No debt, claim for damages or other liability (whether actual or contingent) relating to the Project before the date of the Buy-out Notice will be assumed by POWERGRID unless it chooses to. Due allowance shall be made in computing the Buy-out Price to take account of any such liabilities assumed by POWERGRID.
- 4.2.7 The COMPANY shall, if so required by POWERGRID, use reasonable efforts to procure the novation (or failing that, assignment of the underlying rights held by the COMPANY) to POWERGRID of any relevant operation and maintenance contract and engineering,

procurement and construction contract relating to the Project on such terms as POWERGRID may reasonably require.

4.2.8 In case of a Buy-out, subject to the approval of the Lenders, POWERGRID shall have the right to require the COMPANY to sell the Project to its nominees provided such nominee pays the due Buy-out Price to the COMPANY and otherwise completes the sale in accordance with this Schedule 4.

4.3 Procedure for Determination of the Buy-out Price, POWERGRID Operation and Transfer

4.3.1 Following an Issue of a Buy-out Notice, the COMPANY shall select an independent firm of chartered accountants and a firm that is recognised as being competent and experienced in valuing transmission projects similar to the Project, that is agreeable to POWERGRID to carry out a determination of the Buy-out Price (the "Valuation"). Failing agreement of a mutually acceptable firm of chartered accountants within five (5) days of the Issue of the Buy-out Notice, a firm of chartered accountants shall be nominated by the President or Acting President for the time being of the Institute of Chartered Accountants of India. The firm of chartered accountants appointed pursuant to this Paragraph 4.3.1 (the "Appraiser") will begin work within ten (10) days of its appointment and shall be provided by the parties with all such data and information it requires to carry out the valuation. Notwithstanding the foregoing, if an appraiser has already been appointed or is in the process of being appointed pursuant to paragraph 6.3.1 of Schedule 6 of the Implementation Agreement then such appraiser shall be deemed to be the Appraiser under this Paragraph 4.3.1.

~~4.3.2 The Appraiser shall prepare the Valuation in accordance with the methodology described in Paragraphs 4.4 and 4.5 of this Schedule. Throughout the process, the Appraiser shall consult with both parties, update them of progress and analyse any commentary they may have on the Valuation.~~

The Appraiser shall complete the Valuation within forty-five (45) days of its appointment and deliver a copy to both parties. Provided that in case Implementation Agreement for the Phases under operation has expired and completed cost of Phases under operation has not been approved by Competent Authority, the COMPANY shall have the option of requiring the valuation to be conducted only after such clearance has been finally awarded and on the exercise of such option, both the parties shall exercise their best efforts in obtaining such clearance.

Following the completion of the Valuation, only in the case of a Buy-out Notice having been served due to a COMPANY Event of Default, POWERGRID shall be entitled to enter the Site and takeover the Project and the COMPANY shall ensure that all its employees, Contractors and Sub-Contractors have left the Site and shall provide POWERGRID with any license required to give effect to the foregoing. In consideration of the COMPANY permitting POWERGRID to so enter the Site, POWERGRID shall defend, indemnify and hold harmless the COMPANY against any loss it may suffer arising in connection with POWERGRID's taking over of the Project. In the event that POWERGRID does not pay the Buy-out Price when due and payable in accordance with this Schedule 4, the COMPANY's obligations and POWERGRID's rights under this sub-paragraph of paragraph 4.3.2 shall cease and POWERGRID and its employees, contractors, agents and representatives shall leave the Site within one day's written notice from the COMPANY to POWERGRID to that effect.

- 4.3.3 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. POWERGRID shall, pursuant to an agreement in form and substance satisfactory to each of the Lenders, either (i) takeover such Total Debt Amount calculated as at the date of such takeover as its own debt and make principal and interest payments on such debt on the same terms and conditions as would have been applicable to the COMPANY had such Total Debt Amount been regularly serviced by the COMPANY or (ii) undertake to pay such Total Debt Amount to the COMPANY within six (6) months of the date of the Termination Notice in immediately available funds and simultaneously therewith, the COMPANY shall transfer and assign to POWERGRID all of its right, title and interest in the Project except to the extent excluded pursuant to Paragraph 4.2 of this Schedule 4. All payments shall be made in Rupees. If any Lender is unwilling to allow POWERGRID to take over the responsibility for repaying the Total Debt Amount owed to it, POWERGRID shall, within six (6) months of the date of the Termination Notice, pay to the COMPANY the Buy-Out Price which, in respect of that Lender, shall be equal to the outstanding principal and interest (but not any other amounts) owed to that Lender by the COMPANY under the Financing Agreements.
- 4.3.4 Following Completion, POWERGRID and the COMPANY may each submit a statement (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. Any dispute over the Post Closing Adjustment shall be referred to the Appraiser, whose sole judgement shall be final and binding and shall not be open to dispute or arbitration.

4.4 Calculation for the Components of the Buy-out Price

4.4.1 The Buy-out Price shall be determined in accordance with Paragraph 4.5 and as follows:

- (i) The Buy-out Price shall be in Rupees. The 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 such portion will be calculated in such foreign currency and converted into Rupees at the Reference Exchange Rate prevailing on the date of payment to the COMPANY.
- (ii) The Valuation will be conducted on the presumption (which the Appraiser can depart from for good reason, such reason not to be the existence of a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or a POWERGRID Event of Default) that all Project Documents, would have continued in full force and effect until their natural expiry. It will be assumed that for the purposes of the Valuation that POWERGRID would have met its future payment obligations under this Agreement and the effect of any events that led directly to the issue of the Buy-out Notice shall be disregarded.
- (iii) Any reduction to the value of the assets of the Project due to a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or a POWERGRID Event of 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 event had not occurred.

4.4.2 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 costs and expenses of the Project) as a result of use of the Project over the remainder of the term of this Agreement (as if it were not terminated until the Expiry Date) plus the residual value of the Project as set forth below. The DCFV will apply to the Project after it has been Commissioned and shall be carried out in line with normal industry practice, following the guidelines set out below:

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

Rev - Opex - Capex - Debt - Taxes - dNWI

where: Rev = All operating revenues determined under this Agreement for each Phase that has been Commissioned, and any payments for ancillary services.

Opex = Cash expenses of the Project including all interest and fees on borrowings, except that any cash expenses required as a result of due to a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or POWERGRID Events of Default shall not be included in Opex.

Capex = 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 a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or POWERGRID Events of Default shall not be included in Capex.

Debt = The average of all principal repayments forming part of the Total Debt Amount, and any reduction or increase in any working capital loans, increases in such being treated as a negative number.

Taxes = Corporate income taxes.

dNWI = Any increase or decrease in net working investment required each Contract Year. Reductions in net working investment shall be treated as negative. The net working investment shall be the sum of inventories and trade receivables minus payables.

4.4.2.2 ACFs should be considered to occur on average at the middle of each Contract Year.

4.4.2.3 ~~Inflation and exchange rate movements should be applied to the~~ components of the forecast where deemed appropriate by the Appraiser. 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.

4.4.2.4 The 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:

- (i) Availability for the calculation of the Transmission Service Charge should be based on historical performance in the immediately

preceding three years unless there is a reason to believe that this is not a reliable indicator of future performance; and

- (ii) operating and maintenance costs should be based on Prudent Utility Practice and should reflect historical performance levels in the immediately preceding three years as well as any factors, which in the judgement of the Appraiser are likely to affect future cost levels.

4.4.2.5 A terminal value cash flow shall be included at the end of the final year of the projection period. Such cash flow shall equal the Terminal Value as defined below.

4.4.2.6 The discount rate will be a nominal discount rate (i.e. including inflation) and will be determined by the Appraiser based on the cost of equity of electrical transmission and/or distribution companies that are publicly quoted in India, but adjusted to take into account the location and size of the Project, and taking into the fact that it may be a private company without a diversified portfolio of assets, the length of operation history, the predictability of the cash flows and their limited growth potential and any other factors that the Appraiser judges to be appropriate.

4.4.2.7 The DCFV should be based on the value of the assets as of the Transfer Date. However, the DCFV should also include a component to cover any reduction in profits that the COMPANY has suffered as a result of the COMPANY receiving reduced revenues between the date of any Termination Notice and the Transfer Date. Such component shall be calculated at the sole discretion of the Appraiser.

~~Provided that the COMPANY should not suffer a reduction in the Buy-out Price for losses which have occurred due to due to a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or POWERGRID Events of Default or for which compensation would have been available through damages in the Project Documents or through any Insurance had the termination not halted construction. To the extent that the COMPANY actually receives any compensation through damages under the Project Documents or through any Insurance, the amount of compensation shall reduce the Buy-out Price commensurately.~~

4.4.3 The Appraiser shall make any adjustments that in his sole discretion he feels are necessary to account for any loss or gain in the value of the underlying assets. Such adjustments should reflect:

- (i) the extent to which the amounts actually incurred by the COMPANY differ from the budgeted amounts at the start of construction;

- (ii) the extent to which the estimated final specification, operation & maintenance costs and performance characteristics of the Project differ from those anticipated at the start of construction;
- (iii) the amounts included in the equity subscriptions that have been spent on the Project in question; and
- (iv) such other matters as the Appraiser may determine.

Provided that the COMPANY should not suffer a reduction in the Buy-out Price for losses which have occurred due to a Force Majeure Event of the nature described in Clause 9.3 (vi), (vii) and (viii) or POWERGRID Events of Default or for which compensation would have been available through damages in the Project Documents or through any Insurance had the termination not halted construction. To the extent that the COMPANY actually receives any compensation through damages under the Project Documents, or through any Insurance, the amount of compensation shall reduce the Buy-out Price commensurately.

The Buy-out Price shall be adjusted to fully incorporate the amounts which POWERGRID may owe to the COMPANY or the COMPANY may owe to POWERGRID under the terms of this Agreement. Provided that in case, on the date of Termination Notice, there is any dispute with regard to the payment of the any amounts by one party to the other, notwithstanding any other provision of this Agreement, such dispute shall be immediately referred to arbitration and such Arbitrators shall give their reasoned award (which shall be binding on the parties) within a period of forty five (45) days of the reference being made to them.

4.4.4 The terminal value ("TV") shall be equal to the Project Cost less depreciation paid upto the Transfer Date pursuant to paragraph 6.2.3 of Schedule 6.

4.5 The Buy-out Price

The Buy-out Price shall equal the sum of the following, adjusted if appropriate under the other provisions of this Schedule:

- (i) A times the DCFV;
- (ii) B times the TV;
- (iv) C times the Total Debt Amount;
- (v) D times the Transfer Taxes; and

(vi) E times the Transfer Cost

where A,B,C,D and E are determined depending on the reason for termination (as described in Paragraph 4.1.1) as shown in the following table.

The notes to the table should be taken into account when calculating the relevant variable.

	A	B	C	D	E
Reason of Termination	DCFV	TV	Total Debt Amount	Transfer Taxes	Transfer Costs
COMPANY sale option following POWERGRID Event of Default	100%	0%	100%	100%	100%
POWERGRID purchase following COMPANY Event of Default	0%	0%	100%	100%	100%
COMPANY sale option under Paragraph 4.1.1 (iv) or POWERGRID purchase option under Paragraph 4.1.1 (iii) pursuant to Force Majeure Events of the of the nature described in Clause 9.3 (vi), (vii) and (viii)	100%	0%	100%	100%	100%
COMPANY sale option under Paragraph 4.1.1 (iv) or POWERGRID purchase option under Paragraph 4.1.1 (iii) pursuant to Force Majeure Events of the of the nature described in Clause 9.3 (iv).	55%	0%	100%	100%	100%

and (v)					
COMPANY sale option under Paragraph 4.1.1 (iv) or POWERGRID purchase option under Paragraph 4.1.1 (iii) pursuant to Force Majeure Events of the nature described in Clause 9.3 (i), (ii) and (iii)	25%	0%	100%	100%	100%
POWERGRID purchase option following expiry of this Agreement	0%	100%	0%	100%	100%

4.6 Provisions applicable to the OPGW cables or other non-transmission related assets installed by the Company

In case the COMPANY has installed OPGW cables or any other non-electricity transmission related assets/equipment along with the Project, then, at the option of the COMPANY, the provisions of Clause 12 and this Schedule 4 shall also apply to such assets/equipment/OPGW cables. In such a case, for the calculation of DCFV, Total Debt Amount, Terminal Value, Transfer Taxes and Transfer Costs, the amount of debt and equity invested/incurred for setting up such assets/equipment/OPGW cables shall also be considered.

SCHEDULE 5

Standard List of Outage Categories

- 1.0 Outages attributable to COMPANY
- 1.1 Forced Outages not caused by any of the events listed in paragraph 2 below.
- 1.2 Scheduled Outages and Unscheduled Outages, in each case, not caused by any of the events listed in paragraph 2 below.
- 2.0 Outages not attributable to the COMPANY.
- 2.1 Where it would conflict with Prudent Utility Practice to make the Project Available.
- 2.2 Periods of outage due to POWERGRID modifications or new connections.
- 2.3 Periods of POWERGRID defaults.
- 2.4 Any outage taken by POWERGRID for carrying out maintenance of the equipment not covered under the scope of the Project. However, the COMPANY may use this opportunity for carrying out maintenance of the element(s) of the Project. In such event the COMPANY will be required to complete the maintenance within the duration of the outage taken by POWERGRID.
- 2.5 Periods when the Interconnection Facilities to which the Project is connected are not fully functional.
- 2.6 Periods of outage caused on account of tripping of elements of the Project due to grid incidents and/or disturbances attributable to POWERGRID, including, without limitation, faults in substation or bays or transmission or generation systems owned by POWERGRID causing outage of the elements of the Project.
- 2.7 The manual tripping of switches to which the elements of the Project are connected.
- 2.8 Any outage taken by persons other than POWERGRID or the COMPANY for carrying out maintenance of the equipment not covered under the scope of the Project. However, the COMPANY may use this opportunity for carrying out maintenance of the element(s) of the

Project. In such event the COMPANY will be required to complete the maintenance within the duration of the outage taken by such other persons.

2.9 Periods of Force Majeure Events.

- 2.10 Periods of outage caused on account of tripping of elements of the Project due to grid incidents and/or disturbances attributable to persons other than POWERGRID or the COMPANY, including, without limitation, faults in substation or bays or transmission or generation systems owned by such other persons causing outage of the elements of the Project.

Notwithstanding anything contained herein before, definitions, interpretations and the methods of calculations of Availability given above shall not conflict with orders of the Central Electricity Regulatory Commission (CERC) issued from time to time in this regard. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC orders shall prevail.

(M)

[Signature]

SCHEDULE 6

The Transmission Service Charge

6 Monthly TSC Payment

6.1 General

6.1.1 POWERGRID shall pay the Monthly TSC Payment for the period from the date on which a Phase is first Commissioned until this Agreement expires or is terminated.

6.1.2 The Monthly TSC Payment for each Phase Under Operation shall consist of the following components:

- Fixed Charge, plus
- Incentive Charge, less
- Disincentive Charge, plus
- Actual Foreign Exchange Variation, plus
- Income Tax Charge, as provided in this Schedule

6.1.3 Monthly TSC Payments are payable in Rupees.

6.1.4 Monthly TSC Payments shall be calculated for a full calendar month or part thereof, except:

- If one or more Tariff Changes referred to in Paragraph 6.1.5 occur during the course of the month, the Monthly TSC Payment for that month shall be calculated separately for (a) the period from the beginning of the month until the day before the first Tariff Change occurred, (b) each period (if any) from the date an existing Tariff Change occurred until the day before the next Tariff Change occurred and (c) the period from the date on which the last Tariff Change in that month occurred until the end of the month (as though each such period were a separate month) and the Monthly TSC Payment for the month shall be the sum of those separate calculations. Notwithstanding the above calculations, only one Monthly TSC Invoice shall be raised for each calendar month; and

- If the term of this Agreement expires or is terminated other than on the last day of a calendar month, the last Monthly TSC Payment shall be calculated for the period from the first day of

that month until the day on which this Agreement expires or is terminated.

6.1.5 A Tariff Change means:

- Any change in the Project Cost;
- The occurrence of any other event including but not limited to Change in Law, Change in Project or circumstance which is relevant to the calculation of the Monthly TSC Payments.

6.1.6 Provided that notwithstanding anything contained in this Schedule 6, the method of calculation of the Monthly TSC Payment shall not conflict with any orders of the Central Electricity Regulatory Commission (CERC) issued from time to time in this regard. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC orders shall prevail.

6.2.1 The Fixed Charge

Fixed Charge, for each Phase Under Operation, in any month_m which begins on or after the Commercial Operation Date of such Phase, shall be calculated as follows:

$$FC_m = A_m + B_m + C_m + D_m + E_m + F_m + G_m$$

where

FC_m is the Fixed Charge in month_m

A_m is the Interest Expense in month_m

B_m is the Depreciation Expense in month_m

C_m is the Advance Against Depreciation in month_m

D_m is the O&M Expense in month_m

E_m is the Return on Equity in month_m

F_m is the Interest on Working Capital in month_m

G_m is the Transmission Majoration Factor in month_m

6.2.2 Interest Expense

The Interest Expense in month_m shall be calculated as follows:

$$A_m = \sum_c \left(D_c \times \frac{l_c}{365} \times d \times r_c \right)$$

where,

A_m is the Interest Expense in month_m (expressed in Rupees)

\sum_c is the sum of relevant values for each currency_c in which the principal component of the Total Debt Amount may be denominated

D_c is the outstanding amount of the principal component of the Total Debt Amount at the beginning of month_m which is denominated in currency_c

l_c is the annual rate of interest (including all annualised deferred payment guarantee commissions, charges payable to the providers of debt but excluding any annualised penal charges payable to the debt providers which have arisen solely on account of the COMPANY and are not due to a POWERGRID default or a Force Majeure Event) on the first day of month_m applicable to outstanding debt denominated in currency_c

d is the number of days in month_m

r_c is the Reference Exchange Rate for currency_c (a) on the day on which the most recent interest payment was made to Lenders or (b) prevailing at the beginning of the current Contract Year in case no interest payment has yet been made (or equal to 1.0 if currency_c is Rupees)

6.2.3 Depreciation Expense

(a) The Depreciation Expense in month_m for the period prior to the repayment of entire debt, shall be calculated as follows:

$$B_m = (CC_R \times t \times d) / 365$$

where,

- B_m is the Depreciation Expense for month_m (expressed in Rupees)
- CC_m is the Adjusted Project Cost in month_m (expressed in Rupees)
- t is the weighted average rate of annual depreciation for the Project calculated on the basis of the individual depreciation rates in the Tariff Order
- d is the number of days in month_m

- (b) The Depreciation Expense in month_m for the period after the repayment of entire debt, shall be calculated as follows:

$$B_m = \frac{(t \times d)}{365}$$

where,

B_m is the Depreciation Expense for month_m (expressed in Rupees)

t is the Adjusted Project Cost in month_m less cumulative depreciation charged upto and including the date on which the entire debt is repaid divided by the number of years (including part year as a fraction) of remaining useful life of the Project asset (where remaining useful life shall be determined in accordance with the Tariff Order) (expressed in Rupees)

d is the number of days in month_m

For the purposes of this paragraph 6.2.3, "Adjusted Project Cost" shall mean the Project Cost adjusted in each month, to reflect any variation in the foreign currency component of the principal component of the ~~Total Debt Amount~~ that is outstanding and shall be calculated as follows:

- (i) for the first month in which a Monthly TSC Invoice is raised, such adjustment shall reflect a variation in the Reference Exchange Rate on the last business day of such month from the Base Reference Exchange Rate;
- (ii) on and after the raising of the second Monthly TSC Invoice, such adjustment shall reflect a variation in the Reference Exchange Rate on the last business day of the month, in relation to which such invoice has been raised, from the

Reference Exchange Rate on the last business day of the immediately preceding month.

Provided that the Depreciation Expense shall not exceed 90% of the Adjusted Project Cost at any time.

6.2.4 Advance Against Depreciation

The Advance Against Depreciation in month_m shall be calculated as follows:

$$C_m = [(R_y/n) - B_m]$$

where,

C_m is the Advance Against Depreciation in month_m (expressed in Rupees)

R_y is the total repayment of debt to be made, during Contract Year 'y' in which month_m occurs, (expressed in Rupees). Provided that for foreign currency debt "Ry" shall be converted into Rupees on the basis of Base Reference Exchange Rate for the currency of debt (expressed in Rupees)

B_m is defined in Paragraph 6.2.3 above (expressed in Rupees)

n is the number of months after which the last debt repayment is to be made in Contract Year 'y' in which month_m occurs

~~Provided that Advance Against Depreciation in any full calendar year shall not exceed 1/12th of the principal component of the original debt amount less Depreciation as per paragraph 6.2.3, provided that the foreign currency component of such debt amount shall be converted into Rupees at the Reference Exchange Rate prevailing on the last business day of month_m.~~

6.2.5 O&M Expense

The O&M Expense in month_m shall be calculated in the following way:

$$D_m = (OM_y \times \frac{d}{365})$$

where,

D_m is the O&M Expense in month_m (expressed in Rupees)

OM_y is the O&M Expense in Financial Year 'y' in which month_m occurs and shall be calculated as shown below

d is the number of days in month_m

$$OM_y = OM_{y-1} \times (1 + F)$$

where,

OM_y is O&M Expense for Financial Year 'y' (expressed in Rupees)

OM_{y-1} is O&M Expense for Financial Year 'y-1' (expressed in Rupees)

F in Financial Year 'y' is equal to

$$\left\{ 0.45 \frac{(WPI_y - WPI_{y-1})}{WPI_{y-1}} + 0.55 \frac{(CPI_y - CPI_{y-1})}{CPI_{y-1}} \right\}$$

where,

WPI_y is the price level shown in the Indian Wholesale Price Index for the most recent month for which figures are available at the beginning of Contract Year,

CPI_y is the price level shown in the Indian Consumers Price Index for the most recent month for which figures are available at the beginning of Contract Year,

Provided that in case F as calculated above is more than equal to 1.048 and less than equal to 1.072, F shall be deemed to be 1.06.

Provided further that in doing the above calculation of OM_y , the O&M Expense for the year in which Commissioning occurs shall be equal to 1.50% of the Project Cost.

6.2.6 Return on Equity

The Return on Equity in month_m shall be calculated as follows:

$$E_m = \sum_e (Eq_e \times 0.16 \times d) / 365$$

where,

- E_m is the Return on Equity in month_m (expressed in Rupees)
- \sum_r is the sum of the relevant values for each currency in which the E_{q_c} may be denominated
- E_{q_c} is the outstanding amount of equity component of the Project Cost (determined as per methodology mentioned in definition of Project Cost) in month_m which is denominated in currency_c
- d is the number of days in month_m

6.2.7 Interest on Working Capital

The Interest on Working Capital in month_m shall be calculated as follows:

$$F_m = [C_m + \frac{(MS_m - IS)}{5} + MT_x] \times \frac{d}{365} \times w$$

- F_m is the Interest on Working Capital in month_m
- C_m is the O&M Expense in month_m determined in accordance with Paragraph 6.2.5
- MS_m is the cost to the COMPANY of maintenance spares which shall be equal to 1% of the Project Cost in the first year after Commissioning and shall be increased in each subsequent year at the same rate as is applied to revise the O&M Expense in Paragraph 6.2.5
- IS is the cost of the initial spares included in the Project Cost (determined as per methodology mentioned in definition of Project Cost)
- MT_x is the aggregate amount of the Monthly TSC Invoices (but excluding amounts payable on account of Availability being different from the normative Availability) for the two months immediately preceding month_m except that in the first two months after commissioning, MT_x shall be equal to two times the aggregate amount of Monthly TSC Invoice of month_m
- d is the number of days in month_m
- w is the annual rate of interest, payable by the COMPANY for its working capital borrowings, as in effect on the first day of month_m. In case the COMPANY is being charged a different rate

of working capital interest by different bankers, the weighted average interest rate shall be used (where the amount of working capital shall be used as the weight)

6.2.8 Transmission Majoration Factor

The Transmission Majoration Factor for month_m shall be calculated as follows:

$$H_m = T_m \times 10\%$$

where,

H_m is the Transmission Majoration Factor in month_m (expressed in Rupees)

T_m is the sum total of all amounts which can be claimed by the COMPANY from POWERGRID under this Schedule, but excluding amounts due under this Paragraph 6.2.8, in month_m (expressed in Rupees)

6.3 Incentive/Disincentive Charge

The Incentive or Disincentive Charge, if any, shall be determined at the end of each Contract Year (not later than three months after the end of the Contract Year) and shall be calculated as follows:

$$IC = [(AV_y - 98) \times \sum_c (Eq_c \times br_c) \times k_p]$$

where

IC is the Incentive Charge (expressed in Rupees)

AV_y is the Availability of the Project (expressed as a number of percentage points to two decimal places) in Contract Year 'y' which is the immediately preceding Contract Year to the Contract Year in which month_m occurs

\sum_c is the sum of the relevant values for each currency in which the Eq_c may be denominated

Eq_c is defined in para 6.2.6

br_c is the Base Reference Exchange Rate for currency_c (or equal to 1.0 if currency_c is Rupees)

k_p is the Incentive Rate which is 0.01 in case AV_y is more than 98.00 and less than or equal to 98.50, is 0.02 in case AV_y is more than 98.50 and less than or equal to 99.00, is 0.03 in case AV_y is more than 99.00 and less than or equal to 99.50 and is 0.04 in case AV_y is more than 99.50 and less than or equal to 99.75

If the Incentive Charge is a negative number, it shall be assumed as nil.

$$DC = \frac{(98 - AV_y)}{98} \times FC_y$$

where

DC is the Disincentive Charge (expressed in Rupees)

AV_y is the Availability of the Project (expressed as a number of percentage points to two decimal places) in Contract Year 'y' which is the immediately preceding Contract Year to the Contract Year in which month_m occurs

FC_y is the Fixed Charges paid to the COMPANY (expressed in Rupees) in Contract Year 'y' which is the immediately preceding Contract Year to the Contract Year in which month_m occurs

If the Disincentive Charge is a negative number it shall be assumed as nil.

6.4 Actual Foreign Exchange Variation

In the case of any component of the Transmission Service Charge for which foreign exchange protection is being provided under the terms of this Schedule, the Reference Exchange Rate used is different from actual exchange rate applicable to the COMPANY, the difference between the actual exchange rate and Reference Exchange Rate used earlier shall be claimed by POWERGRID from the COMPANY (in case Reference Exchange Rate was higher than the actual exchange rate applicable to the COMPANY) or by the COMPANY from POWERGRID (in case Reference Exchange Rate was lower than the actual exchange rate applicable to the COMPANY).

6.5 Supplementary Statement

Upon the final Project Cost Approval being awarded, the COMPANY shall, at the same time as raising the Monthly TSC Invoice in respect of the month immediately succeeding the month in which such final Project Cost Approval has been awarded, issue a supplementary statement setting out (in sufficient detail) any amounts to be paid to the COMPANY by POWERGRID or to POWERGRID by the COMPANY, as the case may be, arising as a result of the Transmission Service Charge having been paid, prior to the date of such award, based on the Project Cost set out in the initial Project Cost Approval. POWERGRID or the COMPANY shall pay to the COMPANY or POWERGRID, as the case may be, the amount set out in such statement within 30 days of the statement being issued.

6.6 The Income Tax Charge

6.6.1 POWERGRID's Liability for Taxes on Income and Profits

The COMPANY shall be entitled to recover from POWERGRID as part of the Monthly TSC Payment, the Tax attributable to the income streams of the COMPANY arising as a consequence of the sale of capacity of the Project to POWERGRID, subject to a ceiling of actual Tax assessed on the COMPANY on this account. A certificate from the COMPANY's statutory auditors estimating the total Tax payable by the COMPANY in any Contract Year shall be presented to POWERGRID at the beginning of each Contract Year and one-twelfth of such amount shall be recovered as part of the Monthly TSC Payment in each month, the reconciliation shall be made at the end of each quarter based on actual remittance and excess/ shortfall amount, if any, shall be recovered / paid in the following month. Within 3 months of the end of each Contract Year an adjustment shall be carried out so that, if the actual Tax assessed on the COMPANY in any Contract Year is greater than that estimated by the statutory auditors then POWERGRID shall pay such excess amount to the COMPANY, and if the actual Tax assessed on the COMPANY in any Contract Year is less than that estimated by the statutory auditors then the COMPANY shall pay to POWERGRID an amount equal to such shortfall.

The COMPANY undertakes to use all reasonable endeavors to minimize its liability in respect of the Taxes that are recoverable from POWERGRID under this Paragraph 6.6.1.