

**AGREEMENT TO HYPOTHECATE Cum DEED OF
HYPOTHECATION**

FOR

**POWER STATION TO BE SET UP AT Tehsil Bara, District Allahabad, Uttar
Pradesh, India**

Dated [], 2008

**Draft
AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION**

between

**Madhyanchal Vidyut Vitran Nigam Limited, Lucknow
("Procurer1")
And**

**Paschimanchal Vidyut Vitran Nigam Limited, Meerut
("Procurer2")
And**

**Poorvanchal Vidyut Vitran Nigam Limited, Varanasi
("Procurer3")
And**

**Dakshinanchal Vidyut Vitran Nigam Limited, Agra
("Procurer4")
And**

**Kanpur Electric Supply Company, Kanpur
("Procurer5")
And**

**Prayagraj Power Generation Company Limited
("Seller")**

**1980 MW THERMAL POWER PROJECT AT Tehsil Bara, District
Allahabad, Uttar Pradesh, India**

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	6
1.1 Definitions	6
1.2 Interpretation	6
ARTICLE 2: THE SECURITY INTEREST.....	7
2.1 Covenant to pay.....	7
2.2 The Charge.....	7
2.3 Release of Charge	8
ARTICLE 3: FURTHER ENCUMBRANCES.....	10
3.1 Further Encumbrances.....	10
ARTICLE 4: REPRESENTATIONS AND WARRANTIES	11
4.1 Representations and Warranties of the Procurer	11
4.2 Representations and Warranties of the Seller.....	12
ARTICLE 5: PROCURER UNDERTAKINGS	13
5.1 Certain Undertakings	13
5.2 Indemnification	13
5.3 Further Actions	14
ARTICLE 6: MISCELLANEOUS PROVISIONS.....	15
6.1 Continuing Security	15
6.2 Waiver and Severability	15
6.3 Assignment and Transfer	16
6.4 Notices.....	16
6.5 Governing Law and Dispute Resolution.....	17
6.6 Language	17
6.7 Amendments	18
6.8 Counterparts.....	18
6.9 Terms of this Agreement to prevail	18
6.10 Confidentiality	18
6.11 Effectiveness.....	18

This AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION AGREEMENT is made this [], 2008 at Lucknow, by and between:

1. {insert name of the Procurer} a company incorporated under the Companies Act, 1956, with its registered office at [insert address] (hereinafter referred to as "**Procurer**" which expression shall unless repugnant to or inconsistent with the context, mean and include successors and permitted assigns) of the **FIRST PART**; and
2. Prayagraj Power Generation Company Limited, a company incorporated and existing under the Companies Act, 1956, with its registered office at 3rd Floor, Shakti Bhawan Extension, 14-Ashok Marg, Lucknow 226001, Uttar Pradesh, India, (hereinafter referred to as "**Seller**" which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **SECOND PART**;

(Each of the parties of the **FIRST and SECOND PART** above are individually referred to as a "**Party**" and collectively as the "**Parties**").

WHEREAS

- A. The Procurers have identified the Project for the construction, generation and supply of electricity to the Procurers, from Power Station to be located at Tehsil Bara, District Allahabad, Uttar Pradesh, India;
- B. In accordance with the Competitive Bidding Guidelines, the Procurers, through their Authorised Representative, had initiated a competitive bidding process through issue of RFQ and RFP for selecting a Successful Bidder to build, own, operate and maintain the Project.
- C. Pursuant to the said bidding process, _____ [Insert name of successful bidder] has been identified by the Procurers, through the Authorised Representative, as the Selected Bidder to construct the Project for a Contracted Capacity of _____ [to be filled in based on Selected

Bid] MW and sale and supply of electricity in bulk there from to the Procurers, in accordance with the terms of PPA.

- D. The Selected Bidder has also acquired 100% equity shares of the Seller, in accordance with the terms of the RFP Project Documents;
- E. The Procurer has agreed to purchase the Electrical Output from the Seller and to individually pay the Seller the Tariff (as defined in the PPA) set out in Schedule 7 of the PPA for such portion of the Available Capacity and dispatched Electrical Output of the Power Station as is made available to the Procurer and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;
- F. In terms of the said PPA, the Procurer is required to duly secure the Seller, by establishing an arrangement for payments of Secured Obligations becoming due to the Seller from the Procurer under the PPA and the Seller and the Procurer have agreed on a mechanism through a Default Escrow Agreement (as defined hereinafter) for securing the Secured Obligations;
- G. In furtherance of its obligations under the PPA the Procurer has agreed to create and grant a charge and security interest in favour of the Seller on the Procurer's right, title and interest on and in the Incremental Receivables in accordance with the terms hereof; and
- H. Accordingly, the Parties wish to enter into this Agreement to formally record their respective understanding, representations and covenants in respect of the aforestated

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other considerations, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA and the Default Escrow Agreement

Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

"Agreement" means this Agreement to Hypothecate Cum Deed of Hypothecation Agreement entered into between the Procurer and the Seller and the modifications, amendments or alterations thereto from time to time;

"Business Day" shall mean any day which is not a bank or public holiday in Uttar Pradesh.

"Default Escrow Agreement" means the agreement titled 'Default Escrow Agreement' dated ___ entered into between the Parties and the Escrow Agent;

"Hypothecated Interest" shall have the meaning as ascribed thereto in Article 2.2.1 of this Agreement;

"Power Purchase Agreement" or **"PPA"** means the agreement titled 'Power Purchase Agreement' dated _____ entered into between the Procurer and the Seller and as may be amended from time to time;

1.2 Interpretation

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA is incorporated herein by reference and shall apply for the purposes of this Agreement

ARTICLE 2: THE SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Seller having entered into the PPA and agreeing to supply electricity to the Procurer, subject to the terms and conditions set out in the PPA, the Procurer does hereby covenant with the Seller that it shall pay to the Seller all the Secured Obligations in the manner set out in the PPA.

2.2 The Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the PPA, the Procurer as the legal and / or beneficial owner of the Hypothecated Interest does hereby agree to hypothecate on the Charge Creation Date by way of pari pasu charge in favour of the Seller:-

all right, title, interest, benefit, claims and demands whatsoever of the Procurer in respect of the Incremental Receivables (collectively, the **"Hypothecated Interest"**).

The charge created pursuant to this Article by the Procurer over the Hypothecated Interest in favour of the Seller shall be a floating charge and subject to Article 3.1.1 of this Agreement, shall not hinder the Procurer from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof.

Provided that, the floating charge created pursuant to this Article shall immediately and automatically be converted into a fixed charge upon the occurrence of any Event of Default as defined in the Default Escrow Agreement.

2.2.1A on the date of the creation of the pari pasu charge in accordance with Article 2.2.1, this Agreement to Hypothecate Cum Deed of Hypothecation shall be deemed to continue as the Deed of Hypothecation between the Parties in accordance with the terms contained herein.

2.2.1B At any time after an Event of Default as defined in the Default Escrow Agreement occurs and is continuing, the Seller shall have the authority to act upon and enforce the provisions of this Agreement in accordance with the provisions hereof and the PPA.

2.2.1C Following the occurrence of an Event of Default as defined in the Default Escrow Agreement, except as may be required under the PPA, the Seller shall not be obliged before taking steps to enforce the Security constituted by or pursuant to this Agreement to:

- (a) take action or obtain judgement or any arbitration award against the Procurer in any court or before any arbitrator;
- (b) make or file any claim or proof in a winding up or dissolution of the Procurer; and
- (c) exercise any legal remedies, which may be available to it under or in respect of the PPA.

Release of Charge

2.3.1 The pari pasu charge created under Article 2.2.1 shall be immediately released and vacated on the earlier of:

- a. the date on which the PPA has terminated, in accordance with the terms thereof, and all the Secured Obligations have been paid in full;
- b. the occurrence of all of the following events mentioned in sub-articles (i), (ii) and (iii) below, subject to the proviso to this sub-clause:
 - (i) A period of not less than two (2) years, from COD of Power Station, has elapsed; and
 - (ii) The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and
 - (iii) Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 14 of the PPA by such Procurer.

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to release the pari pasu charge created under this Agreement. If the Seller desires to continue with said pari pasu charge, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of such pari pasu charge, with effect from such date. In case the Seller fails to respond or agrees to release the pari pasu charge, the said charge shall forthwith cease and this Agreement shall stand terminated.

- 2.3.2 In the case of the occurrence of the events described in Article 2.3.1 (a) or (b) and in the event the Seller fails to respond or agrees to release the pari pasu charge as mentioned above, the Seller shall at its own costs and expenses forthwith:
- (a) cede the benefit of the pari pasu charge on and security interest in the Hypothecated Interest; and
 - (b) re-assign, retransfer or re-convey to the Procurer, or as it may direct, the Hypothecated Interest or such part thereof as may remain, freed from the Security created hereunder; and
 - (c) execute all such documents and do all such other acts as may be required by the Procurer in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

ARTICLE 3: FURTHER ENCUMBRANCES

3.1 Further Encumbrances

- 3.1.1 Except for the charge created under this Agreement and permitted under Clause 3.1.2 hereof, the Procurer shall not, without written consent of the Seller, , create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest;
- 3.1.2 The Procurer shall be entitled to create a pari pasu charge in favour of the Procurer Financing Parties over the Hypothecated Interest, provided however the Procurer shall ensure that the rights of the Seller under this Agreement are not prejudiced in any manner.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Procurer

The Procurer acknowledges that the Seller has entered into this Agreement in reliance on the representations and warranties made by the Procurer in this Agreement. The Procurer hereby represents and warrants to the Seller that:

- (a) The Procurer is a duly constituted entity validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Procurer and constitute the valid, legal and binding obligations of the Procurer enforceable in accordance with the terms hereof and thereof respectively;
- (c) The charge and security interest created hereunder constitute a fipari pasu security interest in favour of the Seller;
- (d) To the best of its knowledge, there are no actions, suits or proceedings pending against the Procurer before any court or administrative body or arbitral tribunal that would adversely and materially affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its duties and obligations under this Agreement;
- (e) The execution, delivery and performance of this Agreement by the Procurer has been duly authorized by all requisite actions, and will not constitute a violation of:
 - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
 - (ii) the Procurer's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;

- (f) Based on available records, the Receivables are believed by the Procurer to be true and bonafide and fully collectible Receivables generated in the ordinary course of business of the Procurer and the Procurer has full right and interest in the Receivables;
- (g) No charge, security interest or other encumbrance presently exists over the Hypothecated Interest other than the charge created under this Agreement.

4.2 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Procurer that:

- (a) The Seller is a company duly constituted under the Companies Act, 1956, as amended, and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Seller and constitute the valid, legal and binding obligations of the Seller enforceable in accordance with the terms hereof; and
- (c) The execution, delivery and performance of this Agreement by the Seller has been duly authorized by all requisite actions, and will not constitute a violation of:
 - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Seller, its assets or its business; or
 - (ii) the Seller's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound.

ARTICLE 5: PROCURER UNDERTAKINGS

5.1 Certain Undertakings

During the term of this Agreement, the Procurer shall:

- (a) do all acts and things as may be reasonably required or appropriate to give effect to the charge/ security interest created in favour of the Seller on and in the Hypothecated Interest and to take all steps to maintain such charges and security interest in full force and effect on and in the Hypothecated Interest;
- (b) obtain and maintain at its own expense any license, permission, consent or authorization and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/ security interest granted under this Agreement and to enable the Seller to have the full benefit of this Agreement;
- (c) deposit or cause to be deposited immediately upon the receipt of Receivables in the Procurer's Banks; and
- (d) after the occurrence and during the continuance of an Event of Default deliver to the Seller (not later than the second Business Day of each Month) copies of summary statements of the electricity sold during the immediately preceding Month.

5.2 Indemnification

The Seller and every attorney, appointed by it shall be entitled to be indemnified out of the Hypothecated Interest in respect of all liabilities and expenses incurred by it in the execution of the powers of the Seller under this Agreement other than those arising on account of the negligence or default or misconduct on the part of the Seller, or any such attorney and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done by such person pursuant to this Agreement.

5.3 Further Actions

The Procurer shall from time to time upon the request of the Seller, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Seller) as the Seller may reasonably require in order that the Seller may obtain the full benefit of the charge created by this Agreement and of the rights and powers hereby granted.

ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 Continuing Security

6.1.1 The Security created by this Agreement shall be a continuing security for the performance and discharge of the Secured Obligations.

6.1.2 The Security so created

- a. shall not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- b. shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any part of the Secured Obligations.

6.1.3 Neither the charge hereby granted nor the rights, powers and remedies conferred on the Seller by this Agreement or by law shall be discharged, impaired or otherwise affected by:

- a. any time or other indulgence given or agreed to be given by the Seller to the Procurer or any other party providing Security for the Secured Obligations;
- b. any amendment of the PPA or the Default Escrow Agreement not agreed to by the Seller;
- c. any release or exchange of Security or obligations granted or undertaken pursuant to PPA or the Default Escrow Agreement or any document connected therewith;
- d. any other act, event or omission which but for this provision would impair or discharge the Procurer's liability hereunder; and
- e. any change in the structure or organization of the Procurer as a result of a Change in Law, insolvency of the Procurer or otherwise.

6.2 Waiver and Severability

No failure or delay by the Seller in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise

thereof or the exercise of any other right, power or remedy. If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement shall not be affected or impaired thereby. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply

6.3 Assignment and Transfer

- 6.3.1 This Agreement shall inure to the benefit of the Seller and its successors and permitted assigns and the obligations of the Procurer hereunder shall be binding on its successors and assigns notwithstanding any Change in Law or change in the constitution or status of the Procurer or of any of its successors, to the extent stated therein.
- 6.3.2 The Procurer shall not have the right to assign all or any of its rights or obligations hereunder.
- 6.3.3 The Seller shall have the right to assign all or any of its rights, title and interest hereunder and to the Hypothecated Interest as security only to the Lenders or the Selectee appointed under the terms of the PPA.

6.4 Notices

- 6.4.1 Any notice or other information required or authorised by this Agreement to be given shall be given in writing, in English and by:
 - (a) delivering it by hand (a written acknowledgement in receipt thereof shall be sufficient evidence that the notice or other information has been duly given); or
 - (b) sending it by courier or registered post;to the relevant Parties at the addresses referred to in Article 6.4.2 below.
- 6.4.2 The address and other details of the Parties for the purpose of communication, unless otherwise notified in writing to the other Parties shall be:

[insert addresses of the Procurer and the Seller]

6.5 Governing Law and Dispute Resolution

6.5.1 Governing Law

This Agreement shall be governed by and constructed in accordance with the laws of India.

6.5.2 Dispute Resolution

If any dispute arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in this Article 6.5.2, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- (i) the Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with Rule 23 of the Indian Council of Arbitration Rules;
- (ii) The place of arbitration shall be Lucknow, India. The language of the arbitration shall be English;
- (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and
- (v) The provisions of this Clause shall survive the termination of the PPA for any reason whatsoever.

6.5 Language

This Agreement is written in the English language. The English language text of this Agreement shall prevail over any translation.

6.6 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if in writing and signed in person or by an authorised representative of the Parties.

6.8 Counterparts

This Agreement may be executed in two or more counterparts, but all of such counterparts shall together constitute one and the same instrument.

6.9 Terms of this Agreement to prevail

The Parties hereto agree that if any provisions of this Agreement shall conflict with any provision of the PPA, then the provisions of this Agreement shall prevail.

6.10 Confidentiality

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

- (a) to their professional advisors;
- (b) to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

Without the prior written consent of the other Parties.

Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.

6.11 Effectiveness

This Agreement shall become effective on the date of signing of this Agreement by the Parties.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement through their authorised representatives on the day, month and year first above mentioned

SIGNED AND DELIVERED
BY THE WITHINNAMED " PROCURER"
BY THE HAND OF Mr. _____
(AUTHORISED SIGNATORY) PURSUANT TO THE RESOLUTION PASSED BY THE BOARD
ON THE DAY OF 2008

IN THE PRESENCE OF:

WITNESS:

NAME AND ADDRESS:

SIGNED AND DELIVERED
BY THE WITHINNAMED " SELLER"
BY THE HAND OF Mr. _____
(AUTHORISED SIGNATORY) PURSUANT TO THE RESOLUTION PASSED BY THE BOARD
ON THE DAY OF 2008

IN THE PRESENCE OF:

WITNESS:

NAME AND ADDRESS: