

POWER PURCHASE AGREEMENT

BETWEEN

- Pashchimanchal Vidyut Vitran Nigam Limited



- Purvanchal Vidyut Vitran Nigam Limited



- Madhyanchal Vidyut Vitran Nigam Limited



- Dakshinanchal Vidyut Vitran Nigam Limited



- Uttar Pradesh Power Corporation Limited



AND

Tidong Power Generation Private Limited



INDIA NON JUDICIAL

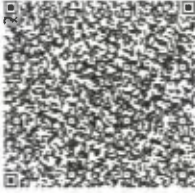
Government of National Capital Territory of Delhi



सत्यमेव जयते

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HYDRO POWER PURCHASE AGREEMENT BETWEEN The Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL) (the "Procurer 1"), The Purvanchal Vidyut Vitran Nigam Limited (puvvnl) (the "Procurer 2"), The Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) (the "Procurer 3"), The Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) (the "Procurer 4"), The Uttar Pradesh Power Corporation Limited (UPPCL) And Tidong Power Generation Private Limited (TPGPL). THIS AGREEMENT is entered into on this the 17th day of May 2021.

 TPGPL	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meenu	 PVVNL मुख्य अभियन्ता पूरुव-अंचल विद्युत वितरण संस्थान Meenu Singh	 PVVNL	 Executive Engineer (Commercial) DVMN AGRA Head Office AGRA BHAWAN, 220KV Sub Station AGRA, MATHURA BYPASS ROAD SIKANDRA - AGRA-282007	UPPCL
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मुख्य अभियन्ता (नियोजक)
उ.प्र.पा.का.वि.
लखनऊ



HYDRO POWER PURCHASE AGREEMENT

For 25 years

Issued by:

Chief Engineer (Planning)
UP Power Corporation Limited
3rd Floor, Shakti Bhawan Extn,
14 Ashok Marg, Lucknow; Phone: 0522-2218297
Email: cgm2plg@yahoo.co.in; cgm2plg@gmail.com

Date of issue of HPPA: 17.05.2021



PVVNL

Executive Engineer (Commercial)
Pashchimanchal Vidyut Vitaran Nigam
Meerut

इ. प्र. वि. नि. सिंह
अधीक्षण अभियन्ता
पश्चिम विद्युत वितरण निगम
वाराणसी

PVVNL

Executive Engineer (Commercial), D.V.V.M. AGRA
head Office-UP JA BHAWAN, 220KY Sub Station
AGRA-MATHURA BYPASS ROAD
SHANBURA - AGRA-282007

UPPCL

मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का लि,
लखनऊ

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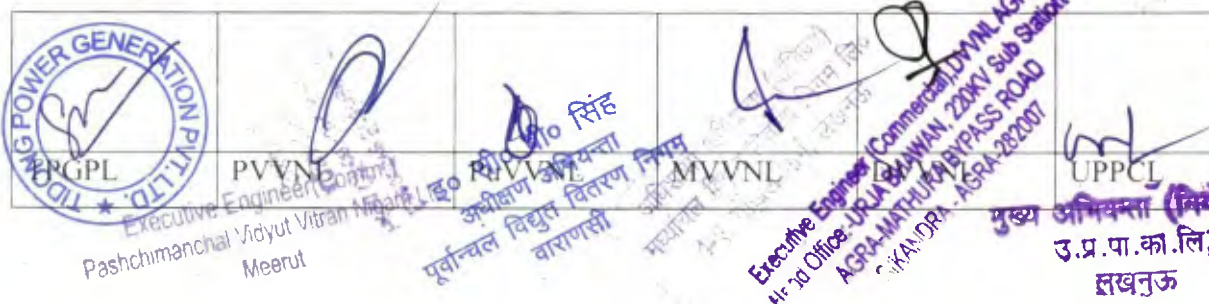
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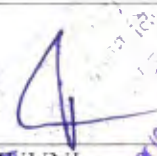


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	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut


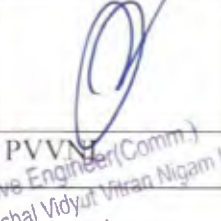
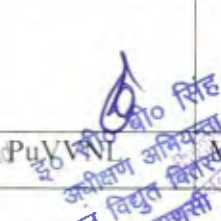

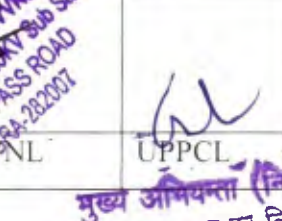
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Executive Engineer
Pashchimanchal Vidyalaya Nigam
Meerut

सिंह
पूर्वांचल विद्युत वितरण निगम
वाराणसी

4
Executive Engineer (Commercial) UJA
AGRA MATRUHA DIVISION
AGRA MATRUHA DIVISION
220KV Sub Station
SIKRI

UPPCL
मुख्य अभियन्ता (नियोजन)
उ.प्र. पा. का. लि.
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Executive Engineer (Comm.)
Pashchimanchal Vidyut Nigam Ltd.
Meerut

PVVNL

श्री श्री श्री श्री श्री सिंह
काशीदास अग्रियन्ता
पूर्वांचल विद्युत वितरण निगम
बारागंजी

PVVNL





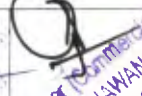

Executive Engineer (Commercial), DVM, AGRA
Head Office: JIJAJI BHAWAN, ZORNI Sub Station
K-5, MATHURA BYPASS ROAD
28 - AGRA-202007

DVM

UPPCL

मुख्य अभियन्ता (नियोजन)
उ.प्र. पा.क. लि.
लखनऊ

Part I
Preliminary

					
TPCPL	PVVNL	ईश्वर सिंह अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण वाराणसी	MVVNL निगम	Executive Engineer (Commercial) MVVNL AGRA Head Office, U.R.J.A BHAWAN, 220045 Sub Station AGRA, MAHURA BYPASS ROAD SIKANDRA - AGRA-202007	UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.को.लि, लखनऊ

AGREEMENT FOR PROCUREMENT OF POWER



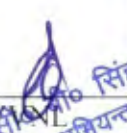

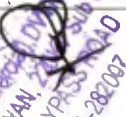
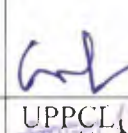
THIS AGREEMENT is entered into on this the 17th day of May 2021.

BETWEEN

1. The Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL) represented by its Managing Director and having its principal/registered office at Urja Bhawan, Pashchimanchal Vidyut Vitran Nigam Ltd., Victoria Park, Meerut, 250001 (hereinafter referred to as the "Procurer 1" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;
2. The Purvanchal Vidyut Vitaran Nigam Limited (PuVVNL) represented by its Managing Director and having its principal/registered office at Vidyut Nagar, Bhikharipur, DLW. Varanasi, 221010 (hereinafter referred to as the "Procurer 2" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Second Part;
3. The Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) represented by its Managing Director and having its principal/registered office at Madhyanchal Vidyut Vitran Nigam Limited Head Office 4-A, Gokhale Marg, Lucknow, 226001 (hereinafter referred to as the "Procurer 3" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Third Part;
4. The Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) represented by its Managing Director and having its principal/registered office at Urja Bhavan, NH-2 (Agra – Delhi Bypass Road), Sikandra, Agra – 282002 (hereinafter referred to as the "Procurer 4" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Four Part;
5. The Uttar Pradesh Power Corporation Limited (UPPCL) represented by its Managing Director and having its principal/registered office at Shakti Bhawan 14 Ashok Marg, Lucknow, 226001 (hereinafter referred to as the "UPPCL" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Fifth Part;

AND

6. Tidong Power Generation Private Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 represented by its Director and having its principal office at 401, Level 4, Salcon Rasvilas Building, Saket District Centre, New Delhi- 110017 and having its registered office at Grover Cottage, 2nd Floor, above HDFC Home Loans, Chota Shimla-Kasumpti Road, Shimla, Himachal Pradesh, 171002, India, (hereinafter referred to as the "Supplier" which expression shall, unless repugnant to the context or meaning



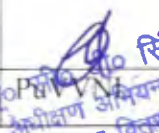

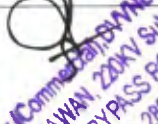
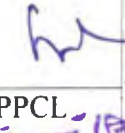
					
Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	PVVNL	PuVVNL अधीक्षक अभियन्ता इं० सो० वि० सिंघ पूर्वांचल विद्युत वितरण निगम वाराणसी	MVVNL	DVVNL	UPPCL (अधीक्षक) उ.प्र.पा.को.लि. वाराणसी

thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- A. The PVVNL, PuVVNL, MVVNL, DVVNL and UPPCL (the "Procurer"), has decided to procure electricity from the **Run off the River/ Pondage/ Pumped Storage** hydro power generating station(s) (the "Power Station") that would dedicate a capacity for supply of Electricity thereof for a specified period and time (the "**Supply of Electricity**") and has, therefore, decided to carry out the bidding process for selection of the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Document.
- B. The Procurer had invited bids from the Bidders in accordance with the Standard Bidding Documents issued on 24.01.2014 under and including the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No.23/17/2013-R&R (Vol-II) dated 10.02.2014 which were modified by the Procurer to accommodate long term procurement of power from hydro power stations and approved by the Hon'ble Uttar Pradesh Electricity Regulatory Commission vide orders in petition nos 1343/2018 dated 14.01.2019, 1456/2019 dated 10.06.2019 and 1553/2020 dated 12.02.2020.
- C. After completion of the Bidding Process, the Procurer had accepted the Bid of the Selected Bidder and issued its Letter of Award No. 352 Plg/ UMPP-I/400 MW Hydro dated 16.04.2021 (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Hydro Power within 30 (thirty) days of the date of issue thereof.
- D. In pursuance of the LOA, the Parties have agreed to enter into this Agreement for Procurement of Hydro Power on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement for Procurement of Hydro Power for 25 years the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

 TPLPPL	 PVVNL.com Executive Engineer Pashchimanchal Vidyut Nigam Meerut	 सिंह मुख्य अभियन्ता पूर्वांचल विद्युत निगम वाराणसी	 MVVNL	 Executive Engineer (Commercial) PVVNL AGRA AGRA-MATHURA BYPASS ROAD SIKANDRA AGRA-202007	 UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ
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ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation



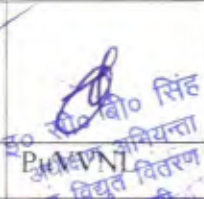


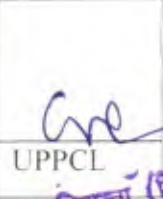
1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly.

	 PVVNI Executive Engineer Pashchimanchal Vidyut Vitaran Nigam Meerut	 Puvni उपनिवेशन अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	 Puvni Executive Engineer Head Office: UPJA AGRA-MANTHURA BYPASS ROAD Surat: DRA - 382001	 UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
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- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Power Station is situate are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**kWh**” shall mean kilowatt hour;
- (r) “**lakh**” shall mean a hundred thousand (100,000) and “**crore**” shall mean ten million (10,000,000);
- (s) “**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;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to

					
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Executive Engineer
Pashchimanchal Vidyut Nigam Ltd
Meerut





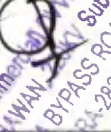

पुर्वान्वित विद्युत वितरण
वाराणसी

Executive Engineer (Commercial)
AGRA-MATHURA Bypass Station
SIKANDRA AGRA-202007

मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि,
लखनऊ

include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Procurer hereunder or pursuant hereto in any manner whatsoever;
- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages");
- (z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (za) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

					
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	PVVNL	अजीश कुमार सिंह अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	PVVNL	Executive Engineer (Commercial) Head Office: J.P. Road, BAWANAN AGRA, M.P. 202007 Sub Station BYPASS ROAD SIVAN, M.P. 202207	UPPCI - (नियोजन) उ.प्र.पा.का.लि, लखनऊ

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Procurer shall be provided free of cost and in three copies, and if the Procurer is required to return any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules


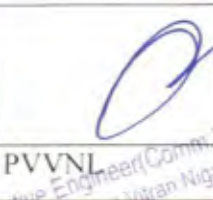
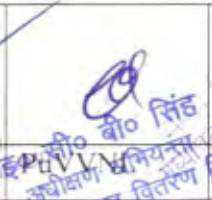
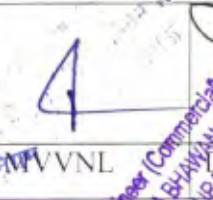
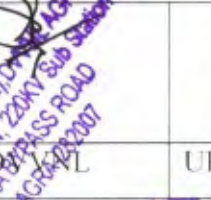
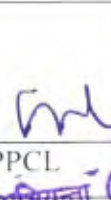
1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;

					
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
Executive Engineer (Commercial) District
Pashchimanchal Vidyalaya Nigam
Meerut

पूर्वांचल विद्युत वितरण
वाराणसी

Executive Engineer (Commercial) District
Head Office - J.R. BAJAJAN, ZAKRY SUB STATION
AGRA - MATHURA EXPRESS ROAD
AGRA - 202007

मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि.
लखनऊ

- (d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

	 PVVNL (Comm.) Executive Engineer Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	 Puv डी. पी. सिंह अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 PVVNL Executive Engineer PVVNL PVVNL	 PVVNL Executive Engineer (Comm.) PVVNL AGRA U.P. BHANGA AGRA THURA BYPASS ROAD Sitapur - AGRA-282007	 UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.को.लि, लखनऊ
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Part II
The Procurement Contract

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Executive Engineer
Pashchimanchal Vidyut Nigam Ltd.
Meerut

सिंह
अधीक्षण अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

49
Executive Engineer (Commercial) DIVVNL AGRA
Head Office-URJA BHAWAN, 220KV Sub Station
AGRA-MATHURA BYPASS ROAD
SIKANDRA AGRA-282007

UPPCL
मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि;
लखनऊ

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Agreement (the “**Scope of the Agreement**”) shall mean and include, during the Contract Period:

- (a) ensure the operation and maintenance of the Power Station(s), situated at the Site(s) described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement;
- (b) supply of electricity to the Procurer in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Supplier and the Procurer, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.



Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam
Meerut

PVVNL

अधीक्षक अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Pu

MVVNL

Executive Engineer (Consumer)
AGRA
BHAVAN
SHUNPUR BYPASS ROAD
AGRA-282007

DVVNL

UPPCL

मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि,
लखनऊ

ARTICLE 3
GRANT OF PROCUREMENT CONTRACT




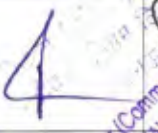
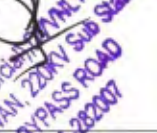

3.1 The Grant of Procurement Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Procurer hereby awards to the Supplier the procurement contract set forth herein for generating electricity at the Power Station(s)" for supply thereof to the Procurer for a period of 25 years commencing from the Appointed Date (the "Procurement Contract"), and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period for such further period for five year with same terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Procurement Contract hereby awarded shall oblige or entitle (as the case may be) the Supplier to:

- (a) Finance, own, operate and maintain the Power Station(s) in accordance with this Agreement", or ensure that the Developer finances, owns, operates and maintains the Power Station(s) in accordance with this Agreement";
- (b) procure if Supplier Supply of the Capacity for generation of electricity and Supply of Electricity thereof to the Procurer under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;
- (c) to receive Fixed Charge from the Procurer in accordance with the provisions of this Agreement;
- (d) to receive Variable Charge in accordance with the provisions of this Agreement;
- (e) perform and fulfil all of the Supplier's obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement; and



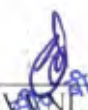

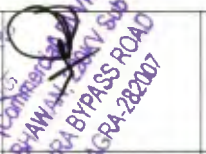
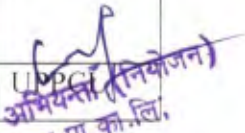
					
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	PVVNL	पूर्वनिचल विद्युत वितरण निगम वाराणसी	PVVNL	Executive Engineer (Commercial) UKA BAHWAN, 22KV Sub Station SUKANDELA - AGRA-282207	UPPCL

मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का. लि,
लखनऊ

- (g) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement”, or neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or Encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.2 Substitution of the Procurer

The Parties expressly agree that the Procurer may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, or if it is unable to discharge its liabilities and obligations under this Agreement, substitute itself by another PVVNL, PuVVNL, MVVNL and DVVNL/ *UPPCL* and upon such substitution, all the functions, rights and obligations of the Procurer under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws. Provided, however, that prior to any substitution hereunder, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 13. Provided further that the creditworthiness of the substituted entity shall be substantially similar or greater as compared to the Procurer and in the event of any shortfall therein, credit enhancement shall be provided by the substituted entity to bridge the gap.

 <p>TPGPI</p>	 <p>PVVNL</p>	 <p>PuVVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी मध्य</p>	 <p>MVVNL</p>	 <p>DVVNL Executive Engineer (Commercial) Head Office-UPPCL, BAWALPUR Sub-Station 400-MATARA BYPASS ROAD SIKA, NIPRA, AGRA-282007</p>	 <p>UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.क.लि, लखनऊ</p>
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ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 17, 19, 23 and 25, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.


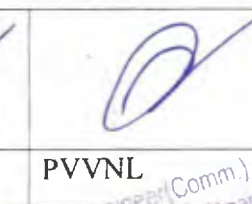
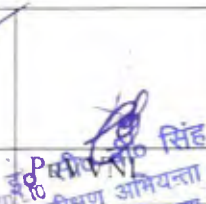
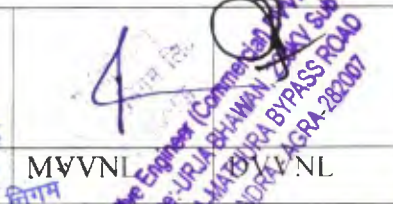
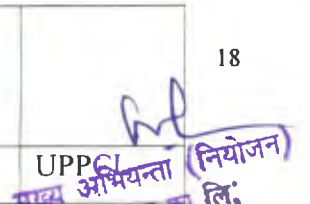
4.1.2 The Supplier may, upon providing the Performance Security to the Procurer in accordance with Article 9, at any time within 30 (Thirty) days from the date of this Agreement or on an earlier day acceptable to the Procurer, by notice require the Procurer to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Procurer shall be deemed to have been fulfilled when the Procurer shall have:

- (a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;
- (b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;
- (c) procured adoption of the Tariff from the Appropriate Commission for payment of Tariff by the Procurer to the Supplier in accordance with the provisions of this Agreement;

Provided that upon request in writing by the Procurer, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

- a. provided Performance Security to the Procurer to be provided within 30 days;
- b. deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1; and

				
TPGPL	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	P.V.V.N.L. सिंग अभियन्ता पूर्वांचल विद्युत वितरण निगम बाराणसी	MVVNL Executive Engineer (Commercial) ANA AGRA AGRA-MATHURA BYPASS ROAD SIKANDRA AGRA-282007	UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.क.लि. झखनुऊ

c. procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.

Provided that upon request in writing by the Supplier, the Procurer may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant extension of time, not exceeding 90 (ninety) days, for fulfilment thereof, as the case may be. For the avoidance of doubt, the Procurer may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.


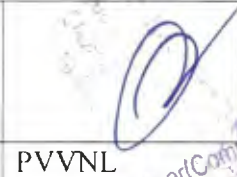
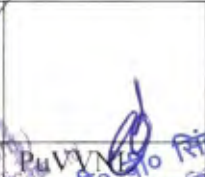
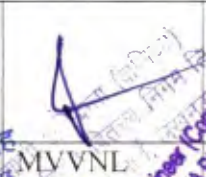
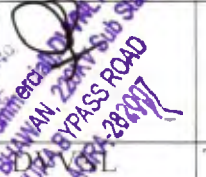
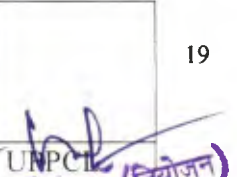
4.2 Damages for delay by the Procurer

In the event that (i) the Procurer does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Procurer shall pay to the Supplier Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

If Performance Security is not provided within 30 Days, the Bid Security of the Supplier shall be encashed and appropriated by the Procurer.

4.3 Damages for delay by the Supplier




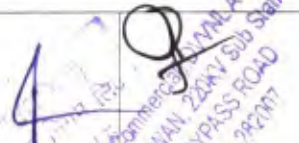
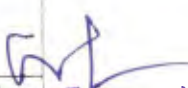
In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Procurer or due to Force Majeure, the Supplier shall pay to the Procurer Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Procurer may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Procurer in procuring

 TPGPL	 P.V.V.N.L.	 P.V.V.N.L. सिंह अधीक्षण अभियंता पूर्वांचल विद्युत वितरण निगम वाराणसी	 M.V.V.N.L.	 Executive Engineer (Commercial) P.V.V.N.L. Head Office: U.P.U. BAWAN, ZAKRY Sub Station SIKANDAR - KSR-282007	 UNPCL मुख्य अभियंता (नियोजन) उ.प्र.पा.का.लि; लखनऊ
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fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Procurer shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Hydro Power Purchase Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Procurer as Damages thereof.

				
<p>TPGPL THERMO POWER CORPORATION LIMITED C/O. TPO</p>	<p>PVVNL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut</p>	<p>PVVNL मुख्य अभियन्ता (नियोजन) वाराणसी</p>	<p>MVVNL Executive Engineer (Comm) Office: U.P. J.A. SHAWAN, 20KV Sub Station K.P. MATTHUR, BYPASS ROAD SIKANDRA, A.P.A. 202107</p>	<p>UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ</p>

ARTICLE 5
OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, at its own cost and expense”, undertake the operation and maintenance of the Power Station(s) and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Supplier shall comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Supplier shall operate and maintain the Power Station in accordance with the Specifications, Standards and the Maintenance Requirements such that the monthly supply of the Contracted Capacity of the Power Station in terms of million units is at least [*Run off the River - /Pondage – 90% (Ninety percent) without silt & 85% (Eight Five Percent) with silt/ Pumped Storage/ any other to be specified*] thereof during the peak hours pertaining to Procurers specified 6 hours during the Contract Period (the “Contracted Supply”).





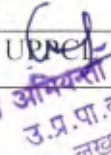
Explanation:

Supply in respect of any day shall be actual supply of power in terms of million units pertaining to the Contracted Capacity during peak hours pertaining to Procurers specified 6 hours during the Contract Period up to the Delivery Point.

The bidders shall have to provide CEA approved/certified monthly design energy for the power station for the 6 months from May to Oct during the contract period along with already tied-up firm commitments.

The Parties further agree that if the Power Station is not supplying electricity to its full capacity during any hour pertaining to the Procurer specified Peak Hours, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of supply, be reduced proportionate to the non-supply during that hour. The Parties also agree that the determination of Supply hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.



	 Executive Engineer Pashchimanchal Vidyut Vitran Meerut	 Executive Engineer Pashchimanchal Vidyut Vitran Meerut	 Executive Engineer Pashchimanchal Vidyut Vitran Meerut	 Executive Engineer Pashchimanchal Vidyut Vitran Meerut	 Executive Engineer Pashchimanchal Vidyut Vitran Meerut
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5.1.5 The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:


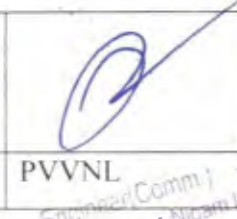
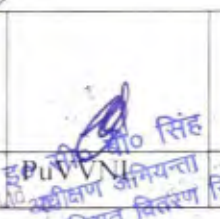
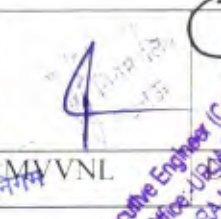
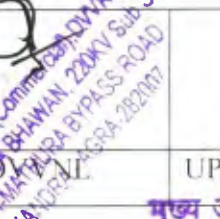
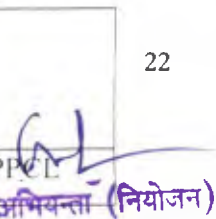
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of long term open access shall be mutually decided by the Procurer and Supplier;
- (b) procure, or cause to be procured, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;
- (c) ensure and procure that its comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;
- (d) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- (e) support, cooperate with and facilitate the Procurer in the implementation of this Agreement;
- (f) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;
- (g) comply with the directions of the Commission issued from time to time under the Act.

5.2 Obligations relating to Project Agreements

It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Supplier from its obligations or liability hereunder.

5.3 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Procurer.

 <p>TPGPL</p>	 <p>PVVNL</p>	 <p>इ.प्र.पा.का.लि. मुख्य अभियन्ता पूर्वाञ्चल विद्युत वितरण वाराणसी</p>	 <p>MVVNL</p>	 <p>Executive Engineer (Commissioning) MVVNL AGRA Head Office: JICA BHAWAN, 220KV Sub-Station AGRA-MATHURA BYPASS ROAD SIKA, INDIA, AGRA-282007</p>	 <p>UPPCL</p> <p>मुख्य अभियन्ता (नियोजन) उ.प्र.पा का.लि. लखनऊ</p>
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5.4 Obligations relating to operation of the Power Station



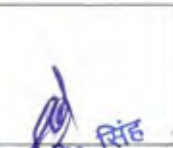

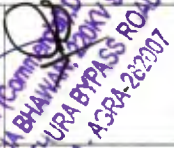
- 5.4.1 The Supplier shall at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the RLDC/SLDC may give from time to time in accordance with the provisions of the Act.
- 5.4.2 The Supplier shall comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5 Obligations relating to transmission charges

The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Procurer. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs.0.7800 per kWh for and in respect of the Contracted Capacity, which charges shall at all times be due and payable by the Supplier.

5.6 Obligations relating to transmission losses

- 5.6.1 The Supplier shall be liable for the transmission losses in all inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Procurer.

				
Executive Engineer (Comm.) Rashchimanchal Vidyut Vitran Ni. Meerut	सि. पी. डी. सिंह अध्यक्ष पूर्वांचल विद्युत वितरण निगम वाराणसी	Executive Engineer (Comm.) Head Office-UPZB BHANIPUR K.G.P. KOTIURA BYPASS ROAD Substation A-CRA-282007		मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ

5.6.2 The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Procurer and shall be adjusted in the relevant Monthly Invoice in case of reduction in Transmission Loss but Procurer has already paid to the Supplier as per the prevailing order of the Commission. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to the Procurer and shall be adjusted in the Monthly Invoice for that month.

5.7 Obligations relating to SLDC and RLDC charges


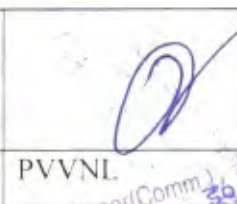
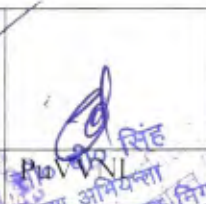
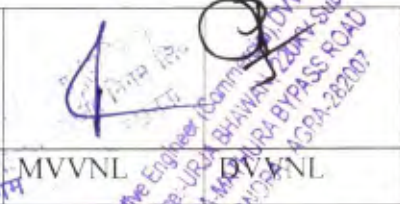
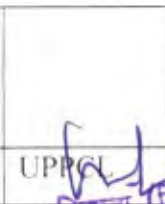
The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Procurer.

5.8 Obligations relating to taxes

The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Procurer under this Agreement shall be reimbursed by the Procurer upon receipt of particulars thereof.

5.9 Obligations relating to reporting requirements

All information provided by the Supplier to the SLDC and RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Procurer simultaneously.

 <p>TPGFL</p>	 <p>PVVNL</p>	 <p>MVVNL</p>	 <p>DVVNL</p>	 <p>UPPCL</p>
<p>Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut</p>		<p>अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी</p>		<p>मुख्य अभियन्ता (मियोजन) उ.प्र.पा.का.लि; लखनऊ</p>

ARTICLE 6
OBLIGATIONS OF THE PROCURER


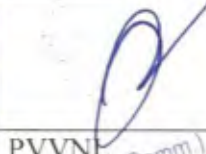
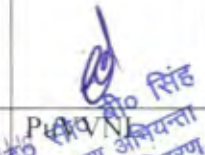

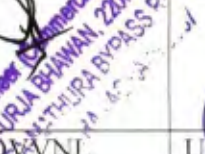
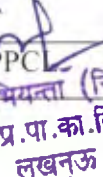
6.1 Obligations of the Procurer

6.1.1 The Procurer shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Procurer agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- (a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non-grant of long term open access shall be mutually decided by the Procurer and Supplier;
- (b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (c) support, cooperate with and facilitate the Supplier in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.

6.1.3 The Procurer shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Procurer in accordance with the provisions of sections 42 and 49 of the Act.




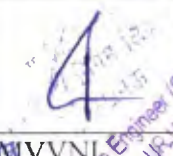
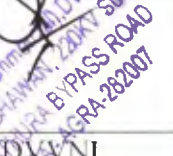
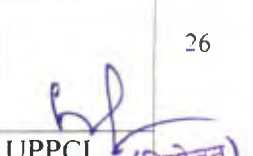
					
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ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier





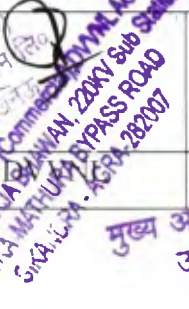
The Supplier represents and warrants to the Procurer that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government instrumentality

 TPGPL	 PVVNL	 PVVNL	 PVVNL	 PVVNL	 UPPCL
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	इ.प्र.पा.का.लि. अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	इ.प्र.पा.का.लि. अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	इ.प्र.पा.का.लि. अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	इ.प्र.पा.का.लि. अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ

which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;
- (k) the Selected Bidder and have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) the Selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Procurer to enter into this Agreement with pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) no representation or warranty by it contained herein or in any other document furnished by it to the Procurer or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (n) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Procurer in connection therewith;
- (o) all information provided by the Selected Bidder in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (p) all undertakings and obligations of the Supplier arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Supplier as if they form part of this Agreement.

	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	 PuvNL अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम लि. वाराणसी	 MVNL अधीक्षण अभियन्ता मध्य प्रदेश विद्युत वितरण निगम लि. भोपाल	 UPPCL Executive Engineer (Comm.) AGRA MATRUWA BYPASS ROAD Sikar, U.P. AGRA-282007 मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ
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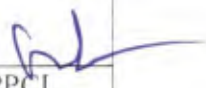
7.2 Representations and warranties of the Procurer

The Procurer represents and warrants to the Supplier that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Procurer's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

					
PGCPL PUNJAB GENERATION PVT. LTD.	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	इ.पी.वी.सी. सिंह अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	MVVNL Executive Engineer (Comm.) Jharkhand State Power Corporation SIKANDRA - AGRA - 202007	DVVNL अधीक्षक अभियन्ता (नियोजन) उ.प्र. विद्युत निगम	UPPCL अधीक्षक अभियन्ता (नियोजन) उ.प्र. विद्युत निगम

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Bidding Document, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Procurer or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Procurer makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Procurer in this regard.
- 8.1.2 The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Procurer shall not be liable for the same in any manner whatsoever to the Supplier, or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Procurer to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Procurer contained in Clause 8.1.1 and shall not in any manner shift to the Procurer any risks assumed by the Supplier pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Procurer shall not be liable in any manner for such risks or the consequences thereof.




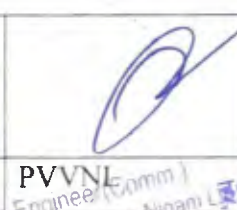
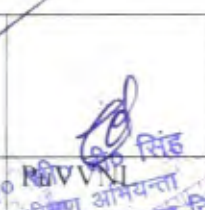
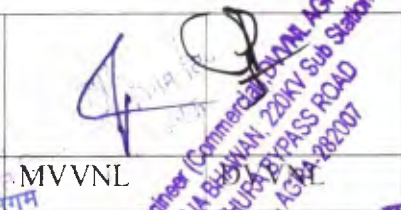
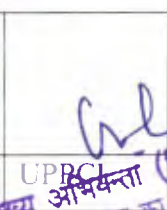
Executive Engineer
Pashchimanchal Vidyut Vitran Nigam
Meerut

अधीक्षण अधिकारी
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Executive Engineer
Head Office - U.P. JALANWAN
AGRA-MATHURA BYPASS ROAD
Sikandrapur, AGRA-282007

मुख्य अभियंता
उ.प्र. पा.का. लि.
बलनगढ़

Part III
Operations

				
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Executive Engineer (Comm)
Pashchimanchal Vidyut Vitan Nigam
Meerut

श्री. रवि सिंह
अधीक्षक अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

MVVNL

Executive Engineer (Commercial)
AGRA MATRUJIB BYPASS ROAD
Sikr 2nd AGRA-202007

UPPCI
मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि,
लखनऊ

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Procurer no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 11.25 crore (Rupees Eleven Crore and Twenty Five Lakhs) in the form set forth in Schedule-B (the "Performance Security") for a period of 6 (six) months.
- 9.1.2 Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Procurer shall release the Bid Security to the Supplier.
- 9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 30 (thirty) days from the date of this Agreement, the Procurer may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Procurer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Procurer shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Procurer shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

					
TPGPL TIDONG POWER GENERATION PVT. LTD.	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Viran Meerut	PVVNL अधीक्षण अधिकारी पूर्वांचल विद्युत वितरण निगम वाराणसी	PVVNL अधीक्षण अधिकारी पूर्वांचल विद्युत वितरण निगम वाराणसी	Encash Engineer (Commercial) PVVNL AGRA Head Office: U.P. BHAWAN, BYPASS ROAD AGRA-MEERUT BYPASS ROAD SHAKUNIKHNERA-282007	UPPCL उ.प्र.पा.का.लि, बखनऊ

9.3 Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 6 (six) months after the Appointed Date, and shall be released upon the Deemed Performance Security taking effect in accordance with the provisions of Clause 9.4.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Procurer to the Supplier, and the Procurer shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Supplier Default, the Procurer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Procurer, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

TPGPL	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitaran Nigam Meerut	PVVNL अवैधान्तिक अभियुक्त पूर्वांचल विद्युत वितरण नियम वाराणसी	MVVNL Executive Engineer (Commercial) Head Office - J.P. JAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD AGRA	UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र. वि. नि. लि. वाराणसी

**ARTICLE 10
ALLOCATION OF CAPACITY**

10.1 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of 75 MW to the Procurer as the capacity contracted hereunder (the “Capacity”) and the Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.






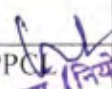
10.2 Dispatch of unutilised Capacity

10.2.1 In the event that the Procurer does not require the supply of the whole or part of the Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Capacity, where upon the Supplier is entitled to utilise the respective production of electricity for sale thereof to any Buyer. Any profit or loss realised, in relation to Variable Charge, through such sale shall be shared with the Procurer in the ratio of 50:50. Such third-party sale shall be subject to consent of Procurer and at a price not less than the Prices discovered on Power Exchange DAM for the respective delivery period. Provided, however, that any reduction in supply under Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours. Subject to regulatory provisions, the liability of Fixed Charge in such case shall remain with the Procurer. Procurer shall at all times, in finalising the schedules of the Supplier, shall strive to avoid spillage due to underutilisation of the Capacity.

10.2.2 Deleted

10.3 Substitute Supply

10.3.1 In the event the Supply of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of availability of water or Force Majeure, the Supplier may, with prior consent of the Procurer, which consent the Procurer may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Procurer rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Supply and payment of Fixed Charge.

 TPGPL	 PVVNL	 PuVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत विपणन निगम वाराणसी	 PVVNL	 Executive Engineer (Commercial) Head Office - DWNL BHANWAN, 220KV Sub Station AGRA-MAJHURA BYPASS ROAD SIKANDRA - AGRA-202207	 UPPC मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि, लखनऊ
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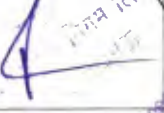
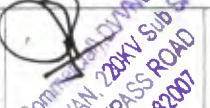
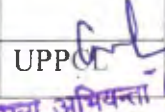
10.3.2 In the event that the COD of the Power Station is expected to occur within 3 years from the Appointed Date, the Supplier, , with specified COD date being January 2023, with prior consent of the Procurer, shall supply electricity from any alternate source, except renewable sources, upto the Contracted Capacity, to the extent of energy deliverable in proportion to the Design Energy, pertaining to the Contract Period, subject to the terms and conditions specified herein, as per the requirement of the Procurer. Any additional charges and losses, like due to cancellation of existing corridor and booking of new corridor etc., on account of such alternate supply shall be to the account of Supplier. Failure in achieving COD of the plant, irrespective whatever reason for such delay, within the specified date from the Appointed Data, shall result on issuance of Termination Notice under 19.1.1 (q) and shall be processed for Termination; provided that before issuing such Termination Notice, the Procurer shall inform the Supplier of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

10.4 Supply during Peak Hours

The Supplier shall ensure the actual generation of the Power Station during peak hours of the day comprising a period of six hours, as specified by the Procurer for each calendar month, with a notice of 4 (four) days to the Supplier (the "Peak Hours"), and shall be liable for penalty on Fixed Charge, as specified in clause 11.6, for such Non-Supply. Provided, however, that in the event the Procurer does not schedule the full capacity comprising the Supply during any hour or part thereof and the whole or part thereof is sold to Buyers, the provisions of Clause 10.2.1 shall apply.

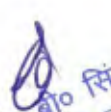

10.5 Supply during Off-Peak Hours

The Supplier shall Supply balance energy for a day, after provisioning for energy during Peak Hours, as per the hydrology (water inflow) of the plant subject to Supply of the Capacity during Off-Peak hours which are the balance hours of a day not covered under Peak Hours (the "Off-Peak Hours").

					
	Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	इ.प्र.पा.का.लि. (नियोजन) अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	MVVNL	Executive Engineer (Comm.) Head Office, Jhansi Bypass, 220KV Sub Station AGRA-WARANASI BYPASS ROAD SIKANDRA ROAD, AGRA-202007	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. वाराणसी

Part IV

Financial Covenants

 TPGPL	 PVVNL	 PVVNL	 MVVNL	 MVVNL	 UNPOL
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	श्री पी.पी. सिंह प्रमुख अभियन्ता (नियोजन) पूर्वान्वल विद्युत वितरण निगम वाराणसी	श्री पी.पी. सिंह प्रमुख अभियन्ता (नियोजन) पूर्वान्वल विद्युत वितरण निगम वाराणसी	श्री पी.पी. सिंह प्रमुख अभियन्ता (नियोजन) पूर्वान्वल विद्युत वितरण निगम वाराणसी	Executive Engineer (Commercial) MVVNL AGRA Head Office: URJA BHAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SKANDEL AGRA-282007	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ

ARTICLE 11

TARIFF

11.1 Tariff

11.1.1 The Procurer shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Procurer to the Supplier for Supply and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the "Tariff").

11.1.2 As a part of the Tariff, the Procurer shall pay to the Supplier an amount, determined in accordance with the provisions of this Article 11, as the Fixed Charge for supply of a kWh of electricity to the Procurer and expressed in Rupees per kWh (the "Fixed Charge").



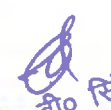
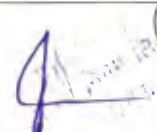
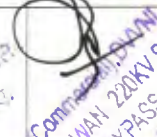
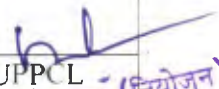
11.2 Base Fixed Charge

The Parties agree that the fixed charge shall, in accordance with the offer of the Supplier for the Base Year, be Rs 2.3000 per kWh, to which the amount, if any, determined in accordance with the provisions of Clauses 11.2 or 11.3, as the case may be, shall be added or deducted, as the case may be, and the sum thereof (the "Initial Fixed Charge") shall be revised annually in accordance with the provisions of Clause 11.4 to determine the base fixed charge for the relevant Accounting Year (the "Base Fixed Charge").

The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which COD occurs, and for each subsequent Accounting Year, the applicable Base Fixed Charge shall be determined by decreasing the Base Fixed Charge for the immediately preceding Accounting Year by [2% (two per cent)] thereof. For the avoidance of doubt and by way of illustration, the Base Fixed Charge for the first Accounting Year in which COD occurs shall be the Initial Fixed Charge, and for the second and third Accounting Years subsequent to the Accounting Year in which COD occurs, shall be a sum equal to [98% (ninety eight per cent) and 96.04% (ninety six point zero four per cent)] respectively of the Initial Fixed Charge.

11.3 Indexed Fixed Charge

For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in March 2015; (b) the appointed date occurs in May 2019; and (c)

 TPGPI	 P.V.V.N.L.	 P.V.V.N.L.	 P.V.V.N.L.	 D.V.V.N.L.	 U.P.P.C.L.
	Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	पूर्वांचल विद्युत वितरण निगम वाराणसी		Executive Engineer Head Office: MATHURA BYPASS ROAD SINHAUDA, AGRA-202007	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ

WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 104% (one hundred and four per cent) of the Base Fixed Charge.

11.4 Computation of Fixed Charge






11.4.1 Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for scheduled energy in each month of the relevant Accounting Year.

11.4.2 The obligations of the Procurer to pay Fixed Charges in any Accounting Year, pertaining to the Contract Period, shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the scheduled energy in each month computed with reference to the Capacity (the "Capacity Charge"). Provided, however, that in the event of Despatch of the Power Station beyond Contracted Supply an Incentive shall be payable in accordance with the provisions of Clause 11.6.1

11.4.3 Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for scheduled energy in excess of Contracted Capacity, and in the event it supplies electricity to the Procurer in excess of such Contracted Capacity, such excess supply shall be eligible only for payment of Variable Charge (i.e. generating cost of electricity, transmission charges and transmission losses), save and except the payment of Incentive due under the provisions of Clause 11.4.2.

11.4.4 In the event that any shortfall in Supply of Electricity to the Procurer occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Supply shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Supply arising as a consequence thereof shall, for the purposes of penalty of Fixed Charge, be deemed to be Supply to the extent of 50% (fifty per cent) of the Non-Supply hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Supply hereunder for supply to other Buyers, and to the extent of full or part Non-Supply hereunder for supply to other Buyers, and to the extent of such Despatch, the Procurer shall not be liable to penalty on any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Supply hereunder. The Parties further agree that any and all revenues received from Buyers shall be applied first towards reduction of Fixed Charge payable by the Procurer hereunder and only the balance remaining shall be appropriated by the Supplier.

11.4.5 In the event that any shortfall in supply of electricity to the Procurer occurs on account of shortage or availability of water, Supply shall be deemed to be reduced

	 P.V.V.N.L. Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	 श्री बी० सिंह पूर्वान्वयक विद्युत वितरण निगम वाराणसी	 M.V.V.N.I. Executive Engineer (Commercial) D.V.N. Office Office: J.P.J.A. BHAWAN, 20K/150/150 AGRA-MATHURA BYPASS ROAD SIKANDRA, AGRA DISTRICT	 U.P.P.C.A. मुख्य अभियन्ता (निर्माण) उ.प्र.पा.का.लि, लखनऊ
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in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Supply arising as a consequence of shortage of availability of water during procurers defined peak hours caused by any event of Force Majeure shall, for the purpose of payment on Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Supply hereunder.

11.5 Declaration of Supply






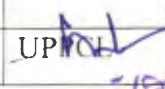
11.5.1 Unless otherwise notified by the Supplier, the declared Supply shall, be deemed to be 100% (one hundred per cent) thereof at all times.

11.5.2 In the event that any shortfall in supply of electricity to the Procurer occurs on account of any deficiency in transmission between the Point of Grid Connection and Delivery Point, the Supply shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Supply on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the Contracted Capacity, the Supply shall be deemed to be 80% (eighty per cent) and the Non-Supply hereunder shall be notified by the Supplier to the Procurer forthwith.

11.5.3 In the event that any shortfall in supply of electricity to the Procurer occurs on account of shortage of availability of water, the Supply shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Supply on account of shortage of availability of water. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Supply shall be deemed to be 80% (eighty per cent) and the Non-Supply hereunder shall be notified by the Supplier to the Procurer forthwith.

11.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, maintenance schedule for that month and any reduction in Supply arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of maintenance schedule and shall confirm, with or without modifications, the reduction in Supply no later than 48 (forty-eight) hours prior to its occurrence.

11.5.5 In the event that the Supply at any time is determined to be lower than 100% (one hundred per cent) of the Contracted Capacity or the reduced Supply notified hereunder, an event of mis-declaration of Supply (the "Mis-declaration") shall be deemed to have occurred. In such an event, the Supply for the relevant month shall, for the purposes of penalty on Fixed Charge, be deemed to be reduced by the same proportion that Supply bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.

	 PVVNL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut	 श्री पी. बी. सिंह P. B. Singh Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut	 PVVNL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut	 UPVNL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut	 मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
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11.5.6 Notwithstanding the provisions of Clause 11.5.5, any reduction in Supply arising out of de-commissioning due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Procurer in accordance with the provisions of Clauses 17.5.

11.6 Incentive and Damages

11.6.1 In the event that the Supply in any month during the peak hours pertaining to Procurers specified 6 hours during the Contract Period exceeds the Contracted Supply, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Supply in excess of Contracted Supply. Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Power Station. For the avoidance of doubt and by way of illustration, in the event the Supply in any month shall exceed the Contracted Supply by 3% (three per cent) of the Contracted Capacity but the Despatch during that month shall exceed 1% (one per cent) of the Contracted Capacity, the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

11.6.2 In the event that Supply in any month during the peak hours pertaining to Procurers specified 6 hours during the Contract Period is less than the Contracted Supply, the Fixed Charge for such month shall be reduced to the extent of shortfall in Contracted Supply and in addition, any reduction below the Contracted Supply shall be multiplied by a factor of 0.25 (zero point two five) to determine the Damages payable for such reduction in Supply. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in Contracted Supply shall be 25% (twenty-five per cent) of the Fixed Charge which is reduced on account of shortfall in Supply below Contracted Supply.


11.6.3 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Supply for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Contracted Supply for that year, subject to the Contract Period. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

11.7 Variable Charge

The Procurer shall pay to the Supplier, as part of Tariff, a Variable Charge to be determined in accordance with the provisions of Article 12.

11.8 Taxes and duties

11.8.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11 8.2. It is further

 <p>TPGPL</p>	<p>PVVNL</p>	<p>श्री पी. वी. सिंह अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी मजबूत</p>	<p>Executive Engineer (Contract) Pashchimanchal Vidyut Vitan Nigam Meerut</p>	<p>Engineer (Contract) PVVNL ACRA BIRWAN BIRWAN Sub Station BIRWAN BYPASS ROAD AGRA-282007</p>	<p>UPPCI- (नियोजन) उ.प्र.पा.का.लि. रावबकु</p>
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agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.

11.8.2 The Tariff and Incentives payable by the Procurer under this Article 11 shall be exclusive of Service Tax, Electricity Duty, or GST, if applicable, shall be paid by the Supplier and reimbursed by the Procurer upon submission of necessary particulars by the Supplier.





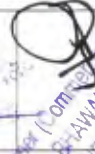

11.8.3 Any payment to be made by the Procurer shall be subject to any tax deduction at source, if required to be made by the Procurer as per Applicable Laws.

11.9 Billing and Payment

11.9.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Procurer, an invoice in the agreed form (the "Monthly Invoice") signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Variable Charge to be paid by the Procurer to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Supply for the period billed, comprising evidence of communications regarding the extent of Non-Supply from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Supply in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6; and (l) the net amount payable under the Monthly Invoice.

11.9.3 The Procurer shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 11.9.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").

 TPGPL Pashch-manchal Vidyut Vitran Meerut	 P. V. V. N. L. Executive Engineer (Comm) Pashch-manchal Vidyut Vitran Meerut	 B. Singh प्राच्यल विद्युत वितरण निगम वाराणसी	 P. V. V. N. L. Executive Engineer (Comm) Pashch-manchal Vidyut Vitran Meerut	 P. V. V. N. L. Executive Engineer (Comm) Pashch-manchal Vidyut Vitran Meerut	 U.P. Power Corporation Ltd. मुख्य अभियंता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
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11.9.4 All Damages and any other amounts due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month.







11.10 Disputed Amounts

11.10.1 The Procurer shall, within 10 (ten) days of receiving an invoice, notify the Supplier of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Supplier shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Procurer may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Procurer shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

11.10.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 25.4.

11.11 Discount for early payment

The Parties expressly agree that in the event the Procurer pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.

					
TPGPL	PVVNL	Dr. सी. बी. सिंह अधीक्षण अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	MPVNL	Executive Engineer (Commercial) DVMN AGRA Head Office PURJA BHAWAN, ZADKI Sub Station AGRA, MATHURA BYPASS ROAD SIKAR, RA. AGRA-202007	UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि, लखनऊ

ARTICLE 12
Variable CHARGE

12.1 Variable Charge

As part of the Tariff, the Procurer shall pay to the Supplier for and in respect of the Fuel/Water utilised for supply of a kWh of electricity to the Procurer, a Variable Charge determined from time to time in accordance with the provisions of this Article 12 and expressed in Rupees per kWh (the "Variable Charge").


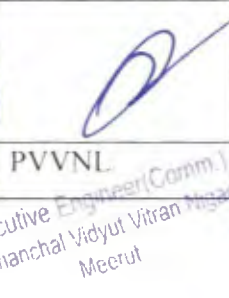
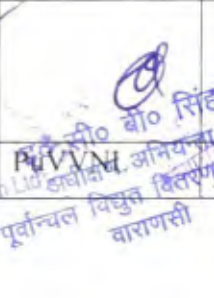
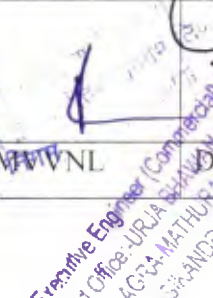
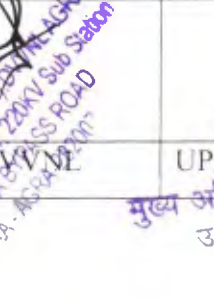
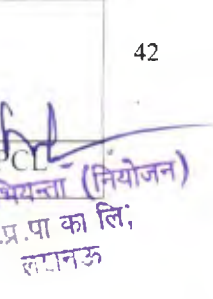
12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. 3.2700 per kWh, [comprising Rs. 2.3000 per kWh as the generating cost, Rs. 0.7800 per kWh as the cost of transmission charges and Rs. 0.1900 per kWh as the cost of transmission loss] (the "Base Variable Charge") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period. For the avoidance of doubt, the Parties expressly agree that the Variable Charge shall include the transmission charges and transmission losses as on Bid Date upto the Delivery Point.

12.3 Computation of Variable Charge

12.3.1 The Supplier represents and warrants that it shall supply electricity to the Procurer at the Delivery Point for a lumpsum Tariff which shall comprise: (a) a Base Variable Charge referred to in Clause 12.2, which shall include the generating cost of electricity, the transmission charges thereof and the transmission losses, and (b) a Base Fixed Charge which shall be equal to the Base Variable Charge excluding transmission charges and transmission losses specified in Clause 12.2. For the avoidance of doubt, the Parties agree that the Base Fixed Charge and Base Variable Charge shall be revised in accordance with the provisions of Clauses 11.3 and 12.3.2 respectively.

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the letter being I (one) year after the first such date, increase by 6.25% (six point two five per cent), the Variable Charge in the Accounting Year following first Accounting Year shall be 81 paise (eighty one paise).]

					
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12.4 Shortage of availability of water

In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Procurer from Contracted Capacity on account of a shortfall in water for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of availability of water, notify the Procurer of the nature, extent and period of shortage of availability of water and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Supply occurring on account of shortage of availability of water, save and except as provided in Clause 11.4.5.

 <p>TPGPL</p>	 <p>PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Meerut</p>	 <p>बौ० सिंह अधीक्षक विद्युत पूर्वांचल विद्युत वितरण निगम वाराणसी मध्य</p>	 <p>MVVNL Executive Engineer (Commercial) DVVNL AGRA Near to Office, URJA Bhawan, 20KV Sub Station AGRA - MATHURA BYPASS</p>	 <p>DMVNL</p>	 <p>UPFC (नियोजन) उ.प्र.पा.का.लि. लखनऊ</p>
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ARTICLE 13

PAYMENT SECURITY

13.1 Default Escrow Account

13.1.1 The Procurer and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Procurer's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Procurer's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Procurer expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 30% (thirty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.



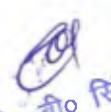
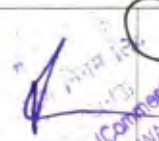
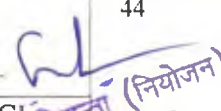
13.1.2 The Procurer and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "**Deed of Hypothecation**"), whereby the Procurer shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

13.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "**Minimum Monthly Payment**") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Procurer for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.

13.1.4 The Procurer shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

13.2 Letter of Credit

13.2.1 The Procurer shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and

 TPGPL	 PVVNL Executive Engineer (Commercial) Pashchimanchal Vidyalayan Nigam, Meerut	 PVVNL अधीक्षक विद्युत वितरण वाराणसी	 PVVNL Executive Engineer (Commercial) H.S.P.A. Bhattaraj Sub Station Sikahi, A.C.H.S. Road	 UPPCI मुख्य अभियन्ता (नियोजन) उ.प्र.रा.का.लि. बखनऊ
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irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the “Letter of Credit”), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement.

13.2.2 The Letter of Credit shall be procured by the Procurer from a bank where at least 30% (thirty per cent) of the Procurer’s total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer.

13.2.3 In the event of Procurer’s failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Procurer, pay the amount due upon the Supplier presenting the following documents, namely:





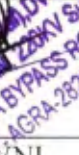

- (a) a copy of the Monthly Invoice which has remained unpaid; and
- (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

13.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Procurer shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 13.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Minimum Monthly Payment, except to give effect to such revision once every year.

13.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

13.3 Recovery from sale of Capacity

13.3.1 In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Buyer. For the

 <p>TPGPL</p>	 <p>PVVNL</p>	 <p>इ.पी.सी. बी. सिंह अधीक्षक अभियन्ता पश्चिम विद्युत वितरण निगम वाराणसी</p>	 <p>Executive Engineer (Commercial) AGRA-MATHURA BYPASS ROAD S.No. 23/2007</p>	 <p>DPVNL</p>	 <p>मुख्य अभियन्ता (नियोजन) उ.प्र.पा.को.सि. लखनऊ</p>
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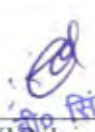
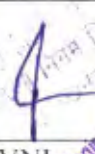

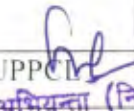
avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Procurer and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Procurer.

13.3.2 The sale of Contracted Capacity pursuant to Clause 13.3.1 shall not extinguish any liability of the Procurer or any claim that the Supplier may have against the Procurer, save and except to the extent of amounts recovered under the provisions of Clause 13.3.1.

13.3.3 Supply of electricity to the Procurer in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Procurer pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.

13.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Procurer to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Procurer expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

 <p>TPOPL</p>	 <p>PVVNL</p>	 <p>PVVNL</p>	 <p>MVVNL</p>	 <p>MVVNL</p>	 <p>UPPCL</p>
	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam, Meerut

ARTICLE 14
DESPATCH OF CAPACITY

14.1 Despatch of Capacity

14.1.1 The Procurer shall, in accordance with Applicable Laws, issue instructions to the Supplier for production of electricity and despatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the “Despatch”). Provided that the Procurer shall not Despatch in excess of the Contracted Capacity, unless mutually agreed between the Parties. For the avoidance of doubt, the Parties agree that the Procurer may, in its discretion, direct the Supplier to Despatch on its behalf, all or part of the Capacity, in favour of the third parties designated by it from time to time on the express understanding that the payment thereof shall be made by the Procurer to the Supplier as if the electricity has been Despatched in favour of the Procurer.

14.1.2 Pursuant to the provisions of Clause 14.1.1, the Supplier shall cause the Developer to plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.





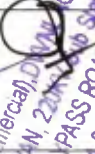

14.1.3 In the event the Supplier schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Supplier shall pay Damages equal to the higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoidance of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder.

14.2 Settlement of DSM charges

14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the DSM Regulations (the “Deviation Settlement Mechanism” or “DSM”) shall be solely to the account of and borne by the Supplier, save and except as provided in Clause 14.2.2 and 14.2.3.

14.2.2 Deleted.

14.2.3 Deleted.



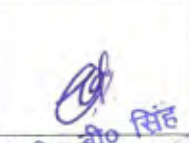
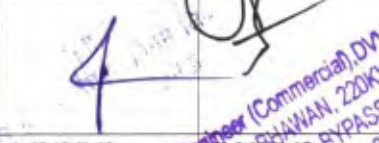
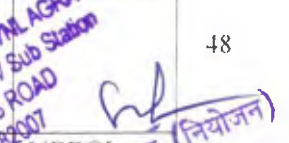
	 PVVNL	 P.वी. सिंह अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 PVVNL	 Executive Engineer (Commercial) D.V.V.N. GRA Head Office: URJA Bhawan 220006 Station AGRA-MATHURA BYPASS ROAD SIKANDRA AGR 282007	 मुख्य अभियन्ता (निर्भोजन) उ.प्र.पा.का.लि. लखनऊ
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14.3 Overriding powers of the Procurer





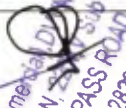

- 14.3.1 Upon occurrence of a Supplier's Default, the Procurer may, in its discretion, direct the Supplier to stop any or all its sale of power to Buyers from and in respect of Contracted Capacity, and to sell all such electricity to the Procurer in accordance with the provisions of this Agreement. Upon receipt of any directions hereunder from the Procurer, the Supplier shall comply forthwith and issue despatch and scheduling instruction to the RLDC and SLDC in conformity with the directions of the Procurer.
- 14.3.2 In the event the Supplier does not comply with the directions of the Procurer issued in pursuance of Clause 14.3.1, the Procurer may issue directions to the RLDC and SLDC to undertake despatch and scheduling in accordance with such instructions as the Procurer may issue hereunder from time to time.
- 14.3.3 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the RLDC and SLDC, the Supplier shall be deemed to have agreed and undertaken to abide by the provisions of this Clause 14.3 and to have given irrevocable instructions to the RLDC and SLDC to carry out all the directions given by the Procurer hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Clause 14.3 shall remain in force and effect until the Termination Payment, if any, has been made by the Supplier to the Procurer.
- 14.3.4 The exercise of any overriding powers by the Procurer under this Clause 14.3 shall not in any manner affect or diminish the liability and obligation of the Procurer to make payments to the Supplier for the electricity supplied and the Procurer shall, for this purpose, ensure and procure compliance of the provisions of Article 13. Notwithstanding anything to the contrary contained in this Clause 14.3, the Procurer shall not be entitled to issue any directions hereunder nor shall the RLDC and SLDC comply with such directions to the extent and for the period during which Procurer is in material breach of the provisions of Article 13 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 13.3 shall apply.

14.4 Ramp up of Despatch

In the event the Procurer Despatches less than 2% (two per cent) of Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 5 (five) minutes to the Supplier for reaching Supply equal to the Capacity. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Supply within 5 (five) minutes, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 11.5.5. The Parties further

	 P.V.V.N.L. Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Meerut	 P. S. सिंह अधीक्षक अभियंता पूर्वांचल विद्युत वितरण निगम वाराणसी	 M.V.V.N.L. Executive Engineer (Commercial) D.V.V.N.L. AGRA 16-23 Office-URU BHAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-282007	 U.P.P.C.I. मुख्य अभियंता (नियोजन) उ.प्र. पा.का.लि. लखनऊ
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agree that the liability of the Procurer hereunder shall at all times be reckoned with reference to the Contracted Capacity.

 <p>TPGPL</p>	 <p>PVVNL Executive Engineer (Commercial) Pashchimanchal Vidyut Vitan Meerut</p>	 <p>PVVNL सी० बी० सिंह अधीक्षक पूर्वमंडल विद्युत वितरण वाराणसी</p>	 <p>MVVNL</p>	 <p>DVVNL Executive Engineer (Commercial) AGRA MATTERA BYPASS ROAD SIKANDRA AGRA-282007</p>	 <p>UPPC मुख्य अभियंता (नियोजन) उ.प्र.पा.का.लि. लखनऊ</p>
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ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

The Supplier shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Procurer as a consequence of any act or omission of the Supplier during the Contract Period.




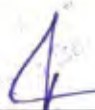

15.2 Insurance Cover

Without prejudice to the provisions contained in Clause 15.1, the Supplier shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets at replacement value;
- (b) comprehensive third-party liability insurance including injury to or death of personnel of the Procurer or others caused by the Project;
- (c) the Supplier's general liability arising out of the Procurement Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Supplier and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

15.3 Evidence of Insurance Cover

All insurances obtained by the Supplier in accordance with this Article 15 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Procurer, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Procurer .

				
TPGPL	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	PVVNL अधीक्षक पूर्वांचल विद्युत वितरण वाराणसी	PVVNL अधीक्षक (Commercial) DUNDAURA in 22, Village - DUNDAURA, Buxar, Bihar SIKANDRA, AGRA-282207	मुख्य अधीक्षक (नियोजन) उ.प्र.पा.कालि, बलनगर

15.4 Remedy for failure to insure

If the Supplier shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Procurer shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier.

15.5 Waiver of subrogation




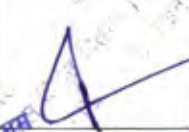
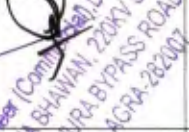
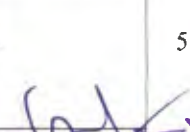
All insurance policies in respect of the insurance obtained by the Supplier [pursuant to this Article 15 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Procurer, and its assigns, successors, undertakings and their subsidiaries, 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 or in any way connected with any loss, liability or obligation covered by such policies of insurance.

15.6 Supplier's waiver

The Supplier hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Procurer and its assigns, undertakings and their subsidiaries, employees, successors, insurers and underwriters, which the Supplier may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Supplier pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

15.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Supplier and it shall, notwithstanding anything to the contrary contained in Clause 19.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Power Station.

 TPGPL	 PVVNL	 डॉ. पी.वी. सिंह पूर्वांचल विद्युत वितरण निगम वाराणसी	 MVVNL	 Executive Engineer (Comm. & Insp.) Head Office, U.P. BHANWAN 220KV Sub Station AGRA, BHANWAN BYPASS ROAD Dist. Agra - 202007	 मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. बलब्रज
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ARTICLE 16
ACCOUNTS AND AUDIT

16.1 Audited accounts

16.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Procurer, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Procurer shall have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Procurer for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.






16.1.2 The Supplier shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Procurer its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

16.1.3 On or before the thirty-first day of May each Year, the Supplier shall provide to the Procurer, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as the Procurer may reasonably require.

16.2 Appointment of auditors

16.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it and acceptable to the Procurer. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.

16.2.2 The Supplier may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Procurer, subject to the replacement Statutory Auditors being appointed in the manner specified in Clause 16.2.1.

 TPGPL	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	 PVVNL पूर्वांचल विद्युत वितरण निगम वाराणसी	 PVVNL Executive Engineer (Commercial) PVVNL AGRA AGRA-ANTRHOLI BYPASS ROAD SIKANDRA - AGRA-282007	 UPRCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि, लखनऊ
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16.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Procurer shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

16.3 Certification of claims by Statutory Auditors






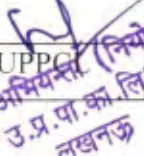
Any claim or document provided by the Supplier to the Procurer in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

16.4 Set-off

In the event any amount is due and payable by the Procurer to the Supplier, it may set-off any sums payable to it by the Supplier and pay the balance remaining. Any exercise by the Procurer of its rights under this Clause 16.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.



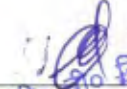


16.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Procurer by recourse to the Dispute Resolution Procedure.

 <p>TPGPL</p>	 <p>PVVNL</p>	 <p>सिंह</p>	 <p>MVVNL</p>	 <p>DVVNL</p>	 <p>UPPG (नियोजन)</p>
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Part V

Force Majeure and Termination

	 PVVNL Executive Engineer (Comm.) Paschimanchal Vidyut Vitran Nigam Meerut	 PVVNL पूर्वांचल विद्युत वितरण निगम वाराणसी	 MVVNL Executive Engineer (Commercial) PVVNL AGRA AGRA Office-UBA BHAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD S.H.A. NDR, AGRA-282007	 UPPC मुख्य अभियन्ता (नियोजन) उ.प्र. पा.का.लि. लखनऊ
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ARTICLE 17
FORCE MAJEURE

17.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Procurer(s) or the Supplier claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

17.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);
- (b) strikes or boycotts (other than those involving the Supplier, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Procurer;

Executive Engineer Pashchimanchal Vidyut Vitran Nigam Meerut	सी० बी० सिंह मुख्य अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	Executive Engineer (Commercial) DANI AGRA He-23 Office, UPJA BHAWAN, DANI Sub Station AGRA, AMITHARA BYPASS ROAD Sikha, CARRIAGRA-202007		मुख्य अभियन्ता उ.प्र.पा.का.वि. लखनऊ

(e) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or

(f) any event or circumstances of a nature analogous to any of the foregoing.

17.3 Indirect Political Event




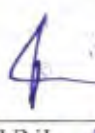

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

17.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 21 and its effect, in financial terms, exceeds the sum specified in Clause 21.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, or of the Contractors;

 TPGPL TIDONGTOWER GENERATION PVT. LTD.	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Ltd. Meerut	 PuVNL अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 MVVNL Executive Engineer (Commercial) AGRA-MATHURA SIKANDRA AGRA ROAD SIKANDRA AGRA	 DVVNL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.ति, लखनऊ
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- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.




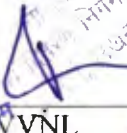
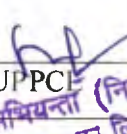
17.5 Duty to report Force Majeure Event

17.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 17 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

17.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and

	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitan Meerut	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitan Meerut	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitan Meerut	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitan Meerut
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such other information as the other Party may reasonably request the Affected Party to provide.

17.6 Effect of Force Majeure Event on the Procurement Contract

17.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

17.6.2 If any force Majeure Event occurs at any time after the Appointed Date, whereupon the Supplier is unable to transmit electricity to the Grid despite making best efforts or it is directed by the Procurer, RLDC or SLDC or any Government Instrumentality to suspend generation or transmission during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period during which the Supplier was prevented from generating or transmitting electricity on account thereof; provided that in the event of reduction in generation on account of partial inability or suspension, as the case may be, which cause the Supply on any day is to decline below 80% (eighty per cent) of the Contracted Supply, the Procurer shall extend the Contract Period in proportion to the loss of Supply due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) of Supply for 4 (four) days shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

17.7 Allocation of costs arising out of Force Majeure

17.7.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Capacity of the Power Station(s) (the "Force Majeure Costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Procurer to the Supplier.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations.

17.7.2 Notwithstanding anything contained in this Clause 17.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity or part thereof is deemed Available in accordance with the provisions of Clause 5.1.4, the Procurer shall not

<p>TPOPL Executive Engineer Pashchimanchal Vidyut Nigam Meerut</p>	<p>PVVNI अधीनस्थ अभियन्ता पश्चिमंचल विद्युत निगम वाराणसी</p>	<p>अधीनस्थ अभियन्ता पश्चिमंचल विद्युत निगम वाराणसी</p>	<p>MVVNI Executive Engineer (Commercial) Deptt. AGRA Head Office - UJDA Bypass, 200KY Sub Station AGRA-MATHURA DISTRICT SIKANDRA - AGRA</p>	<p>UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ</p>

be liable to make any payments towards Force Majeure Costs in respect thereof to the Supplier under this Clause 17.7.

17.7.3 Save and except as expressly provided in this Article 17, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 17, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.


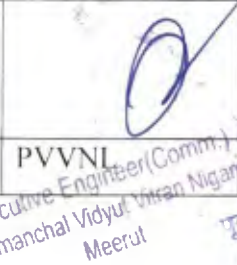
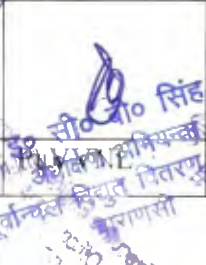
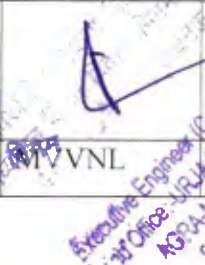
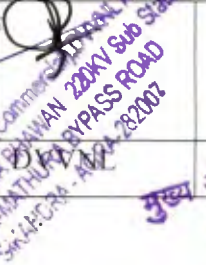
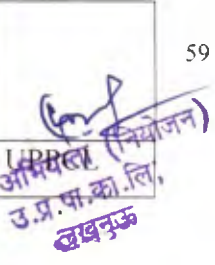
17.9 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

17.10 Relief for Unforeseen Events

17.10.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "Unforeseen Event"), any Party

					
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may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Power Station. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on accordance thereof deal with it in accordance with the provisions of this Clause 17.10.

17.10.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

17.10.3 The conciliation tribunal referred to in Clause 17.10.2 shall conduct its proceedings in accordance with the provisions of Article 23 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 17.10.

17.10.4 The conciliation tribunal referred to in this Clause 17.10.2 shall conduct preliminary proceedings to satisfy itself that -



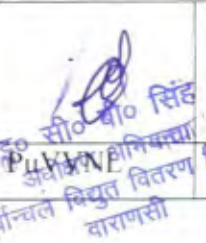
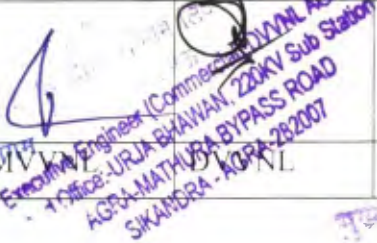
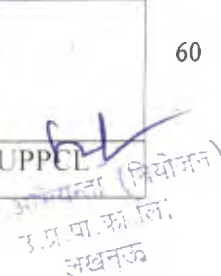
- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 17.10.


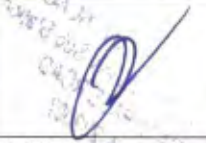
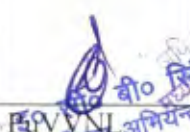
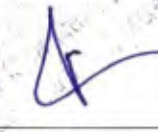

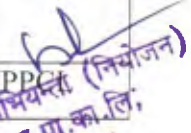
17.10.5 Upon completion of the conciliation proceedings referred to in this Clause 17.10, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

17.10.6 Within 15 (fifteen) days of receiving the order referred to in Clause 17.10.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the

	 P.V.V.N.L. (Com) Executive Engineer Pashchimanchal Vidyut Nigam Meerut	 Dr. S. B. Singh पूर्वांचल विद्युत वितरण वाराणसी	 Executive Engineer (Commercial) AGRA-MATHURA BYPASS ROAD SIKANDRA, AGRA-282007	 UPPCL उ.प्र. पा. म. लि. सखनऊ
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relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may, enter into a Memorandum of Understanding (the "MoU") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

 <p>TPGPL</p>	 <p>PVVNL</p>	 <p>PVVNL</p>	 <p>PVVNL</p>	 <p>PVVNL</p>	 <p>UPPC</p>
<p>Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Meerut</p>	<p>अधीक्षक-अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी</p>	<p>Executive Engineer (Comm.) Head Office ACRA-MITRA Sikr. Sra. AGRA-282007</p>	<p>मुख्य अधीक्षक (नियोजन) उ.प्र. पा.का.लि. राधनाथ</p>		

ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier




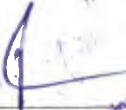
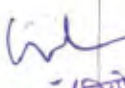
In the event of the Supplier being in material breach or default of this Agreement, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Procurer by way of compensation, all direct costs suffered or incurred by the Procurer as a consequence of such material breach or default; provided that no compensation shall be payable under this Clause 18.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement. For the avoidance of doubt, the Parties agree that the compensation payable under this Article 18 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any. The Parties further agree that the non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising as a result of breach of Agreement by the other Party or for any consequential losses incurred by the Procurer.

18.2 Compensation for default by the Procurer

In the event of the Procurer being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Supplier by way of compensation, all direct costs suffered or incurred by the Supplier as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, and other revenues, debt repayment obligations, or any consequential losses.





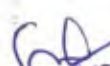
18.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Supply, as the case may be, the Procurer shall, in addition to payment of compensation under Clause 18.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Supply was reduced on account thereof, as the case may be; and in the event of reduction in Supply below 80% (eighty per cent) of the Contracted Supply, the Procurer shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Supply. For the avoidance of doubt, loss of 25% (twenty five per cent)

	 Executive Engineer Pashchimanchal Vidyut Vitran Nigam Meerut	 इ.प.प.व.न.ल. अधीक्षण अधिकारिता विद्युत वितरण विभाग पूर्वांचल वाराणसी	 MVVN Engineer (Commercial) AGRA AGRA-MATHURA BYPASS ROAD 20301 SWAMINATHA - AGRA-203007	 मुख्य अभियंता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
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of Supply for 4 (four) days shall entitle the Supplier to extension of 1 (one)day in the Contract Period.




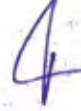

 TPSRL TIDC POWER GENERATION PVT. LTD.	 PVVNI Executive Engineer (Comm.) Pashchimanchal Vidya Upan Nigam Meerut	 इ.प्र.सी. श्री सिंह अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण वाशिंगनी	 PVVNI Executive Engineer (Comm.) UPDA BHAYAN 33KV Sub Station MATHURGA AGRA-202007	 DVVNL मुख्य अभियन्ता (निर्वाह) उ.प्र.पा.का.लि, हाथरुज
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ARTICLE 19
TERMINATION







19.1 Termination for Supplier Default

19.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Supplier fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Supplier shall be deemed to be in default of this Agreement (the “**Supplier Default**”), unless the default has occurred as a result of any breach of this Agreement by the Procurer or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Supplier has failed to make any payment to the Procurer within the period specified in this Agreement;
- (d) the Supplier creates any Encumbrance in breach of this Agreement;
- (e) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;
- (f) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 14.1.3;
- (g) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (h) the Supplier fails to achieve a monthly Supply of 70% (seventy per cent) for a period of 4 (four) consecutive months, save and except to the extent of Non-Supply caused by (i) a Force Majeure Event, (ii) an act or omission of the Procurer, not occurring due to any default of the Supplier or (iii) shortage of availability of water occurring for reasons not attributable to the Supplier;

	 Executive Engineer Pashchimanchal Vidyut Vitaran Nigam Meerut	 Bho Singh पूर्वांचल विद्युत वितरण वाराणसी	 Examining Engineer (Commercial) DVNL AGRA H: 301 Office, JEJA BAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SUKANGRA - AGRA	 UPPCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा. का.लि. बाबुज
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- (i) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, and such transfer causes a Material Adverse Effect;
- (j) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;
- (k) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;
- (l) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Procurer, a Material Adverse Effect;
- (m) a resolution for winding up of the Supplier is passed;
- (n) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier” are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:
- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Supplier as at the Appointed Date;
- (iii) each of the Project Agreements remains in full force and effect; and
- (iv) such amalgamation or reconstruction is approved by the Commission.
- (o) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;

 <p>TPGPL</p>	 <p>PVVNL</p>	 <p>बी. सिंह</p>	 <p>MVVNL</p>	 <p>Executive Engineer (Comm.) AGRA-MATHURA BYPASS ROAD SIKANDRA AGRA-202001</p>	 <p>मुख्य अभियंता (नियोजन) उ.प्र.पा.का.वि. बाबनऊ</p>
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- (p) the Supplier submits to the Procurer any statement, notice or other document, in written or electronic form, which has a material effect on the Procurer's rights, obligations or interests and which is false in material particulars;
- (q) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (r) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
- (s) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Procurer.

19.1.2 Without prejudice to any other rights or remedies which the Procurer may have under this Agreement, upon occurrence of a Supplier Default, the Procurer shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier; provided that before issuing the Termination Notice, the Procurer shall by a notice inform the Supplier of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Supplier to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

19.2 Termination for Procurer Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Procurer fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Procurer shall be deemed to be in default of this Agreement (the "Procurer Default") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Procurer commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;
- (b) the Procurer has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or
- (c) the Procurer repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

 TPGPL Executive Engineer (Comm.) Pashchimanchal Vidyut Meerut	 PVVNI अवीराम अखियन्ता पूर्वान्चल विद्युत वितरण दाराणसी	 MVVNI Executive Engineer (Commercial) DVVNI AGRA Office: U.P. BHAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-282007	 U.P. Power Corporation Ltd. मुख्य अभियन्ता (नियोजन) लखनऊ
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19.2.2 Without prejudice to any other right or remedy which the Supplier may have under this Agreement, upon occurrence of a Procurer Default, the Supplier shall be entitled to terminate this Agreement by issuing a Termination Notice to the Procurer; provided that before issuing the Termination Notice, the Supplier shall by a notice inform the Procurer of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Procurer to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

19.3 Termination Payment

19.3.1 Upon Termination on account of a Supplier Default, the Supplier shall pay to the Procurer, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Contracted Supply for a period of [6 (six) months] as if the Contracted Capacity was Available for such [6 (six) months] from the date of Termination.


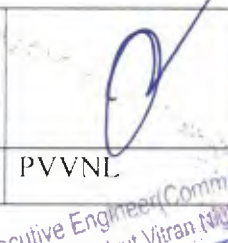
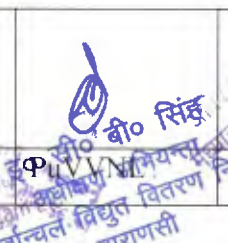
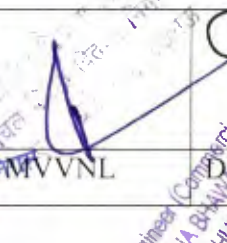
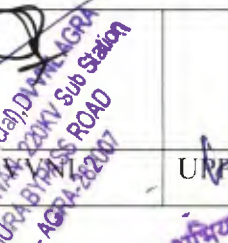
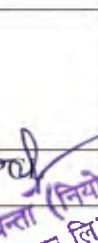
19.3.2 Upon Termination on account of a Procurer Default, the Procurer shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Contracted Supply for a period of [3 (three) months] as if the Contracted Capacity was Available for such [3 (three) months] from the date of Termination.

19.3.3 Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Procurer of its payment obligations in respect thereof hereunder.

19.3.4 The Supplier expressly agrees that Termination Payment under this Article 19 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

19.4 Instructions to RLDC and SLDC

19.4.1 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing such copy hereunder, the Supplier shall be deemed to have given irrevocable instructions and authority to the RLDC and SLDC to follow the instructions of the Procurer in accordance with the provisions of this Article 19. The Supplier agrees and undertakes that it shall not in any manner challenge or revoke the provisions of this Article 19 or in any manner prevent the Procurer, RLDC or SLDC from giving effect thereto.

					
<p>TPGPL TONG POWER GENERATION PVT. LTD.</p>	<p>PVVNL Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Meerut</p>	<p>P. V. V. M. सिंघ पूर्वांचल विद्युत वितरण वाराणसी</p>	<p>PVVNL Executive Engineer (Commercial) Office - URJA K. J. P. MATHURA - 201005 BINA ROAD BINA - AGRA - 202007</p>	<p>U.P. Power Co. Ltd. मुख्य अभियन्ता (नियोजन) उ.प्र. पा. का. लि. लखनऊ</p>	

19.4.2 The Procurer agrees and undertakes to exercise its rights hereunder only to the extent of the Capacity and the Supplier may supply electricity to Buyers in accordance with the provisions of this Agreement.


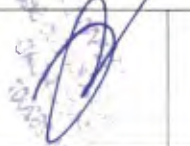




19.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 19.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

<p>TIDONG POWER GENERATION PVT. LTD. NGPL</p>	<p>PVVNL Executive Engineer (Commercial) Pashchimanchal Vidyut Vitaran Nigam Meerut</p>	<p>PVVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम नाराणसी</p>	<p>MVVNL Executive Engineer (Commercial) Head Office: U.P.U. BAJHWAN, 226217 Sub Station AGRA-MATHURA BYPASS ROAD SIKANDRA - 2024-282007</p>	<p>UPPCI मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि, राधकृष्ण</p>

Part VI

Other Provisions

 TPGPL	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	 P. K. Singh अवीक्षण अभियन्ता पूर्वांचल विद्युत वितरण वाराणसी	 M. VNL निगम	 Executive Engineer (Commercial) DYNVIL AGRA Head Office - U.P. BHAWAN, 220KV Sub Station AGRA, JALPAURA BYPASS ROAD SHAMLI-AGRA-282001	 UPR मुख्य अभियंता (नियोजन) उ.प्र. पा. का. लि. हाथकड़
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ARTICLE 20

ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

20.1.1 Subject to Clauses 20.2 and 20.3, this Agreement shall not be assigned by the Supplier to any person, save and except with the prior consent in writing of the Procurer, which consent the Procurer shall be entitled to decline without assigning any reason.

20.1.2 Subject to the provisions of Clause 20.2, the Supplier shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Supplier is a party, except with prior consent in writing of the Procurer, which consent the Procurer shall be entitled to decline without assigning any reason.

20.2 Permitted assignment and charges

The restraints set forth in Clause 20.1 shall not apply to:







- liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station(s);
- mortgages/pledges/hypothecation of Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station(s), and as security only for indebtedness to its Lenders and/or for working capital arrangements for the Power Station(s);
- assignment of rights, interest and obligations of the Supplier to or in favour of its as security for financing provided by them; and
- liens or encumbrances required by any Applicable Law.

20.3 Assignment by the Procurer


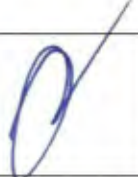



Notwithstanding anything to the contrary contained in this Agreement, the Procurer may, after giving 60 (sixty) days' notice to the Supplier, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Procurer, capable of fulfilling all of the Procurer's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

20.4 Approvals for assignment

Any assignment under this Article 20 shall be subject to the approvals and consents required therefor under Applicable Laws, including the approval of the

	 PVVNL	 P.V.V.N.L.	 M.V.V.N.L.	 D.V.V.N.L.	 UPP
Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Meerut	उ.प्र.पा.का.लि. (नियोजन)	पूर्वांचल विद्युत वितरण निगम वाराणसी			मुख्य अभियन्ता उ.प्र.पा.का.लि. लखनऊ

Commission. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Procurer to grant its approval to such assignment, save and except as provided herein.

		 रावरी बोर सिंह अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण वाराणसी	 Executive Engineer (Commercial) Head Office - J.R.K. BHAWAN, ZAKRY Sub Station AGRA/AGRA BYPASS ROAD SIKANDRA AGRA-202007		UPPCI मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि, लखनऊ
PPGPL	PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	PVVNL	PVVNL	UPPCI	UPPCI

ARTICLE 21
CHANGE IN LAW

21.1 Increase in costs




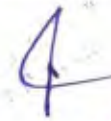
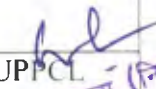
If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Charge in any Accounting Year, the Supplier may so notify the Procurer and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may by notice require the Procurer to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Procurer shall pay the amount specified therein; provided that if the Procurer shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.2 Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Charge in any Accounting Year, the Procurer may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Procurer, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Procurer may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of

 ICGPL	 PVVNL	 MVVNL	 DVVNL	 UPPCL
Executive Engineer Pashchimanchal Vidyut Vitran Nigam Meerut	पूर्वांचल विद्युत वितरण निगम वाराणसी	Executive Engineer AGRA-MATHURA SJK-4	Executive Engineer AGRA-MATHURA SJK-4	मुख्य अभियन्ता (नियोजन) उ.प्र. पा. क्रा. लि, लखनऊ

such notice, along with particulars thereof, the Supplier shall pay the amount specified therein to the Procurer; provided that if the Supplier shall dispute such claim of the Procurer, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.3 Protection of NPV

Pursuant to the provisions of Clauses 21.1 and 21.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

21.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 21 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

21.5 No claim in the event of recovery from Buyers

Notwithstanding anything to the contrary contained in this Agreement, the Procurer shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.

 <p>TPGPL</p>	 <p>PVVNL (Comm.)</p>	 <p>डॉ. सी० बी० सिंह अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी</p>	 <p>MVVNL</p>	 <p>Executive Engineer (Commercial) MVVNL AGRA Head Office: U.P.A BHAWAN, 220KV Sub Station AGRA MATHURA BYPASS ROAD SIKANDEVA AGRA-282007</p>	 <p>UPPC मुख्य अभियंता (वियोजन) उ.प्र.पा.का.लि. बालाघाट</p>
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ARTICLE 22
LIABILITY AND INDEMNITY

22.1 General indemnity



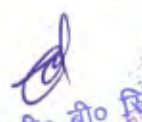
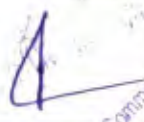
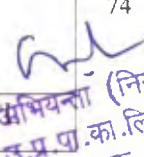
35.1.1 The Supplier shall indemnify, defend, save and hold harmless the Procurer and its officers, servants, agents, Government Instrumentalities and Procurer owned and/or controlled entities/enterprises, (the "Procurer Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Supplier of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Procurer or sale by the Supplier to any Buyer or from any negligence of the Supplier under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Procurer Indemnified Persons.

22.1.2 The Procurer shall indemnify, defend, save and hold harmless the Supplier against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Procurer of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Supplier of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Supplier, its subsidiaries, contractors, servants or agents, the same shall be the liability of the Supplier.

22.2 Indemnity by the Supplier

22.2.1 Without limiting the generality of Clause 22.1, the Supplier shall fully indemnify, hold harmless and defend the Procurer and the Procurer Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

 PVVNL Executive Engineer (Commercial) Pashchimanchal Vidyut Nigam Meerut	 PVVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 MVVNL Executive Engineer (Commercial) UP Jal Bahujan, 200Y Sub Station MUDA MAHARAJGARH, PASS ROAD SIKANDRA, AGR-262007	 DVVNL	 UPBPC अभियन्ता (नियोजक) उ.प्र.प.का.लि. लखनऊ
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
22.2.2 Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Procurer Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Procurer Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station(s), or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Procurer a licence, at no cost to the Procurer, authorising continued use of the infringing work. If the Supplier is unable to secure such licence within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 22 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

22.4 Defence of claims

22.4.1 The Indemnified Party 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 Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities,

 <p>TPGPL</p>	 <p>PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut</p>	 <p>बी० सिंह पूर्वांचल विद्युत वितरण निगम लि. वाराणसी</p>	 <p>PVVNL Executive Engineer (Commercial) Office: UCC-3 BHAWANI, 200K Sub Station AGRA-MATHURA ROAD SIK-ANDRA - AGRA-202007</p>	 <p>UPPC मुख्य अभियंता (नियोजन) उ.प्र. पा. का. लि. बल्लभपुर</p>
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payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

22.4.2 If the Indemnifying Party has exercised its rights under Clause 22.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

22.4.3 If the Indemnifying Party exercises its rights under Clause 22.3, the Indemnified Party shall nevertheless 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 the Indemnified Party, when and as incurred, unless:


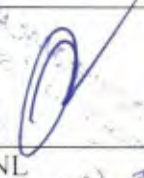
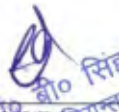

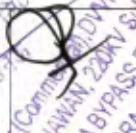
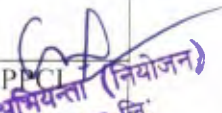
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) 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 Sub-clauses (b), (c) or (d) of this Clause 22.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

	<p>P.V.V.N.L. Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Meerut</p>	<p>P.V.V.N.L. अधीक्षक अभियन्ता पूर्व-चल विद्युत निगम वाराणसी</p>	<p>M.V.V.N.L. प्रमुख अभियन्ता 14-20 Office: URJA BHAWAN, 28th/1 Sub Station AGFA-MATHURA BYPASS ROAD Sikandra, AGFA-282007</p>	<p>D.A.N.L. मुख्य अभियन्ता (नियोजन) उ.प्र. पा.का.लि. हावरा</p>	<p>76</p>
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22.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 22, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

 TPGPI	 PVVNL	 PVVNL श्री 0 सिंह अधीक्षण पूर्वांचल विद्युत वितरण वाराणसी	 PVVNL	 PVVNL Executive Engineer (Comm.) Near Office of AGRA NIA (RA BYPASS ROAD SIKANDRA AGRA-282007	 UPPC मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
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ARTICLE 23
DISPUTE RESOLUTION

23.1 Dispute resolution

23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 23.2.

23.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

23.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Procurer Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 23.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 23.3.

23.3 Arbitration

23.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 23.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 23.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

23.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two

Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	PVVNL	पूर्वांचल विद्युत वितरण निगम वाराणसी	MVVNL	Executive Engineer (Commercial District AGRA) AGRA-MATHURA BY-PASS ROAD SIKANDRA, AGRA-202007	मुख्य अभियंता (नियोजन) उ.प्र. पा. का. लि. बाबतगंज

arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

23.3.3 The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 23 shall be final and binding on the Parties as from the date it is made, and the Supplier and the Procurer agree and undertake to carry out such Award without delay.

23.3.4 The Supplier and the Procurer agree that an Award may be enforced against the Supplier and/or the Procurer, as the case may be, and their respective assets wherever situated.

23.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

23.4 Adjudication by the Commission

23.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 23.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

23.4.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 23.3 shall be followed to the extent applicable.

23.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Procurer, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 23.3 and 23.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

	<p>PVVNL (Comm)</p>	<p>PVVNL</p>	<p>MVVNL</p>	<p>DVVNL</p>	<p>UPPCI (नियोजक)</p>
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Executive Engineer (Commercial), DVVNL AGRA
AGRA-MATHURA BYPASS
SIKANDRA - AGRA-2

मुख्य अभियंता (नियोजक)
उ.प्र. पा. को. लि.
बल्लभपुर

ARTICLE 24 DISCLOSURE

24.1 Disclosure of Specified Documents

The Supplier shall make available for inspection by any person, copies of this Agreement (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Supplier’s Registered Office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

24.2 Disclosure of Documents relating to safety

The Supplier shall make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier’s Registered Office and the Power Station(s). The Supplier shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.


24.3 Withholding disclosure of Protected Documents


Notwithstanding the provisions of Clauses 24.1 and 24.2, but subject to Applicable Laws, the Procurer shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.


Explanation:


The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 24.1 and 24.2, or portions thereof, the disclosure of which the Procurer is entitled to withhold under the provisions of the Right to Information Act, 2005.





PVVNL
Executive Engineer (Comm. & M&M)
Pashchimanchal Vidyut Vitaran Nigam
Meerut


Puvvnl
पूर्वाञ्चल विद्युत वितरण निगम
बाराणसी


MVVNL
Executive Engineer (Commercial), DVVNL AGRA
Head Office: URFJA BHAWAN, 220KV Sub Station
AGRA-MATHURA BYPASS ROAD
AGRA-282007


DVVNL


UPPCL
मुख्य अभियन्ता (नियोजन)
उ.प्र. पा. का. लि.
हाथनऊ

ARTICLE 25
MISCELLANEOUS

25.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:


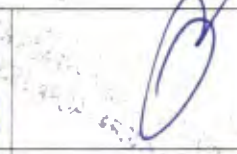
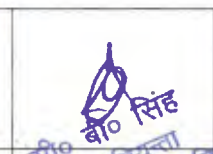


- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

25.3 Interest

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

25.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a

	 P.V.V.N.L.	 M.V.V.N.L.	 Executive Engineer (Commercial) DVVNL AGRA Head Office: J.P. J.K. BANGALAN, 220KV Sub Station AGRA-MAHURAJGIRI CROSS ROAD SIKANDERA - AGRA-282007	 मुख्य अभियंता (नियोजन) उ.प्र. प्रा. का. लि. बावडाऊ
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	डि. पी. वी. वी. एन. एल. अधीक्षक अभियंता पूर्वांचल विद्युत वितरण निगम वाराणसी-प्रयाग			81

demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

25.5 Waiver

38.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

25.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.




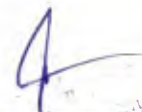
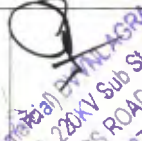

25.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

25.7 Survival

25.7.1 Termination shall:

- (a) not relieve the Supplier or the Procurer, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 22; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out

					
PVVNL	PVVNL	PVVNL	MVVNL	PVVNL	उ.प्र.पा.का.लि. बलबनऊ
Executive Engineer (Comm.) Pashchimanchal Vidyut Viran Nigam Meerut	पूर्वांचल विद्युत वितरण निगम वाराणसी	पूर्वांचल विद्युत वितरण निगम वाराणसी	Executive Engineer (Commercial) Office: URJA Bhawan, 220KV Sub Station AGP-1, MAT HUDA, BHOJES ROAD Surat, GATE No. 402, MAT	मुख्य अभियंता (नियोजन)	

of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

25.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

25.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.9 Severability






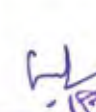
If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10 No partnership

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.

25.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

	 PVVNL Executive Engineer (Comm.) Pashchanchal Vidyut Vitran Nigam Ltd. Meerut	 P अधीक्षक अभियन्ता पश्चिमी विद्युत निगम लि. वाराणसी	 P अधीक्षक अभियन्ता पश्चिमी विद्युत निगम लि. वाराणसी	 P अधीक्षक अभियन्ता पश्चिमी विद्युत निगम लि. वाराणसी	 UR मुख्य अभियन्ता (नियोजन) उ.प्र. पा. को. लि. लखनऊ
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25.12 Successors and assigns

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

25.13 Notices




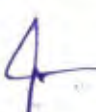


Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Procurer; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Procurer.

Attention: Kishore Nukala
Designation: Senior Manager
Address: 401, 4th Floor, Salcon Rasvilas Building, Saket District Centre, New Delhi 110017
Fax No:
Email: Kishore.nukala@statkraft.com

- (b) in the case of the Procurer, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Procurer Representative or such other person as the Procurer may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Procurer, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

- I. Designation: Chief Engineer (Planning)
Address: Shakti Bhawan Extn, 14 Ashok Marg,
Lucknow 226001, Uttar Pradesh
Fax No: 0522 2288484 / 2287343
Email: cgm2plg@vahoo.co.in
- II. Designation: Chief Engineer (Commercial),PVVNL
Address: Victoria Park, Meerut 250001
Email: cecommpvvnl@gmail.com
- III. Designation: Chief Engineer (Commercial),PuVVNL
Address: DLW Bhikaripur, Varanasi 221004
Email: cecompuvvnl@gmail.com

					
TIDONG POWER GENERATION PVT. LTD.	PVVNL	डॉ. सी० बी० सिंह अध्यक्ष विद्युत वितरण निगम वाराणसी	PuVVNL	Executive Engineer (Commercial) PVVNL AGRA 14-20 Office: J.P.U. BUNYAN, 220KV Sub Station AGRA-MAHURGA BYPASS ROAD SIKANDRA-AGRA-282307	मुख्य अभियन्ता (नियोजन) उ.प्र. पा. का. लि. लखनऊ

- IV. Designation: Chief Engineer (Commercial),MVVNL
 Address: 4A, Gokhale Marg, Lucknow 226001
 Email: commvvn1@gmail.com
- V. Designation: Chief Engineer (Commercial),DVVNL
 Address: Urja Bhawan,NH-2 (Agra-Delhi Bypass Road),
 Sikandara, Agra 282007
 Email: dvvn1com@gmail.com






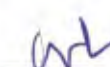
(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

25.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

25.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

	 Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	 Chief Engineer (Commercial) MVVNL	 Chief Engineer (Commercial) DVVNL	 Chief Engineer (Commercial) DVVNL Office: URJA BHAWAN, NH-2, AGRA AGRA-MATHURA BYPASS ROAD SIKANDARA - AGRA - 282007	 Chief Engineer (Commercial) UPCL (नियोजन) उ.प्र. पा. को. नि.प. लखनऊ
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ARTICLE 26
DEFINITIONS

26.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Act**” means the Electricity Act, 2003;

“**Affected Party**” shall have the meaning as set forth in Clause 17.1;

“**Agreement**” or “**Agreement for Procurement of Hydro Power**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;






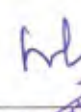
“**Appointed Date**” means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Base Fixed Charge**” shall have the meaning as set forth in Clause 11.2;

“**Base Year**” means the Accounting Year in which the Bid was received;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposals in accordance with the

 TPGPL	 PVVNL	 इ. प्र. वि. वि. सिंह पूर्वांचल विद्युत वितरण निगम लखनऊ	 MVVNL	 MVVNL	 मुख्य आधिकारिक (नियोजन) उ.प्र. पा. क. लि. लखनऊ
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Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam
Meerut

Executive Engineer (Commercial)
AGRA-MATHURA DIVISION
AGRA-MATHURA DIVISION
SWAMIRA AGRA-282007

provisions thereof and “Bids” shall mean the bids submitted by any and all pre-qualified bidders;

“Bid Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“Bid Security” means the security provided by the Supplier to the Procurer along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Bidding Document” shall have the meaning as set forth in Recital (C);

“Buyer(s)” shall mean the third parties buying electricity from the Power Station, in accordance with the provisions of this Agreement and Applicable Laws;

“Capacity Certificate” means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, and other principal parameters of the Power Station;

“Charge” shall have the meaning as set forth in Clause 11.4.2;

“Change in Law” means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together in the total Equity to decline, at any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Procurer upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

“Commission” means the Appropriate Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

“Conditions Precedent” shall have the meaning as set forth in Clause 1.1.1;

TPGPL	PVVNL	PVVNL	PVVNL	PVVNL	UPRCL

Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam
Meerut

अधीक्षण अधिकारी
पश्चिम-विद्युत वितरण निगम
वाराणसी

Commercial Engineer
Office: UPRCL, B-1, 2nd Floor, 22KV Sub Station,
KURIA-MATIA, UPRCL, 220007

मुख्य अभियंता (विद्युत)
उ.प्र. वि. को. लि.
वाराणसी

“Contract Period” means the period starting on and from the Appointed Date and ending on the earlier of the [25th (twenty fifth)] anniversary of the Appointed Date and the date of termination of the Agreement, subject to the annual period of six months namely May to October;

“Contracted Supply” shall have the meaning as set forth in Clause 5.1.4;

“Capacity” shall have the meaning as set forth in Clause 10.1;

“Contractor” means the person or persons, as the case may be, with whom the Supplier has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

provided that if the cure of any breach by the Supplier requires any reasonable action by the Supplier that must be approved by the Procurer hereunder, the applicable Cure Period shall be extended by the period taken by the Procurer or the to accord their approval;

“Damages” shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

“Deed of Hypothecation” shall have the meaning as set forth in Clause 13.1.2;

“Default Escrow Account” shall have the meaning as set forth in Clause 13.1.1;


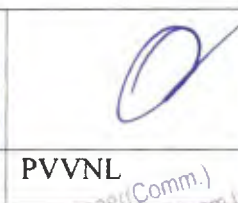
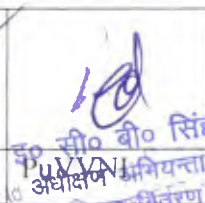
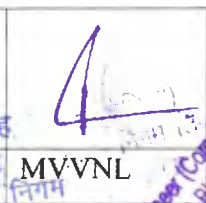

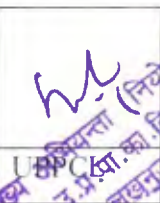
“Default Escrow Agreement” shall have the meaning as set forth in Clause 13.1.1;

“Default Escrow Bank” shall have the meaning as set forth in Clause 13.1.1;

“Delivery Point” means the interface point Grid between the CTU and UP STU in the Northern Region where the electricity supplied under this Agreement is received by the Procurer;

“Despatch” shall have the meaning as set forth in Clause 14.1.1;

“Developer” shall mean the owner of the Power Station from which the Supplier shall supply the Power to the Procurer(s);]

 TPGPL	 PVVNL	 PVVNL	 MVVNL	 AGRA	 UP PCL
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Executive Engineer (Comm.)
Pachchimanchal Vidyut Vitran Nigam Ltd
Meerut

पूर्वांचल विद्युत वितरण निगम
अधीक्षक अभियन्ता
हरदोयसी

Executive Engineer (Commercial Dept.) AGRA
Head Office: URJA Bhawan, 20KV Sub Station
AGRA-MATHURA ROAD
AGRA-202007

मुख्य अभियन्ता (नियोजक)
उ.प्र. वि. को. लि.
बाधमुक्त

“Dispute” shall have the meaning as set forth in Clause 23.1.1;

“Disputed Amounts” shall have the meaning as set forth in Clause 11.9.3;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 23;

“Distribution Licensee” means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“DSM Regulations” means the CERC Deviation Settlement Mechanism Regulations or any substitute thereof;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Supplier, and any interest-free funds advanced by any shareholder of the Supplier for meeting such equity component;

“Fixed Charge” shall have the meaning as set forth in Clause 11.1.2;






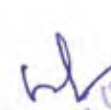
“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 17.1;

“Fuel” means the water which is fit for use in generation of power at the Power Station;]

“Agreement” means the agreement entered into between the Supplier and a supplier of Fuel ;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent Procurer practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

					
TPGPI	PVVNL	BVVNL	MVVNL	DVVNL	UPPCL

Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam
Meerut

अधीक्षक आरक्षक
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Executive Engineer (Commercial)
Office: UCC, SHAWAN, BANK
AGRA-282007
SUKAPURIA

मुख्य आरक्षक (निर्माण)
उ.प्र.प्रा.का.नि.
वाराणसी

“Government” means the Government of India or the Government of the State, as the case may be;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

“Grid” means the high voltage backbone system of inter-connected transmission lines and sub-stations;

“Grid Code” means the Indian Electricity Grid Code 2010 or any substitute thereof;

“Incentive” means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 22;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 22;

“Indirect Political Event” shall have the meaning as set forth in Clause 17.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 15, and includes all insurances required to be taken out by the Supplier under Clause 15.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;



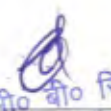
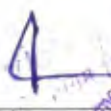
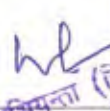
“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

“Letter of Credit” shall have the meaning as set forth in Clause 13.2.1;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Maximum Monthly Payment” shall have the meaning as set forth in Clause 13.1.1;

“Minimum Monthly Payment” shall have the meaning as set forth in Clause 13.1.3;

 TPGPL TIDONG POWER GEN. LTD.	 PVVNL Executive Engineer (Comm.) Parbhichimanchal Vidyut Vitran Nigam Meerut	 श्री श्री ०० सिंह P.V.V.N.L. अधीक्षक (विद्युत) विद्युत विभाग नियम	 MVVNL Executive Engineer (Commercial) URJA Bikaner A-3/1A-MATHURA BYPASS ROAD SIKANDRA - ASRA ROAD	 90 मुंबई PPCL उ.प्र. पा. का. लि. बिडर
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“Mis-declaration” shall have the meaning as set forth in Clause 11.5.5;

“Monthly Invoice” shall have the meaning as set forth in Clause 11.9.1;

“Non-Supply” means any partial or total lack of Supply for any other reason; “Non-Political Event” shall have the meaning as set forth in Clause 17.2;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Payment Due Date” shall have the meaning as set forth in Clause 11.9.3;

“Peak hours” shall have the meaning as set forth in Clause 10.4;

“Performance Security” shall have the meaning as set forth in Clause 9.1;

“Point of Grid Connection” means the point of interconnection at which the electricity generated by the Power Station is transferred to the Grid;

“Political Event” shall have the meaning as set forth in Clause 17.4;

“Power Purchase Agreement” shall mean the back to back arrangement for supply of power between the Supplier and the Developer from the Power Station;]

“Power Station” means the generating station as described in Recital A or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities;


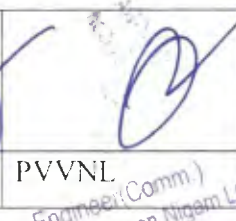
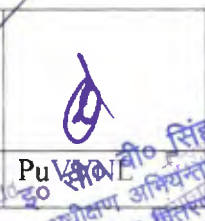

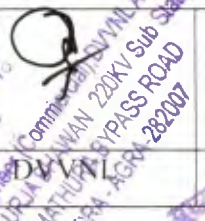

“Procurement Contract” shall have the meaning as set forth in Clause 3.1.1;

“Project” means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement;

“Project Agreements” means this Agreement, Fuel Supply Agreement, O&M contract and any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

“Project Assets” means all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Station Premises in the form of licence or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;
- (d) all rights of the Supplier under the Project Agreements;

					
PGPL	PVVNL	PuVNL	MVNL	DVVNL	URPCL

Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam Ltd.
Meerut

अधीक्षक अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Executive Engineer (Comm.)
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA - 282007

- (e) financial assets, such as receivables, security deposits etc.;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Power Station;

“**RLDC**” means the Regional load Despatch Centre as specified in the Act;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Revenues**” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Procurer in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Procurer for and in relation to any capital expenditure for creation of assets;

“**SLDC**” means the State Load Despatch Centre as specified in the Act;

“**Scope of the Agreement**” shall have the meaning as set forth in Clause 2.1;

“**Secured Obligations**” means:

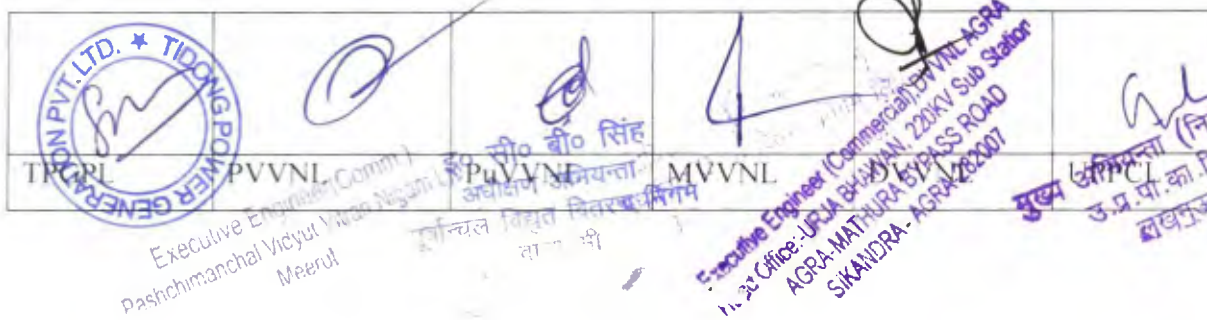
- (a) the amounts due to the Default Escrow Bank from the Procurer in relation to the Letter of Credit;
- (b) obligations of the Procurer for payment of Tariff and Incentives under and in accordance with this Agreement; and
- (c) obligation of the Procurer to make Termination Payment under and in accordance with this Agreement upon termination thereof;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in the rules and regulations made under the Act;

“**State**” means the State or the Union Territory, as the case may be, in which the headquarters of the Procurer is situate and “**State Government**” means the government of that State or Union Territory;

“**Station Premises**” shall mean and include the site, real estate, assets, equipments, facilities and amenities comprising the Power Station;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;



“Supply” shall have the meaning as set forth in Clause 5.1.4 and the term “Available” shall be construed accordingly;

“Supplier” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Supplier Default” shall have the meaning as set forth in Clause 19.1.1;

“Tariff” shall have the meaning as set forth in Clause 11.1.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement and the Procurement Contract hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

“Unit” means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity independently of other units at the Power Station;


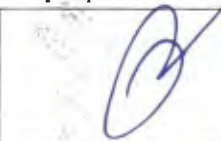

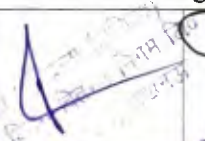
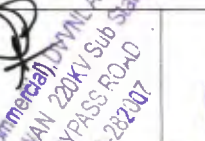
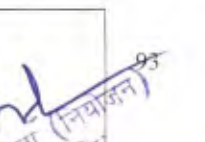
“Procurer” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Procurer Default” shall have the meaning as set forth in Clause 19.2.1;

“Procurer Representative” means such person or persons as may be authorised in writing by the Procurer to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Procurer under this Agreement;

“Variable Charge” shall have the meaning as set forth in clause 12.1; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the

					
TPGPI	PVVNL	पूर्वांचल विद्युत वितरण निगम अभियंता (निर्वाहक) प्राराणसी	MVVNL	Executive Engineer (Commercial) AGRA-MAHARAJGIRI BYPASS ROAD SIKANDRA - AGR-282-007	LPPCL

Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam Ltd
Meerut

पूर्वांचल विद्युत वितरण निगम
अभियंता (निर्वाहक)
प्राराणसी

Executive Engineer (Commercial)
AGRA-MAHARAJGIRI BYPASS ROAD
SIKANDRA - AGR-282-007

अभियंता (निर्वाहक)
उ.प्र. प्रा. वि.
लखनऊ

provisions of Clause 11.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE PROCURER 1 by:

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE SUPPLIER by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

Sanjeev Mehra
Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam Ltd
Meerut

(Signature)
Name : Sanjeev Mehra
Designation : Director
Address: 401, 4th Floor, Salcon Rasvilas Building, Saket District Centre, New Delhi 110017, India.
Fax No.
e-mail address: Sanjeev.Mehra@statkraft.com






Sanjeev Mehra
TIDONG POWER GENERATION PVT. LTD.

In the presence of:

- Vikram Singh*
Vikram Singh
SE (UMPP-1) Plg, UPPCL
- आयूष सिंह*
आयूष सिंह
अधि०अभि० नियोजन, उ०प्र०पाका०लि०

In the presence of:

- Nukala Kishore*
1. (Nukala Kishore)
- Prem Singh*
2. (Prem Singh)

 TIDONG POWER GENERATION PVT. LTD.	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	 अधि०अभि० नियोजन, उ०प्र०पाका०लि०	 MVVNL Executive Engineer (Commercial) AGRA AGRA MATHERWADI PASS ROAD Sik. Mathura - Agra-282007	 UPPCL (नियोजन) उ.प्र.पा.का.लि. लाखनुऊ
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SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE PROCURER 2 by:

(Signature)


(Name)

(Designation)

(Address)


(Fax No.)






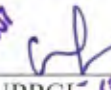
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इ० सी० बी० सिंह
अधोक्षण अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

In the presence of:

1. 
Vikram Singh
SE (UMPP-I) Ptg. UPPCI

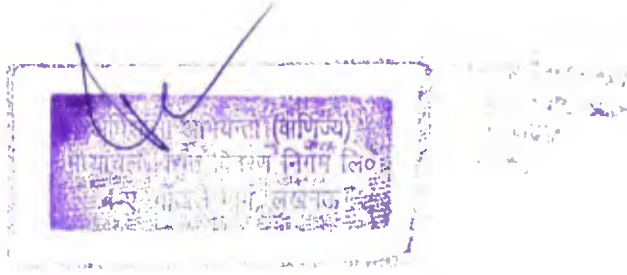
2. 
आयूष सिंह
अधि०अभि० निगम, उ०प्र०पाका०लि०

					
TPGPL	PVVNL	इ० सी० बी० सिंह अधोक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	PVVNL	Executive Engineer (Commercial) DVVNL AGRA Head Office: U.P. BIKANER AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-202007	UPPCI (नियोजन) उ.प्र.पा.का.लि. लखनऊ

SIGNED, SEALED AND
DELIVERED

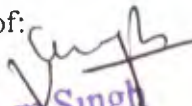
For and on behalf of
THE PROCURER 3 by:


(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)









In the presence of:

- 1.
- 2.


Vikram Singh
SE (UMPP-1) Plg, UPPCI


आयूष सिंह
अधि०अभि० नियोजन, उ०प्र०पाका०लि०

					
TPGCL	PVVNL	PVVNL	MVVNL	DVVNL	URPCL (नियोजन)

Executive Engineer (Comm.)
Pashchimanchal Woyel Mitran Nigam Ltd
Meerut


इ० प्र० पा० लि०
अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Executive Engineer (Commercial)
AGRA-MAITHILIPURPASS ROAD
AGRA-282007

मुख्य
अभियन्ता (नियोजन)
उ.प्र.पा.का.लि.
बखनऊ

SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE PROCURER 4 by:


(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)


Executive Engineer (Commercial), DVVNL AGRA
Head Office:-URJA BHAWAN, 220KV Sub Station
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282007

In the presence of:

1.
2.



Vikram Singh
SE (UMPP-II) Ptg. UPPCL


आयुष सिंह
अधि०अभि० नियोजन, उ०प्र०पाका०लि०



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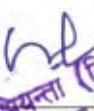
Executive Engineer (Comm)
Pashchimanchal Vidyut Vitran Nigam Ltd
Meerut


इ.प्रि० बी० सिंह
अधी०अभि०
विद्युत वितरण
पूर्वांचल
वाराणसी

PVVNL



Executive Engineer (Commercial), DVVNL AGRA
Head Office:-URJA BHAWAN, 220KV Sub Station
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282007

PVVNL

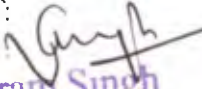

अधियन्ता (नियोजन)
उ.प्र. पाका.लि.
वाराणसी


SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE UPPCL by:






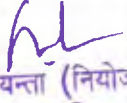
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(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)


मुख्य अभियन्ता (नियोजन)
उ.प्र.पा.का.लि;
लखनऊ

In the presence of:

1. 
Vikram Singh
SE (UMPP-I) Plg, UPPCI

2. 
आयूष सिंह
अधि०अभि० नियोजन, उ०प्र०पाका०लि०

					
Executive Engineer (Comm) Dashchimaichal Vidyut Vitran Nigam Ltd Meerut	PVVNL	इ०पी०वी० सिंह अधीक्षण अभियन्ता उ०प्र०पा०का०लि० लखनऊ	MVVNL	Executive Engineer (Commercial) DVVNL AGRA 1st Office UPPCL AGRA-MATHURA Six-Mile-Away-Sub Station	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि; लखनऊ

Schedules



Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitaran Nigam Ltd.
Meerut

PVVNL
बी० सिंह

पूर्वांचल विद्युत वितरण निगम
वाराणसी

PVVNL
बी० सिंह

Executive Engineer (Comm.)
AGRA MATHEWAR BYPASS ROAD
SIKANDRA AGRA-282007

उ.प्र. पा.का.लि.
राधवल्लभ

SCHEDULE – A

(See Clause 2.1)







SITE OF THE POWER STATION(s)

1 The Site

Site of the Power Station(s) shall include the land, buildings, structures as briefly described in Annex-I of this Schedule A.

2 Power Station(s)

The principal features of the Power Station(s) are described in Annex-I of this Schedule-A.

					
TIDONG POWER GENERATION PVT. LTD.	PVVNL Executive Engineer (Admin.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	पुष्पा शी. सिंह अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	MVVNL	Executive Engineer (Commercial) Sikandra, AGRA 202007	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.को.लि, लखनऊ

Annex – I
(Schedule-A)

Description of Hydro-based Power Station

1 The site

The Site of the Hydro-electric Power station shall include the land, building and structures comprising a Dam/Barrage, HRT, Penstocks/Pressure Shaft, Power House (Underground/Surface/Semi surface) & TRT. The Power Station may be based on Storage/Run off River.

2 Capacity of the Hydro Power Station

2.1 The Hydro Power Station has a generating capacity of 100 MW.

2.2 The configuration of Units is given below:

(a) The number of Units is two

(b) The nameplate capacity of each Unit is 50 MW.

3 Head

Maximum net head available for power generation is 603.67 m, which is the maximum gross head less all the losses in the water conductor system including penstock.

Minimum net head results from the difference in elevation between the minimum head water level (MDDL) and the maximum tailrace water level (TWL0, minus losses with all turbines operating at full gate opening.

4 Overloading Limits

All Units of Hydro Power Station shall be capable of increasing their output by 10% (ten per cent). The rate of increase or decrease in machine output shall be governed by change in speed/pressure rise in compliance other relevant IS.

5 Ramp Rates

Each Units of the Hydro Power Station shall have the capacity to ramp up from spinning at zero load to reach full capacity within 5 minutes.

6 Description of the Power Station

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Executive Engineer (Comm.)
Pashchimanchal Vidyut Vitran Nigam
Meerut

बि.सिंह
मुख्य अधिकारी
पूरबीचल विद्युत वितरण निगम
वाराणसी

Executive Engineer (Comm.)
AGRA Office - U.P.
AGRA - BHAWAN, ZAN Sub Station
Sikar - AGRA-222007

मुख्य अधिकारी (नियोजन)
उ.प्र.पा.का.लि.
लखनऊ

The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Power Station is briefly described below:

A. Intake

- (i) Number : 1
- (ii) Invert Level:
- (iii) Design Discharge: 19.2 cumecs
- (iv) Intake Gates (Size) : Non gated

B. Head Race Tunnel

- (i) Number: 1
- (ii) Size: 3.5 m finished Dia
- (iii) Shape: Concrete Lined, D-shaped
- (iv) Length: 8461 m
- (v) Design Discharge: 19.2 Cumecs
- (vi) Velocity: 1.75 m/s



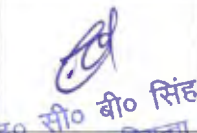
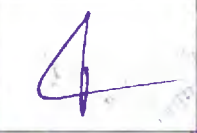
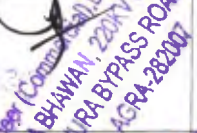
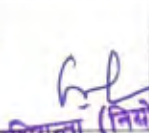
C. Surge Shaft

- (i) Number: 1
- (ii) Type: underground, restricted orifice type
- (iii) Size: 8.0m Dia., 120 m high.
- (iv) Height: 120 m high
- (v) Max. Surge Level: 2910.40 m
- (vi) Min Surge Level: 2830.30 m

D Penstock

- (i) Number: 2
- (ii) Daimeter: 1.75 m dia
- (iii) Length: 15 m each
- (iv) Shape:
- (v) Design Discharge: 19.2 Cumecs

E Water Levels

					
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Executive Engineer
Pashchimanchal Vidyut Nigam Ltd
Meerut

श्री सी० बी० सिंह
पूर्वांचल विद्युत वितरण निगम लि
वाराणसी

Executive Engineer (Construction) DIVNL AGRA
Head Office: U.P. BHAWAN, 220KV Sub Station
AGRA, MURARA BYPASS ROAD
SIKANDARA - AGRA-202007

अभियंता (नियोजन)
उ.प्र.पा.का.लि;
बल्लभपुर

- (i) Full Reservoir Level: 2873.75 m
- (ii) Minimum Draw Down Level: 2860.75m
- (iii) Minimum TWL:
- (iv) Maximum TWL: 2252.00 m

F Power House



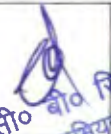

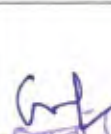
- (i) Type: Surface
- (ii) Installed Capacity: 100 MW (2 x 50 MW)
- (iii) Number of Units: 2
- (iv) Power House Cavern Size:
- (v) Type of Turbine: Vertical Shaft Pelton
- (vi) Type & Capacity of Generator: Vertical shaft synchronous generator
- (vii) Number & Rating of Transformer: 7 nos single phase, 25 MVA
- (viii) Overall efficiency:

G Tail Race Channel

- (i) Type: Surface
- (ii) Size: 4 m wide open channel
- (iii) Length: 50 m long
- (iv) Design Discharge:

H Design Energy

Month	Design Energy of installed capacity in kWh/ per year	Design Energy of offered capacity in kWh/ per year
April	21707500	
May	38057000	28542750
June	59042500	44281875
July	70680000	53010000
August	69293000	51969750
September	42218000	31663500
October	24671500	18503625
November	19342000	
December	18278000	
January	17290000	
February	14972000	
March	18582000	
Annual	414133500	227971500

 TPGRL Executive Engineer Pashchimanchal Vidyut Vitrans Nigam Ltd. Meerut	 PVVNL PuV Nigam (Comm.) Pashchimanchal Vidyut Vitrans Nigam Ltd.	 PuV Nigam अखिल भारतीय विद्युत नियंत्रण मंडल वाराणसी	 DVVNE Executive Engineer District Udaipur Ashram Road, Udaipur SHANWARA, K.A. 342807	 UPPCL उ.प्र. पा. का. नि. लखनऊ
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SCHEDULE -B
(See Clause 9.1.1)

PERFORMANCE SECURITY


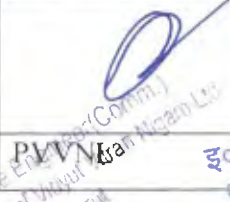
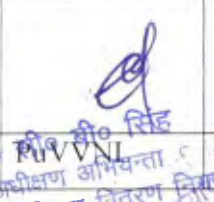
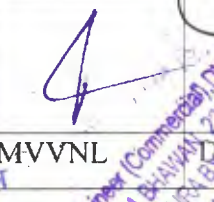
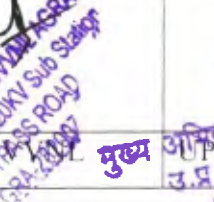
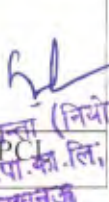
The.....,
Distribution Company
State of....

WHEREAS:

- (A) (the "Supplier") and [the.... Distribution Company] represented by.... and having its principal offices at.... ("Procurer") have entered into an Agreement for Procurement of Hydro Power dated(the "Agreement") whereby the Procurer has agreed to the Supplier undertaking the financing and operation of the Power Station with a generating capacity of MW in the State of, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Supplier to furnish a Performance Security to the Procurer in a sum of [Rs..... cr. (Rupees.... crore)] (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).
- (C) We,.... through our Branch atthe "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Procurer upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Procurer shall claim, without the Procurer being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Procurer, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Procurer shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding

					
Executive Engineer (Comm.) Pashchimanchal Jyotir Meerut	Executive Engineer (Commercial) 220KV Sub Station AGFA-MAT Bypass Road Meerut	Executive Engineer (Commercial) 220KV Sub Station AGFA-MAT Bypass Road Meerut	Executive Engineer (Commercial) 220KV Sub Station AGFA-MAT Bypass Road Meerut	Executive Engineer (Commercial) 220KV Sub Station AGFA-MAT Bypass Road Meerut	Executive Engineer (Commercial) 220KV Sub Station AGFA-MAT Bypass Road Meerut

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Procurer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Procurer that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Procurer pursuant to the provisions of the Agreement.

Signed and sealed this.... day of20.... at




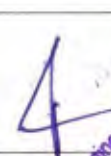
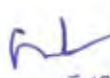
SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

				
<p>Executive Engineer (Commercial) Pashchimanchal Vidya Ugron Nigan Meerut</p>	<p>PVVNL</p>	<p>इंजीनियर (विद्युत वितरण) अधीनस्थ अधिकारी सिंह</p>	<p>MVVNL</p> <p>Executive Engineer (Commercial) DOWNL AGRA AGRA Office-UPJA BHAWAN, 22KV Sub Station AGRA-202007</p>	<p>मुख्य अभियंता (वियोजन) उ.प्र. पा. का. लि. लखनऊ</p>

SCHEDULE – C
(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of20....

AMONGST

1.Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2.(name and particulars of the Default Escrow Bank), through itsbranch, and having its registered office at.... (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The.... Distribution Company represented byand having its principal offices at(hereinafter referred to as the “**Procurer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:



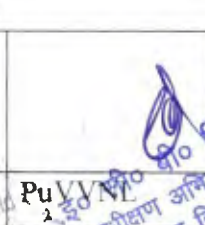
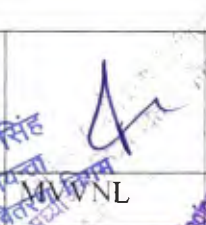
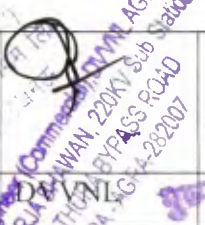

- (A) The Procurer has entered into a agreement dated with the Supplier (the “**Agreement for Procurement of Hydro Power**”) for supply of MW of electricity from the Power Station at.... in the State of...., and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Procurer’s payment obligations to the Supplier under the Agreement for Procurement of Power, the Procurer is required to establish a default escrow account on the terms and conditions stated therein (the “**Default Escrow Account**”).

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

					
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Executive Engineer (Comm)
Paschimanchal Vidyut Vitran Nigam Ltd
Meerut

अधीक्षण अभियन्ता
पूर्वांचल विद्युत वितरण निगम
वाराणसी

Executive Engineer (Comm)
Head Office U.P. Power
AGRA-MITHAN
SIKANDRA
AGRA-MITHAN BYPASS P.O. 282007
Sub Station

अधीक्षण अभियन्ता (नियोजन)
उ.प्र. वि. नि. का. नि. वि.
वाराणसी

“**Agreement**” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Procurer, and shall commence from the date on which a notice is delivered by the Supplier to the Procurer asking the latter to cure the breach or default specified in such notice;

“**Default Escrow Account**” shall have the meaning set forth in Recital B of this Agreement;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Agreement for Procurement of Hydro Power**” shall have the meaning set forth in Recital A of this Agreement;

“**Security**” shall have the meaning set forth in Clause 3.1;

“**Procurer Account**” shall have the meaning set forth in Clause 2.4;

“**Procurer Escrow Default**” shall have the meaning set forth in Clause 8.1;

“**Procurer’s Lenders**” means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Procurer and who have, for the repayment and/or discharge of obligations of the Procurer been provided security by way of a charge on the Revenues of the Procurer, as specified in Annex-I hereto.

1.2 Interpretation



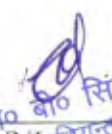


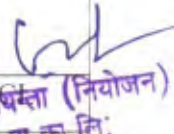
1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Agreement for Procurement of Power shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

 TPOB Executive Engineer (Comm. I) Pashchimanchal Vidyut Nigam Ltd. Meerut	 PVVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 PVVNL अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी	 PVVNL	 UPRCL Executive Engineer (Commercial) Head Office: JICA BANGALIAN 220KV Sub Station AGRA-MATHURA BYPASS ROAD Sikar, Rajasthan - 368007	 UPRCL मुख्य अभियन्ता (नियोजन) उ.प्र.पा.क.लि. लखनऊ
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The Default Escrow Bank and the Procurer acknowledge that at least 30% (thirty per cent) of the Procurer's total monthly Revenues are being deposited in the Procurer's existing account at the Default Escrow Bank (the "Procurer Account"), and the Procurer undertakes to maintain the Procurer Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Procurer. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Agreement for Procurement of Power, the rights of the Supplier and the Procurer in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest






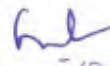
The Procurer expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "Security").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Procurer Account from the Procurer Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Procurer and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Procurer Escrow Default and until delivery of notice that the Procurer Escrow Default is no longer continuing, the Default Escrow Bank

	 P V V N L	 P V V N L सिंह	 P V V N L	 P V V N L	 U P P C L (निवेदन) उ.प्र.पा.का.लि. लखनऊ
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पूर्वाञ्चल विद्युत वितरण निगम लि.
वाराणसी

Engineer (Commercial) UPVNL-AGRA
Office: Dr. J. B. Jalan, 220KV Sub Station
AGRA-MAHURABLI-PASS ROAD
SIKANDRA-AGRA-202007

shall provide statement of accounts to the Procurer and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Procurer of the Secured Obligations in the manner contemplated under this Agreement and the Agreement for Procurement of Hydro Power.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.


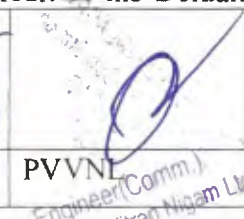
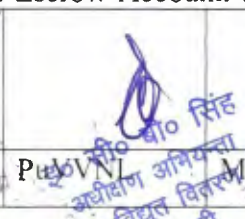
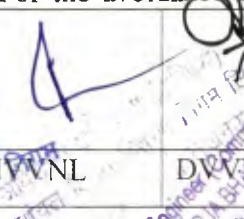
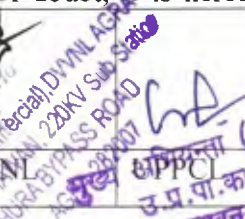
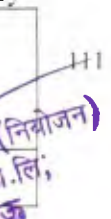
3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Procurer upon a certificate signed by or on behalf of the Procurer;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Procurer in connection herewith; and
- (d) shall within 5 (five) business days after receipt, deliver a copy to the Procurer of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby

					
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acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE PROCURER

4.1 General

4.1.1 The Procurer covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Agreement for Procurement of Power and this Agreement.

4.1.2 The Procurer hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Procurer Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Procurer agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

4.2.1 The Procurer hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this

<p>PGPL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut</p>	<p>PVVNL</p>	<p>श्री बी० सिंह अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम वाराणसी मध्य</p>	<p>MVVNL</p>	<p>Executive Engineer (Commercial) DIVNL AGRA Head Office: UJJA SBYMAN, 200V Sub Station AGRA-MATHURA BYPASS ROAD Sikar-324-282001</p>	<p>मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.सि. राजबहादुर</p>

Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Procurer further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Procurer's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Procurer's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Supplier pursuant to the Deed of Hypothecation. The Procurer expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.

- 4.2.2 The Procurer agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Supplier in accordance with Clause 4.2.1.
- 4.2.3 The Procurer may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Supplier over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Procurer in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Procurer Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Procurer from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

- 5.1.1 All amounts deposited in the Procurer Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.
- 5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow

Executive Engineer (Comm.) Pashchimanchal Vidyut Vitaran Nigam Ltd Meerut	P.V.V.N.L. अधीक्षक जनियन्ता पूर्वाञ्चल विद्युत वितरण बाराणसी, भारत	P.V.V.N.L. Executive Engineer (Comm.) Head Office AGRA DISTRICT SIKANDRA	P.V.V.N.L. मुख्य अभियन्ता उ.प्र. पा. को. लि. बालरूप	P.V.V.N.L. मुख्य अभियन्ता (नियोजन) उ.प्र. पा. को. लि. बालरूप	

Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Procurer or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Procurer

The Procurer and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Procurer Account, without any further authorisation or instructions from the Procurer, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Procurer irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Procurer Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.


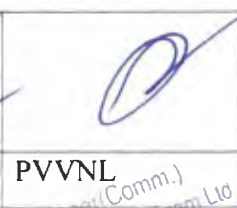
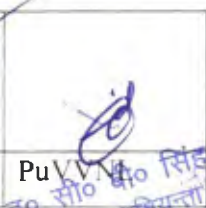

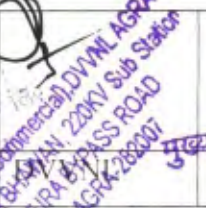
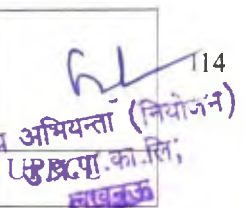
5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Contract Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Minimum Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Procurer.

5.5 Drawal against Letter of Credit

5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against

					
<p>TPCPL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut</p>	<p>P.V.V.N.L.</p>	<p>Pu V.V.N.L. अधीक्षण अभियन्ता पूर्वांचल विद्युत वितरण निगम कानपुर</p>	<p>M.V.V.N.L.</p>	<p>Executive Engineer (Commercial) DVVNL AGRA Head Office: URJA Bhawan, 20KY Sub Station AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-282007</p>	<p>मुख्य अभियन्ता (नियोजन) URJA का. लि. राजपुर</p>

the Monthly Invoice, and there is a failure of the Procurer to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

5.6.1 Upon Termination of the Agreement For Procurement of Hydro Power, if the Procurer fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.





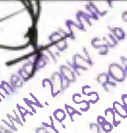
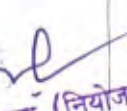
5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Agreement for Procurement of Power .

5.6.3 The Procurer expressly acknowledges and agrees that upon Termination of the Agreement for Procurement of Hydro Power, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Procurer Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Procurer agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Supplier or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.




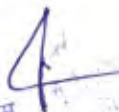

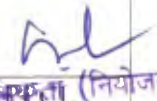
6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Procurer

The Procurer hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	 PUVVNL पूर्वोत्तर विद्युत वितरण निगम वाराणसी	 MVVNL मध्योत्तर विद्युत वितरण निगम मथुरा	 MVVNL Executive Engineer (Commercial) MVVNL AGRA Head Office, JALAWAN, 22KV Sub Station AGRA-MATHURA BYPASS ROAD SKANDRA, AGRA-282007	 Chief Engineer (Nijojan) U.P. P.C.I. Ltd. लखनऊ
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- (a) the Procurer is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Procurer, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Procurer, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Procurer have been duly authorized by all requisite actions and will not constitute a violation of:
- (i) any statute, judgment, order, decree or regulation of any court, 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 Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Procurer, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Procurer Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Procurer routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;
- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;

					
TIDONG POWER GENERATION PVT. LTD.	Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Ltd Meerut	इंजीनियर (विद्युत) पूनाचल विद्युत निगम वाल्मीकी मध्या	निगम MVVNL	Evergrip Engineers (Commercial) DYNAL AGRA Head Office: ROAD BAWAN, ZONIV Sub Station A. F. ANTIHILL BYPASS ROAD SuraMehra, AGRA	मुख्य ऑफिस (नियोजन) ज.प.क. लि. रावतपुर

- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (i) the particulars relating to the Procurer's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 30% (thirty per cent) of the Procurer's total monthly Revenues are deposited in the Procurer Account every month and shall continue to be deposited in the Procurer Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Procurer and the Supplier as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at and its branch among others, at 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 constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or


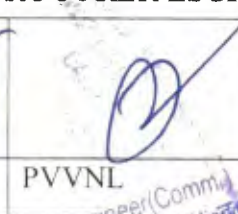
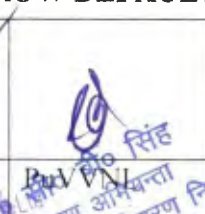
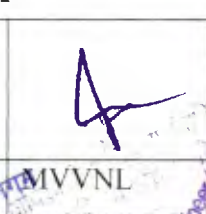
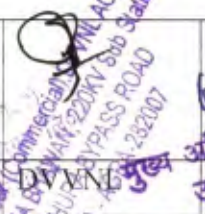
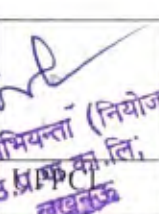
<p>Executive Engineer (Comm.) Dashchimanthal Vidyut Vitran Nigam Ltd. Meerut</p>	<p>डॉ. पी. वी. सिंह अधीक्षक (नियोजन) पूर्वांचल विद्युत वितरण विभाग वाराणसी</p>	<p>MVVNL</p>	<p>Executive Engineer Head Office: SR. KANHANWARI BYPASS ROAD AGRA DISTRICT SIKANDRA</p>	<p>अभियन्ता (नियोजन) उ.प्र. पा.का. लि. रावतपुर</p>

7.1 The Procurer covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;
- (b) it shall procure all amendments, approvals, consents or waivers as may be required from the Procurer's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;
- (c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Procurer routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation, in favour of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;
- (d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Procurer, in connection with:
 - (i) the execution, delivery, performance and observance by the Procurer of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
 - (iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;
- (e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Procurer of its obligations under this Agreement and the Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8

PROCURER ESCROW DEFAULT

					
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Executive Engineer (Comm.)
Pashchamanchal Vidyut Vitran Nigam
Meerut

अधीक्षक अभियन्ता
पूर्वाञ्चल विद्युत वितरण निगम
वाराणसी


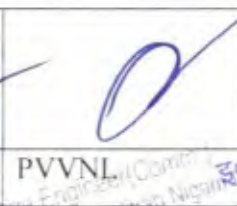
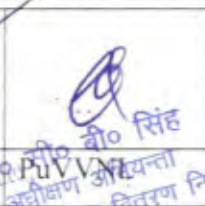
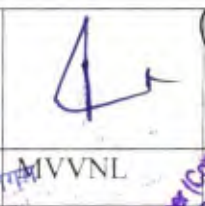
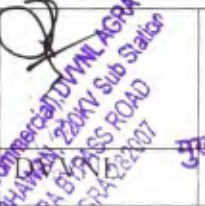
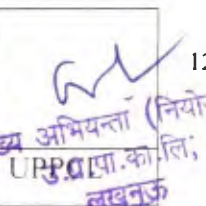
Executive Engineer (Commercial)
Head Office, UPCL
AGRA-MATHURA
SIKANDRA

मुख्य अभियन्ता (नियोजन)
उ.प्र.प.क. लि.
बाबूकद

8.1 Procurer Escrow Default

Following events shall constitute an event of default by the Procurer (a “**Procurer Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

- (a) the Procurer commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Procurer Account as provided herein and fails to cure such breach by depositing the same into the Procurer Account within a period of 5 (five) business days thereof;
- (b) the Procurer does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Procurer causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;
- (d) the Procurer commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (e) the Procurer fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Procurer in this Agreement shall be or shall have been incorrect in any material respect;
- (g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Procurer to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit in accordance with the Agreement for Procurement of Power; and
- (i) the Procurer commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

					
	Executive Engineer (Commercial) PVVNL Pashchimanchal Mahanagar Nigam Muzaffarpur	इ.पी.वी. सिंह अधीक्षण अभियन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	MVVNL	Executive Engineer (Commercial) MVVNL AGPA Head Office-UPJA Building, 22AKV Sub Station AGPA-MATHURA BYPASS ROAD SUNAMGERA - ASRA-221007	मुख्य अभियन्ता (नियोजन) UPPदा.क.लि. बल्लभपुर

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Procurer in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Procurer may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.





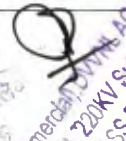
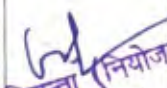
9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Procurer and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Procurer and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Procurer and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Procurer may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (i) cease therewith accepting any payments or deposits into the Default Escrow Account;

					
Executive Engineer Pashchimanchal Vidyut Vignanam Meerut	PVVNL.com	अधीक्षण अधिकारी पूर्वांचल विद्युत वितरण निगम वाराणसी मध्यक	VVNL	Executive Engineer Heat Office, JRU AGRA MATHEUR SIKANDRA	अभियन्ता (नियोजन) उ.प्र. वि. नि. बाबूज

- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within 30 (thirty) days of such closing, provide to the Procurer and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Procurer and the Supplier, made on or after the payment by the Procurer of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Procurer. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Procurer shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

<p>TPGPL Executive Engineer Pashchimanchal Vidyut Mahanigam Meerut</p>	<p>PVVNL अध्यक्ष अनियन्ता व्यापक विद्युत वितरण निगम वाराणसी मध्या</p>	<p>MVVNL</p>	<p>DVVNL</p>	<p>ज.प्र.पा.क.वि. सिखनज</p>

- 11.1.1 The Procurer will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Procurer of any of its obligations under this Agreement or on account of failure of the Procurer to comply with Applicable Laws and Applicable Permits.
- 11.1.2 The Supplier will indemnify, defend and hold the Procurer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Procurer's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.
- 11.1.3 The Default Escrow Bank will indemnify, defend and hold the Procurer and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Procurer or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

- 12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held

<p>Executive Pashchimanchal Vidyalaya Meerut</p>	<p>PVVNL Engineer Vidyan Nigam Ltd</p>	<p>इं. सी. व. सिंघ अधीक्षण पूर्वांचल विद्युत वितरण वाराणसी</p>	<p>SIKANDAR AGRA-202007</p>	<p>SIKANDAR AGRA-202007</p>	<p>शुद्ध अभियांत्रिकी (नियोजन) उ.प्र.पा.का.लि. लखनऊ</p>	<p>123</p>

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

13.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.


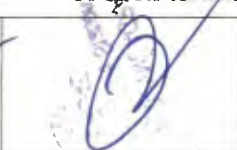
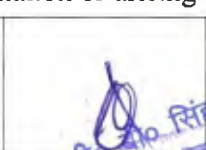
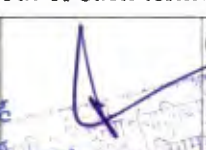
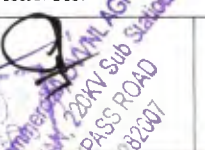
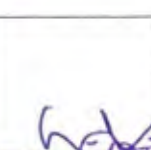
13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

	 PVVNL Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Ltd. Meerut	 PVVNL अधीक्षक पूर्वांचल विद्युत विकास वाराणसी	 PVVNL	 DVVNL Executive Engineer (Comm.) H.E.30 Office-UCDA AGRA-MA THUKA SIKARI-DRA 220KV Sub Station PASS ROAD AGRA-382007	 उ.प्र.पा.का.लि. खाबतऊ
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13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns



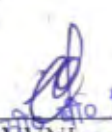
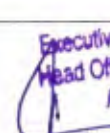

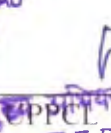
This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by

					
Executive Engineer (Commercial), DVVNL AGRA Head Office:-URJA BHAWAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SIMANDRA-AGRA-282007	PVVNL (Comm)	पूर्वांचल विद्युत निगम वाराणसी	MVVNL	DVVNL	उ.प्र. पा.क.लि. लखनऊ

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notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Procurer and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Procurer and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.




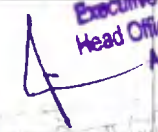
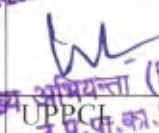
13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

					
PGPL	PVVNL	Executive Engineer (Commercial) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	MVVNL	DVVNL	Executive Engineer (Commercial) D/VNL AGRA Head Office - URJA BHAWAN, 220KV Sub Station AGRA - MAHURA BYPASS SIKANDRA - AGRA-282001
		पूर्वांचल विद्युत वितरण निगम वाराणसी			मुख्य अभियन्ता (नियोजन) उ.प्र. पा.का.वि. सिद्धपुर

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of....., Director, [who has signed these presents in token thereof and....., Company Secretary / Authorised Officer who has countersigned the same in token thereof][†]:

SIGNED, SEALED AND DELIVERED For and on behalf of THE DEFAULT ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of THE PROCURER by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.

[†] To be affixed in accordance with the article of association of the Supplier and the resolution of the Board of Directors

<p>TPGPL TIDONE POWER GENERATION PRIVATE LIMITED</p>	<p>PVVNL Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut</p>	<p>श्री पी. वी. सिंह अधीक्षक अभियन्ता पश्चिम विद्युत वितरण निगम मेरठ</p>	<p>MVVNL Executive Engineer (Commercial), DVVNL AGRA Head Office - BHAVANA ROAD AGRA-MATHURA BYPASS ROAD AGRA - ACRA-372007</p>	<p>DVVNL अधीक्षक अभियन्ता उ.प्र. पा. क. लि. राधकृष्ण</p>	<p>128</p>

Annex- I
(Schedule-C)

Procurer's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

	 Executive Engineer (Comm) Pashchimanchal Vidyut Nigam Ltd Meerut	 Executive Engineer (Comm) Pashchimanchal Vidyut Nigam Ltd Meerut	 Executive Engineer (Comm) Pashchimanchal Vidyut Nigam Ltd Meerut	 Executive Engineer (Comm) Pashchimanchal Vidyut Nigam Ltd Meerut	 Executive Engineer (Comm) Pashchimanchal Vidyut Nigam Ltd Meerut
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SCHEDULE – D
(See Clause 13.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this theday of20....

BETWEEN

1. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The Distribution Company represented by and having its principal offices at.... (hereinafter referred to as the “**Procurer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).





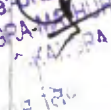
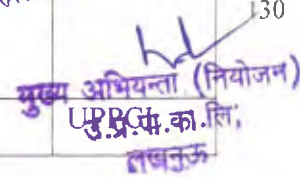
WHEREAS:

- (A) The Procurer has entered into a agreement dated.... with the Supplier (the “**Agreement for Procurement of Hydro Power**”) for supply of MW of electricity from the Power Station at in the State of and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Procurer’s payment obligations to the Supplier under and in accordance with the Agreement for Procurement of Power, the Procurer is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.
- (C) To further secure the Secured Obligations, the Procurer has agreed to grant a charge and security interest in favour of the Supplier on the Procurer’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

 TPCRI	 P.V.V.N.L. Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd Meerut	 P.V.V.N.L. अधीक्षक अभियन्ता पूर्वांचल विद्युत वितरण निगम मथुरा	 M.V.V.N.L.	 D.V.V.N.L. Executive Engineer (Commercial), D.V.V.N.L. AGRA Head Office - J.R.J. BHAWAN, 220KV Sub Station AGRA - KACHHURA BYPASS ROAD AGRA - 282007	 मुख्य अभियन्ता (नियोजन) उ.प्र.वि.का.लि. बिजनौर
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In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Deed**” means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

“**Default Escrow Agreement**” shall have the meaning set forth in Recital B of this Deed;

“**Hypothecated Interest**” shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

“**Agreement for Procurement of Hydro Power**” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Agreement for Procurement of Power or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Deed.


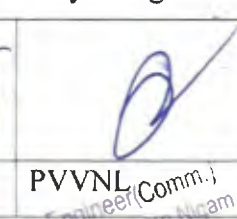
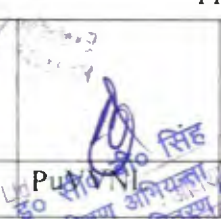
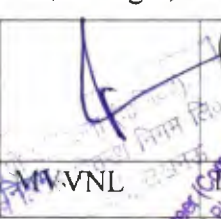
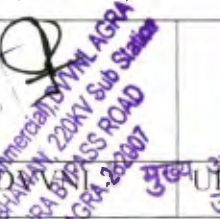
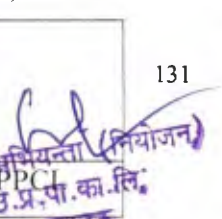
2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Agreement for Procurement of Hydro Power and agreeing to make available to the Procurer the Contracted Capacity, subject to the terms and conditions set out in the Agreement for Procurement of Power, the Procurer hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Agreement for Procurement of Power.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Agreement for Procurement of Power, the Procurer, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims

					
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	PVVNL (Comm.)	PVVNL	PVVNL	Executive Engineer (Commercial) PVVNL AGRA 12, 33 Office: URJA Bhawan, 20KV Sub Station AGRA-MATHURA BYPASS ROAD SIKA:URJA-AGRA-202007	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ

and demands whatsoever of the Procurer in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the "Hypothecated Interest").

2.2.2 The charge created pursuant to this Clause 2.2 by the Procurer over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Procurer from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Procurer Escrow Default.

2.2.3 At any time after a Procurer Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Agreement for Procurement of Hydro Power.

2.2.4 Following the occurrence of a Procurer Escrow Default, the Supplier shall not, save and except as may be required under the Agreement for Procurement of Hydro Power, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:



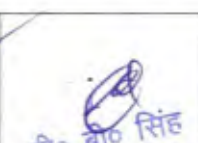
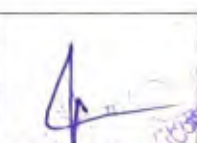
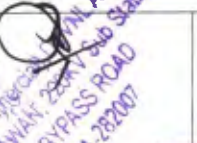
- (a) take action or obtain judgement or any arbitration award against the Procurer in any court or before any arbitrator;
- (b) make or file any claim or proof in a winding up or dissolution of the Procurer; and
- (c) exercise any legal remedies, which may be available to it under or in respect of the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

2.3 Release of Charge

2.3.1 Upon termination of the Agreement for Procurement of Hydro Power in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.

2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:

- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
- (b) re-assign, retransfer or re-convey to the Procurer, or as it may direct, the Hypothecated Interest; and

	 P.V.V.N.L. Executive Engineer (Comm.) Pashchimanchal Vidyut Viran Nigam Ltd Naserul	 P.V.V.N.L. अधीक्षक विद्युत वितरण पूर्वांचल विद्युत वितरण प्रणाली	 M.V.V.N.L. Executive Engineer (Commercial) UPPCCL 1. 21 Office: U.P. JA BAWAN, 22nd Sub Station AGRA-MAITHILA BYPASS ROAD SIKAR, RAJ. PIN-328207	 D.V.V.N.L. मुख्य अभियंता (नियोजन) उ.प्र. पा. का. लि. राखनज
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- (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.

3 FURTHER ENCUMBRANCES

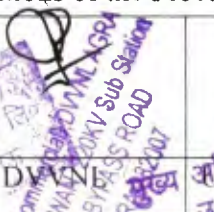
- 3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Procurer shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Procurer, 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.
- 3.2 The Procurer shall be entitled to create a subordinate/second charge in favour of the Procurer's Lenders or any other entity over the Hypothecated Interest, provided, however, that the Procurer shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Procurer

The Procurer hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

- (a) the Procurer is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Supplier;
- (d) based on available records, the Revenues are believed by the Procurer to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Procurer and the Procurer has full right and interest in the Revenues;
- (e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Procurer or the

					
<p>TPGPL</p>	<p>PVVNL</p>	<p>PVVNL</p>	<p>PVVNL</p>	<p>DVANI</p>	<p>उ.प्र.पा.का.लि.</p>

Executive Engineer (Comm.) इ.प्र.पा.का.लि. (नियोजन)
 Pashchimanchal Vidyut Vitran Nigam (अधीक्षण अखिल)
 Meerut पूर्वांचल विद्युत वितरण निगम
 वाराणसी मध्यम
 Executive Engineer (Comm.) उ.प्र.पा.का.लि.
 Office - URJA BHAWANA, 20KV Sub Station
 AGRA-MATHURA Bypass ROAD
 SIKANDRA AGR
 202007





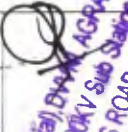

ability of the Procurer to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;

- (f) the execution, delivery and performance of this Deed by the Procurer have been duly authorised by all requisite actions and will not constitute a violation of:
- (i) any statute, judgment, order, decree or regulation of any court, 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 Party or by which it or its property may be bound;
- (g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Procurer routed through the Default Escrow Account after the date hereof, except as permitted under this Deed;
- (h) as of the date hereof and until the expiry of this Deed, the Procurer Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Procurer routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and
- (i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Procurer that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;
- (b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and


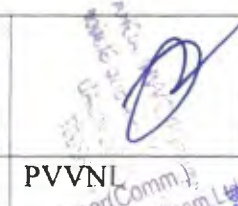

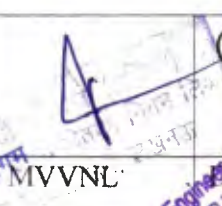
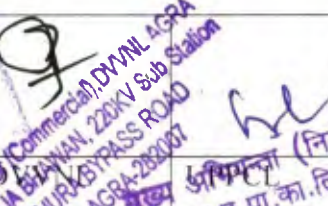
					
Executive Engineer (Comm) Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut	श्री ० ब० सिंह	श्री ० ब० सिंह	श्री ० ब० सिंह	श्री ० ब० सिंह	मुख्य अभियन्ता (नियोजन) उ.प्र.पा.का.लि. लखनऊ
				Executive Engineer (Comm) Office: U.R.I.A. Building, 228KV Sub Station AGRA MATHURA BYPASS ROAD SIKANDRA - AGRA - 202007	

- (c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:
- (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or
 - (ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. PROCURER'S COVENANTS

5.1 The Procurer covenants that during the term of this Deed:

- (a) it shall 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 Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;
- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation 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 Deed and to enable the Supplier to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Procurer's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Procurer routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Procurer, in connection with:

				
<p>Executive Engineer (Comm.) Pashchimanchal Vidyut Vitan Nigam Ltd. Meerut</p>	<p>PVVNL</p>	<p>R.P. V. सिंह अधीक्षण उ.प्र.पा.का.लि. पूर्वांचल विद्युत वितरण निगम वाराणसी</p>	<p>MVVNL</p>	<p>Executive Engineer (Commercial) D.V.V.N.L. AGRA Head Office: U.P. J.A. BHAYAN, 220KV Sub Station AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-282007 उ.प्र.पा.का.लि. सिबनरुद्र</p>

- (i) the execution, delivery, performance and observance by the Procurer of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Procurer of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;
- (i) deposit or cause to be deposited in the Procurer Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of a Procurer Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

The Procurer shall, from time to time, upon the request of the Supplier, 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 Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Procurer will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Procurer of any of its obligations under this Deed or on account of failure of the Procurer to comply with Applicable Laws and Applicable Permits.

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7.1.2 The Supplier will indemnify, defend and hold the Procurer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Procurer's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) 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 Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Supplier to the Procurer or to any other party providing Security for the Secured Obligations;
- (b) any amendment to the Agreement for Procurement of Power or the Default Escrow Agreement not agreed to by the Supplier;

 TPGPL Executive Engineer (Comm.) Pashchimanchal Vidyut Nigam Ltd Meerut	 PVVNL पूर्वांचल विद्युत निगम लि. वाराणसी	 श्रीगणेश सिंह PVVNL पूर्वांचल विद्युत निगम लि. वाराणसी	 MVVNL मध्य प्रदेश विद्युत निगम लि. भोपाल	 DVVNL Executive Engineer (Commercial) DVVNL, ORA Head Office: Ujala Bypass, 220KV Sub Station AGRA-MATHURA Bypass ROAD SIKANDRA - AGRA	 UPPCL उत्तर प्रदेश विद्युत निगम लि. वाराणसी
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- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Agreement for Procurement of Power or the Default Escrow Agreement or any documents 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 organisation of the Procurer as a result of a Change in Law, insolvency of the Procurer or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS


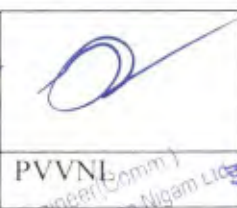
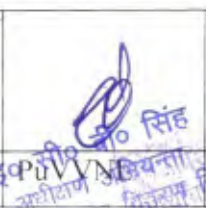
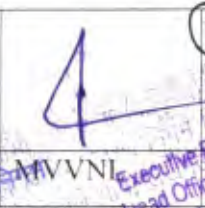
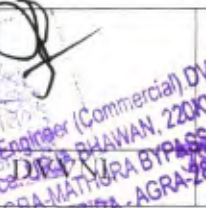
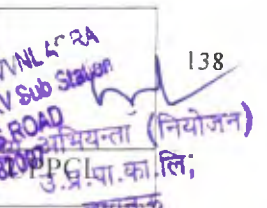
10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where headquarter of the Procurer is situated shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Procurer unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Deed constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Deed or any transaction contemplated by this Deed, no immunity (whether by reason of

					
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sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Procurer with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Hydro Power and this Agreement, the provisions contained in this Deed shall prevail over the Agreement for Procurement of Power.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Deed in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Deed or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

 TPGPL	 PVVNL	 PVVNL	 MVVNL	 DVVNL	 UPPCL
Executive Engineer (Comm.) Pashchimanchal Vidyut Vitran Nigam Meerut	अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी	अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी	अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी	अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी	अधीक्षक (विद्युत वितरण) पूर्वांचल विद्युत वितरण निगम वाराणसी

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Procurer may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Procurer hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

	PVVNL (Panchmaharaj Vidyalaya Nigam)	PVVNL (Panchmaharaj Vidyalaya Nigam)	PVVNL (Panchmaharaj Vidyalaya Nigam)	PVVNL (Panchmaharaj Vidyalaya Nigam)	Executive Engineer (Commercial) D.V.V.N.L. (Panchmaharaj Vidyalaya Nigam) Head Office, UJLA BHAWAN, 220KV S.D. AGRA MATHEURA, SIKHINDRA - AGRA - 202002

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Procurer and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Procurer and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.


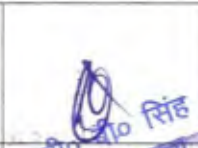
10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

					
	PVVNL	इ.प्र.वि. निकास अभियन्ता (नियोजन) पूर्वांचल विद्युत वितरण वाराणसी	PVVNL	Executive Engineer Head Office, SURAJ AGRA-MATHURA SIKANDRA, AGRA	अभियन्ता (नियोजन) उ.प्र. वी.का. लि. बलबल

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This Deed shall become effective on and from the date hereof.






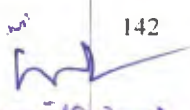
IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and...., company Secretary / Authorised Officer who has countersigned the same in token thereof]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of THE PROCURER by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

					
Executive Engineer (Commercial) Div. Pashchimanchal Vidyut Mitran Nigam Meerut	अधीक्षक अमित्यन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	अधीक्षक अमित्यन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	अधीक्षक अमित्यन्ता पूर्वाञ्चल विद्युत वितरण निगम वाराणसी	Executive Engineer (Commercial) Div. Head Office: D.P.A. BHAWAN, 220K S.I.T AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA	अधीक्षक अमित्यन्ता (नियोजन) उ.प्र. पा. का. लि. लखनऊ

SCHEDULE -E
(See Clause 13.2.1)

LETTER OF CREDIT

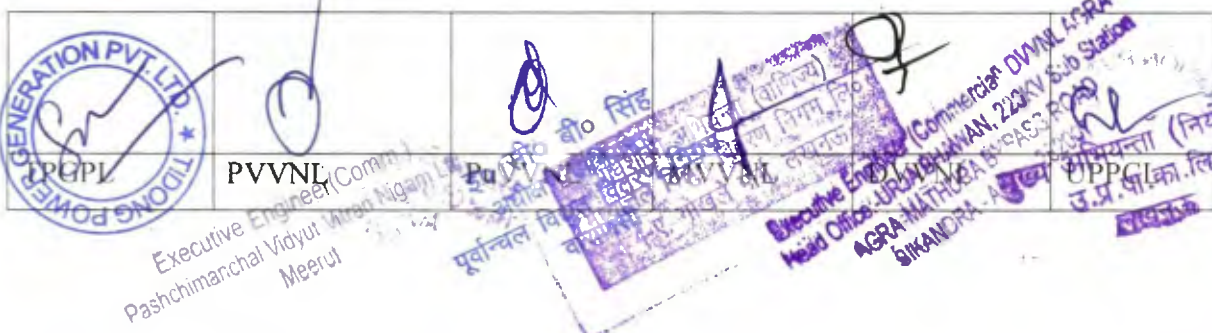
DATE:

TO: Limited (the "Supplier")






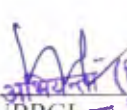
FROM: (Specify the name and address of the bank issuing the Letter of Credit)
(the "Bank")

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the "Letter of Credit") No.... in favour of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Procurer, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs.Rupees....) (the "Monthly Payment"), payable not more than once in a month upon notice received from the Supplier to this effect.
2. The Letter of Credit shall come into force with effect from...., 20.... and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the "Expiry Date"), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Supplier for the payment obligations of the Procurer under an Agreement for Procurement of Power datedentered into between the Procurer and the Supplier (the "Agreement for Procurement of Hydro Power") for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of
4. Any reference to the Agreement for Procurement of Hydro Power or other agreement is for information only and does not in any way incorporate the terms and conditions of such Agreement for Procurement of Hydro Power or agreement into the terms and conditions of this Letter of Credit.
5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:



- (i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of Power) issued by the Supplier to the Procurer, any amounts whereof have remained unpaid; and
 - (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of Hydro Power) is in accordance with the Agreement for Procurement of Hydro Power and that the amount due has remained unpaid and has not been disputed by the Procurer.
6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Procurer to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
 7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.
 8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Procurer that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated, entered into between the Bank, the Procurer and the Supplier.
 9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
 10. The Procurer shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.
 11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

					
<p>Executive Engineer (Commercial), DVVNL-AGRA Pashchimanchal Vidyut Nigam Meerut</p>	<p>PVVNL</p>	<p>श्री. बी० सिंह पूर्वांचल विद्युत निगम वाराणसी</p>	<p>MVVNL Executive Engineer (Commercial), DVVNL-AGRA Near Office, URJA BHAVAN, KANPUR ROAD AGRA-MATHURA</p>	<p>मुख्य अभियंता (नियोजन) उ.प्र. वी. का. लि. लखनऊ</p>	<p>144</p>

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Procurer.
13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: (Name of Procurer representative)
 (Designation)
 (Address, telephone and fax numbers)

To: (Name of the Bank representative)
 (Designation)
 (Address, telephone and fax numbers)

To: (Name of the Supplier representative)
 (Designation)
 (Address, telephone and fax numbers)

Signed and sealed this.... day of20.... at

SIGNED, SEALED AND DELIVERED
 For and on behalf of
 the BANK by:

(Signature)
 (Name)
 (Designation)
 (Code Number)
 (Address)

NOTES:

- (i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

<p>Executive Engineer (Civil) Pashchimanchal Vidyut Nigam Meerut</p>	<p>P.V.V.N.I. (Co)</p>	<p>P.M.V.N.I. (Co)</p>	<p>M.V.V.N.I. (Co)</p>	<p>P.V.V.N.I. (Co)</p>	<p>P.V.V.N.I. (Co)</p>
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Executive Engineer (Commercial) CIVIL AGRA
 Head Office, U.P. Vidyut Nigam, W.N. 2, CIVS & Saha
 AGRA, M.P. 202001
 CIVIL AGRA - 202001
 उ.प्र. पा. का. लि.
 राखमज

SUPPLEMENTARY POWER PURCHASE AGREEMENT

BETWEEN

- Pashchimanchal Vidyut Vitran Nigam Limited
- Purvanchal Vidyut Vitran Nigam Limited
- Madhyanchal Vidyut Vitran Nigam Limited
- Dakshinanchal Vidyut Vitran Nigam Limited
- Uttar Pradesh Power Corporation Limited



AND

Tidong Power Generation Private Limited



INDIA NON JUDICIAL

Government of National Capital Territory of Delhi



सत्यमेव जयते

e-Stamp

Certificate No. : IN-DL30525166792984T
Certificate Issued Date : 29-Sep-2021 02:05 PM
Account Reference : IMPACC (IV) dl921303/DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL92130356733778956112T
Purchased by : TIDONG POWER GENERATION PRIVATE LIMITED
Description of Document : Article 5 General Agreement
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : TIDONG POWER GENERATION PRIVATE LIMITED
Second Party : Not Applicable
Stamp Duty Paid By : TIDONG POWER GENERATION PRIVATE LIMITED
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

SUPPLEMENTARY HYDRO POWER PURCHASE AGREEMENT BETWEEN The Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL) (the "Procurer 1"), The Purnvanchal Vidyut Vitaran Nigam Limited (puvnl) (the "Procurer 2"), The Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) (the "Procurer 3"), The Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) (the "Procurer 4"),The Uttar Pradesh Power Corporation Limited (UPPCL) And Tidong Power Generation Private Limited (TPGPL). This AGREEMENT is entered into on this the 8th day of October 2021.:-

 TPGPL	 Puvnl	 Puvnl	 MVVNL	 UPPCL
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Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**SUPPLEMENTARY AGREEMENT TO HYDRO POWER PURCHASE
AGREEMENT
BETWEEN**

The Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL) (the “**Procurer 1**”),

The Purvanchal Vidyut Vitaran Nigam Limited (PuVVNL) (the “**Procurer 2**”),



The Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) (the “**Procurer 3**”),

The Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) (the “**Procurer 4**”)

The Uttar Pradesh Power Corporation Limited (UPPCL)

And

Tidong Power Generation Private Limited (TPGPL)

	Executive Engineer (Commercial) PVVNL, Meerut	अमीरिका अभियन्ता (वाणिज्य) पूर्वान्चल विद्युत वितरण निगम लि० वायुपुत्री	Executive Engineer (वाणिज्य) लो लो मार्ग		Executive Engineer (Commercial), DVVNL, UP Head Office - JHAWAN, 220KV Sub Sta AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-282007 (Sanjiv Shukla) Chief Engineer (Planning)
TPGPL	PVVNL	PuVVNL	MVVNL		UPPCL

This Supplementary Agreement to the Hydro Power Purchase Agreement dated 17th May, 2021 is made at Lucknow on this Eighth (8) day of October, 2021 between:


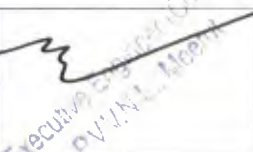
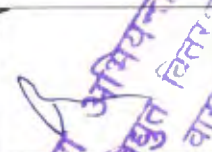
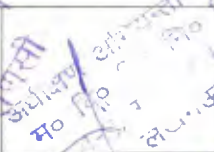
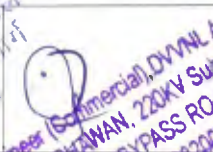
1. The Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL) having its principal/registered office at Urja Bhawan, Pashchimanchal Vidyut Vitran Nigam Ltd., Victoria Park, Meerut, 250001 (hereinafter referred to as the "**Procurer 1**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;
2. The Purvanchal Vidyut Vitaran Nigam Limited (PuVVNL) having its principal/registered office at Vidyut Nagar, Bhikharipur, DLW, Varanasi, 221010 (hereinafter referred to as the "**Procurer 2**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Second Part;
3. The Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) having its principal/registered office at Madhyanchal Vidyut Vitran Nigam Limited Head Office 4-A, Gokhale Marg, Lucknow, 226001 (hereinafter referred to as the "**Procurer 3**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Third Part;
4. The Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL) having its principal/registered office at Urja Bhavan, NH-2 (Agra – Delhi Bypass Road), Sikandra, Agra – 282002 (hereinafter referred to as the "**Procurer 4**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Four Part;
5. The Uttar Pradesh Power Corporation Limited (UPPCL) having its principal/registered office at Shakti Bhawan 14 Ashok Marg, Lucknow, 226001 (hereinafter referred to as the "**UPPCL**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Fifth Part;

AND

Tidong Power Generation Private Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its principal office at at 401, Level 4, Salcon Rasvilas Building, Saket District Centre, New Delhi- 110017 (hereinafter referred to as the "**Supplier**") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- A. The PVVNL, PuVVNL, MVVNL, DVVNL and UPPCL (the "Procurer"), has decided to procure electricity from the **Run off the River/ Pondage/ Pumped Storage** hydro power generating station(s) (the "Power Station") that would dedicate a capacity for supply of Electricity thereof for a specified period and time (the "**Supply of Electricity**") and has, therefore, decided to carry out the bidding process for selection

 TPGPL	 PVVNL	 PuVVNL	 MVVNL	 UPPCL
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(Sanjiv Shukla) Chief Engineer (Planning)

Executive Engineer (Commercial), DVVNL AGRA
Head Office-URJA BHAWAN, 220KV Sub Sta.
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282002

of the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Document.

- B. The Procurer had invited bids from the Bidders in accordance with the Standard Bidding Documents issued for Medium Term which were modified by the Procurer to accommodate long term procurement of power from hydro power stations and approved by the Hon'ble Uttar Pradesh Electricity Regulatory Commission vide orders in petition nos 1343/2018 dated 14.01.2019, 1456/2019 dated 10.06.2019 and 1553/2020 dated 12.02.2020.
- C. After completion of the Bidding Process, the Procurer had accepted the Bid of the Selected Bidder and issued its Letter of Award No. 352 Plg/ UMPP-I/400 MW Hydro dated 16.04.2021 (hereinafter called the "LOA") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Hydro Power within 30 (thirty) days of the date of issue thereof.
- D. **In pursuance of the LOA, the Parties had entered into a Hydro Power Purchase Agreement dated 17.05.2021 (hereinafter called the "HPPA") for Procurement of Hydro Power on the terms and conditions set forth therein.**

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement for Procurement of Hydro Power for 25 years the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree to amend the HPPA as follows:


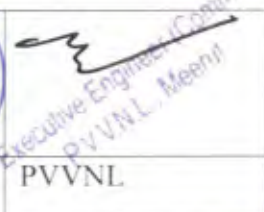
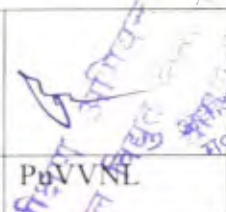
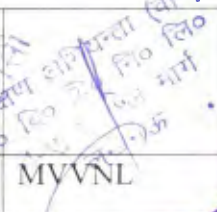
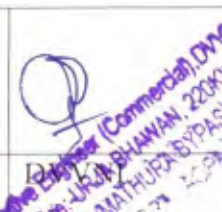

1. Clause 4.1.2 in Article 4 shall be substituted with the following:-

"4.1.2 The Supplier may, upon providing the Performance Security to the Procurer in accordance with Article 9, at any time within 30 (Thirty) days from the date of this Agreement or on an earlier day acceptable to the Procurer, by notice require the Procurer to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Procurer shall be deemed to have been fulfilled when the Procurer shall have:-

- Deleted*
- Deleted*
- procured adoption of the Tariff from the Appropriate Commission for payment of Tariff by the Procurer to the Supplier in accordance with the provisions of this Agreement;*

Provided that upon request in writing by the Procurer, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2."

Clause 4.2 in Article 4 stands deleted.

					
TPGPE	PUVNL	PUVNL	MVVNL	UPPCL	UPPCL

3. Clause 4.4 in Article 4 stands deleted.
4. Clause 13.1.1 of Article 13 shall be substituted with the following:-

*"The Procurer and the Supplier shall, within 180 days from the Appointed Date or mutually extendable thereafter, execute a default escrow agreement with the Procurer's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Procurer's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Procurer expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 30% (thirty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement. "*

5. Clause 13.1.2 of Article 13 shall be substituted with the following:-


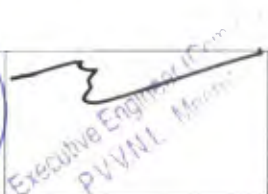
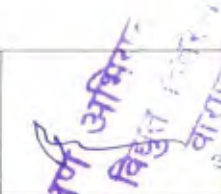
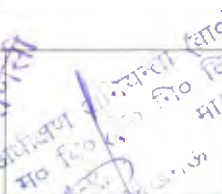
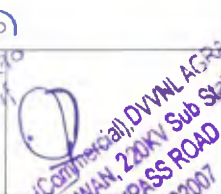

*"The Procurer and the Supplier shall, within 180 days from the Appointed Date or mutually extendable thereafter, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "**Deed of Hypothecation**"), whereby the Procurer shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations. "*

6. Clause 13.2.1 in Article 13 shall be substituted with the following:-

*"The Procurer shall, prior to the likely date of the Appointed Date or mutually extendable thereafter provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "**Letter of Credit**"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement. "*

7. Clause 13.2.2 in Article 13 shall be substituted with the following:

"13.2.2 The Letter of Credit shall be procured by the Procurer from a bank where at least 30% (thirty per cent) of the Procurer's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses

					
TPGPL	PVVNL	PVVNL	MVVNL	PPCL	PPCL

Executive Engineer (Commercial), DVVNL AG-205
Head Office - U.R.J.A. BAWAN, 220KV Sub Station
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282007

(Sanjiv Shukla)
Chief Engineer (Planning)

relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer.”

“Provided that till such time the Default Escrow Bank is appointed, the unconditional revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment shall be procured by the Procurer from any Bank.”

8. Clause 13.2.3 in Article 13 shall be substituted with the following:

“13.2.3 In the event of Procurer’s failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank or any other Bank referred to under Article 13.2.2, as the case may be, shall, without any reference to the Procurer, pay the amount due upon the Supplier presenting the following documents, namely:

- (a) a copy of the Monthly Invoice which has remained unpaid; and
- (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.”

9. Clause 2.3.1 of Schedule C shall be substituted with the following:-


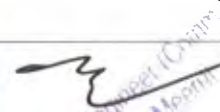
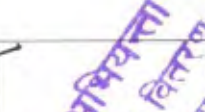
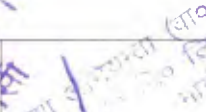
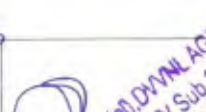

“Within 180 days from the Appointed Date or mutually extendable thereafter- the Procurer shall open and establish the Default Escrow Account with the (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.”

10. Clause 3.1 of Schedule C shall be substituted with the following: -

The Procurer expressly agrees that it shall, within 180 days from the Appointed Date or mutually extendable thereafter- execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the “Security”).

11. Insertion of New Clause in Article 25 as 25.16

“Clause 25.16 Effectiveness

					
TPGPL	PVVNL	PVVNL	MVVNL	AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-202007	UPPCL


The Parties agree and confirm that save and except the modifications mentioned above, the HPPA dated 17.05.2021 shall remain in full force and effect and shall be read in conjunction with this Supplementary Agreement and be enforced as if the modifications made in terms of this Supplementary Agreement were given effect to from the date of signing of the Supplementary PPA. ”

All other terms & conditions of the HPPA dated 17.05.2021 shall remain unchanged.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.



SIGNED, SEALED AND DELIVERED
For and on behalf of
THE PROCURER 1 by:

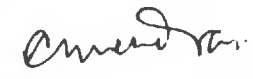
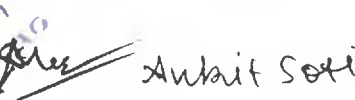
SIGNED, SEALED AND DELIVERED
For and on behalf of
THE SUPPLIER by:


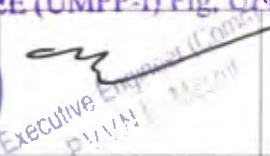
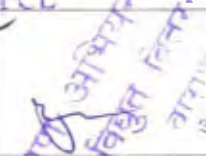
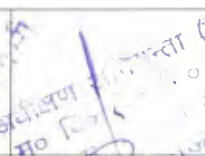

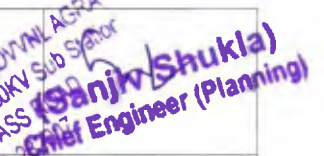
(Signature) 
(Name) AVADHESH KUMAR
(Designation) Executive Engineer.
(Address) PVVNL, Meerut
(Fax No.)
(e-mail address)

(Signature) 
In the presence of:

In the presence of:

- 
- 

- 
- 

	 Executive Engineer (Commercial) PVVNL, Meerut	 Executive Engineer (Commercial) PVVNL, Meerut	 Executive Engineer (Commercial) MVVNE, Meerut	 Executive Engineer (Commercial) DYNV AGRA Sub Station Head Office - J.P. SHAWAN BYPASS AGRA-MATHURA-AGRA-201001 SIKANDRA - AGRA-201001	 Chief Engineer (Planning) UPPCL
---	--	--	--	---	--

SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE PROCURER 2 by:



(Signature)

(Name) Ram Prasad

(Designation) SE (Commercial)

(Address) Vidyaat Bhawan, Bhikhanpur

(Fax No.)

(e-mail address)

अधीक्षण अभियन्ता (वाणिज्य)

पूर्वांचल विद्युत वितरण निगम लि.

वाराणसी


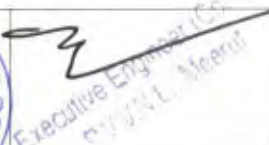
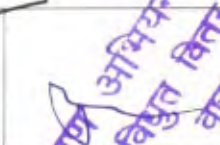


In the presence of:

1.



2.

Rush Singh
EE (UMPP-I) Plg. UPPCL

 TPGPL	 Executive Engineer (Comm) P.V.V.N.L. Meerut	 अधीक्षण अभियन्ता (वाणिज्य) पूर्वांचल विद्युत वितरण निगम लि. वाराणसी	 Executive Engineer (Commercial), DVVNL Head Office: BHAWAN, 220KV Sub Station AGRA-MANWARA BYPASS ROAD SIKANDRA, AGRA-202007	 (Sanjiv Shukla) Chief Engineer (Planning) UPPCL
--	---	--	---	--

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE PROCURER 3 by:



अधीक्षण अभियन्ता (वा०)
म० वि० लि० लि०
4-ए, गोकुल मार्ग
लखनऊ

(Signature)

(Name)

(VIPIN JAIN)

(Designation)

SE (COM) - II

(Address)

4A GOKHLE MARG, LUCKNOW


(Fax No.)

(e-mail address)

In the presence of:

1. 

2.


Avush Singh
EL (UMPP-1) Plg, UPPCL



TPGPL

PVVNL


PVVNL

MVVNL

UPPCL


अधीक्षण अभियन्ता (वाणिज्य)
प्रधान विद्युत वितरण निगम लि०
वाराणसी

अधीक्षण अभियन्ता (वाणिज्य)
म० वि० लि० लि०
4-ए, गोकुल मार्ग
लखनऊ
Executive Engineer (Commercial) UPPCL
Head Office - UPPCL
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282007




(Sanjiv Shukla)
Chief Engineer (Planning)







SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE PROCURER 4 by:



 Executive Engineer (Commercial) /
 Head Office:-URJA BHAWAN, 220KV Sub Station
 (Signature) **AGRA-MATHURA BYPASS ROAD**
 (Name) **SIKANDRA, AGRA-202007**
 (Designation) **Executive Engineer**
 (Address)
 (Fax No.)
 (e-mail address)

In the presence of:



1. 
2. 
Arvish Singh
EE (L&MPP-I) PIG, UPCL

					
TPGPL	PVVNL	PVVNL	MXVNL	Executive Engineer (Commercial) / Head Office:-URJA BHAWAN, 220KV Sub Sta. AGRA-MATHURA BYPASS ROAD SIKANDRA - AGRA-202007	Sanjiv Shukla Chief Engineer (Planning)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE UPPCL by:

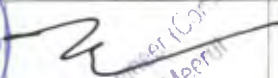

(Signature) **(Sanjiv Shukla)**
Chief Engineer (Planning)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1. 
2. 
Anish Singh
EE (UM P-I) Plg, UPPCL



TPGPL



Executive Engineer (Commercial), DVVNL
Head Office: UPPCL, Meerut

EPVVNL

अभियन्ता (विद्युत)
विद्युत विभाग
वाराणसी
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PVVNL

MVVNL


Executive Engineer (Commercial), DVVNL
Head Office: UPPCL, BHAWAN, 220KV Sub Stn
AGRA-MATHURA BYPASS ROAD
SIKANDRA - AGRA-282007

AGRA-MATHURA BYPASS ROAD

(Sanjiv Shukla)
Chief Engineer (Planning)

UPPCL