

**POWER PURCHASE AGREEMENT  
BETWEEN  
UTTAR PRADESH STATE ELECTRICITY BOARD  
AND  
NATIONAL THERMAL POWER CORPORATION LIMITED**

THIS POWER PURCHASE AGREEMENT hereinafter called "Agreement" entered into on the Seventh day of January Two Thousand (.07.01.2000.) between Uttar Pradesh State Electricity Board, a statutory body constituted by Government of Uttar Pradesh under the Electricity (Supply) Act, 1948 having its Head Office at Shakti Bhawan, 14, Ashok Marg, Lucknow, Uttar Pradesh (hereinafter referred to as "UPSEB") which expressions shall unless repugnant to the context or meaning thereof include its successors and assigns as party of the first part and National Thermal Power Corporation Limited, a Company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodhi Road, New Delhi-110003. (hereinafter referred to as "NTPC") which expression shall unless repugnant to the context or meaning thereof include its successors and assigns as party of the second part.

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WHEREAS NTPC is a Generating Company wholly owned by the Govt. of India and the ownership and operation of Tanda Thermal Power Station ( 440 MW )(hereinafter referred to as "Tanda TPS" and generally be referred to as "station" to be owned and operated by NTPC) is proposed to be transferred to NTPC by Government of Uttar Pradesh under Section 23 of Uttar Pradesh Electricity Reforms Act,1999.

AND WHEREAS UPSEB is desirous of purchasing energy from Tanda TPS and NTPC is willing to sell energy from Tanda TPS to UPSEB from the date of transfer of Tanda TPS on mutually agreed terms and conditions mentioned hereunder.

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

## 1.0 DEFINITIONS

The words/expressions used in this Agreement unless repugnant to the context shall have the same meaning assigned to them by Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 as amended from time to time and the Rules framed thereunder. The words/expressions mentioned below shall have the meanings respectively as assigned hereunder.

- i) GOI : Shall mean Govt. of India.
- ii) CEA : Shall mean Central Electricity Authority which is a statutory Authority.
- iii) POWERGRID : Shall mean Power Grid Corporation of India Ltd.

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- iv) NREB : Shall mean Northern Regional Electricity Board duly established by Government of India vide Resolution No.EL-II-35(3)/63 dated 13.2.1964 and subsequent amendment/ resolution thereof and as defined in the amended E(S) Act.
- v) NRLDC : Shall mean Northern Regional Load Despatch Centre.
- vi) Main Import: Meter : Shall mean Meter for measurement of active energy import at Tanda TPS 220 KV bus bars for Energy Accounting.
- vii) Main Export: Meter : Shall mean Meter for measurement of active energy export at Tanda TPS 220 KV bus bars for Energy Accounting.
- viii) Check Import/ Export Meter : Shall mean Meter for maintaining a check on performance of Main Import/Export meter.
- ix) Energy Account : Shall mean Periodic Energy Account including amendments thereof, if any.
- x) Charges for Supply of Energy : Shall mean and include all charges to be paid by UPSEB in respect of supply of power to them by NTPC in accordance with the provisions of this Agreement.
- xi) LC : Shall mean Irrevocable Revolving Letter(s) of Credit.

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xii) TOD

Shall mean Time-of-Day for the purpose of metering.

xiii) CERC

Shall mean Central Electricity Regulatory Commission established under section-3 of the Electricity Regulatory Commissions Act, 1998.

## 2.0 INSTALLED CAPACITY

The existing capacity of Tanda Thermal Power Station is 440 MW (4x110 MW). The installed capacity is, however, subject to derating / rerating of the generating units as determined from time to time, after following the prescribed procedure as laid down by CEA.

## 2.1 ALLOCATION OF POWER

Full capacity of Tanda TPS (capacity : 440 MW) shall be allocated to UPSEB subject to approval of the Government of India, Ministry of Power, from time to time.

## 2.2 DRAWAL OF POWER

The power from Tanda TPS shall be drawn by the UPSEB directly through its own transmission system or through transmission system of other agency(ies).

## 3.0 WHEELING OF POWER

For wheeling of Tanda TPS power beyond Tanda TPS bus bars, the charges for utilisation of transmission system(s) owned by agency(ies) other than UPSEB shall be mutually settled and paid for directly between that agency(ies) and UPSEB. NTPC shall not be responsible for the payment of such charges.

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#### 4.0 ENERGY ACCOUNTING

Energy Account prepared by NTPC will ensure total accounting of energy sent out at 220 kv bus bars of Tanda TPS. NTPC shall not be responsible for any loss of energy beyond 220 kv bus bars of Tanda TPS.

Energy Accounts shall be prepared by NTPC by 2<sup>nd</sup> day of the month (if 2<sup>nd</sup> day is a holiday, the next working day will be applicable) based on the monthly joint energy meter readings taken by NTPC and UPSEB. The energy Accounts including amendments, if any, issued by NTPC shall form the basis of billing and be binding on the parties. Any change in the energy accounts methodology would be by mutual consent of the parties. The export and import of energy at the metering points shall be computed on net basis i.e. by difference between export and import meter readings.

NTPC shall prepare bills for the energy supply to UPSEB on the basis of these Energy Accounts prepared by NTPC which shall indicate the monthly energy draws from Tanda TPS. For revised/amended energy accounts, if any, as mutually agreed, necessary adjustments would be made by NTPC by issuing supplementary bills/credit notes as required.

Notwithstanding the obligations of UPSEB to pay as per this Agreement, NTPC shall be entitled to supply power to other Bulk Power Customers outside Uttar Pradesh in the event of UPSEB's inability to utilise full power which could be generated by NTPC at Tanda TPS. In such a case, UPSEB will facilitate supply of power to other Bulk Power Customers by wheeling this power on their transmission system. UPSEB would be entitled to recover wheeling charges directly from such Bulk Power Customers for the use of their transmission and distribution system as per their practice in vogue subject to a ceiling of 10%. In case of sale to Bulk Power Customers, the payment of fixed and variable charges by UPSEB will be reduced to the extent of power supply to other Bulk Power Customers.

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amongst all Bulk Power Customers of Northern Region and NTPC for supply of power from the regional power stations of NTPC in Northern Region and the same shall be binding on the parties to these presents.

#### 4.1 POINTS FOR METERING

The main and check meters at all outgoing feeders at the 220 kV bus bars of Tanda TPS to be installed by NTPC shall be maintained by NTPC. Installation and maintenance of main and check meters at locations other than the meters installed and maintained by NTPC shall be the responsibility of UPSEB or Power Grid Corporation of India Ltd., or other agencies as the case may be. The meters shall be sealed after calibration by the concerned parties jointly.

#### 4.2 METERING SYSTEM

- 4.2.1 A set of Main and Check Energy Meters of 0.2 accuracy class shall be installed by NTPC on all outgoing feeders at 220 kV bus bars of Tanda TPS. Each of the Main and Check meters will be a pair of Export and Import meters.
- 4.2.2 All the meters shall be jointly calibrated, inspected and sealed on behalf of both the parties and shall not be interfered with except in the presence of other party or for joint testing and calibration and/or replacement and/or any other purposes for which due notice of 7 (seven) days will be given by NTPC so that this is done in the presence of the authorised representatives of the UPSEB.
- 4.2.3 All the meters shall be checked for accuracy quarterly by NTPC and UPSEB and shall be treated as working satisfactorily so long as the errors are within the limits prescribed in relevant Indian Standard (or British Standard where Indian Standard is not existing) for meters of the said class. The meter readings of main meters shall form the

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basis of the Energy Accounts so long as the quarterly checks thereof are within prescribed limits. If the check meters are found to be defective during the quarterly checks, these shall be immediately calibrated. Where the quarterly checks indicate errors in check meter(s) beyond limits but no error is noticed in main meter(s) during quarterly checking, computation of total net energy sent out from bus bars of Tanda TPS for the month shall be done on the basis of check meter(s) and main meter(s) shall be calibrated immediately during the quarterly test. check both the main meter(s) and corresponding check meter(s) are found to be beyond the prescribed limits of error both the meter(s) shall be immediately calibrated. The correction applicable to main meter shall be applied to the consumption registered by the main meter(s) to arrive at the correct consumption of energy for the purpose of Energy Accounts for the month from the date of last meter reading upto the date of replacement of correct main meter. Billing for the period upto the next monthly meter reading shall be as per calibrated readings. During this period of calibration of main and check meter(s), a set of main and check meters duly calibrated and sealed shall be installed by NTPC at Tanda TPS in the presence of representatives of both parties jointly sealed. The energy accounting during the period of calibration of original meters shall be as per the readings of the substitute meters. In case spare meters are not available with the parties, main/check meters shall be calibrated by rotation. During the period of removal of main meter, the energy accounting will be done on the basis of check meter readings applied with correction factor of check meter obtained during testing/calibration of check meter.

4.2.4 All the main and check energy meter(s) shall be calibrated every six months jointly by the parties, i.e. January and July, irrespective of the calibrations that might have been done during the quarterly check. It shall be endeavored by both parties that errors are adjusted as close to zero as possible. In case error found at the time of half yearly calibration is beyond the permissible limits the same procedures applicable to the quarterly test checks shall be followed.

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0.4% (Zero point four per cent) the main and check energy meter(s) shall be tested in turn and the errors at various levels as per standard procedures would be determined. If on such testing main energy meter error is found to exceed  $\pm 0.2\%$  (plus/minus zero point two per cent) the energy figures recorded by the main energy meter(s) for the above month concerned shall be revised accordingly and the main energy meter(s) shall be recalibrated or replaced by the correct energy meter(s). Pending the results of such testing, billing and payment shall continue to be based on the energy recorded by the check energy meter(s).

4.2.6 All the tests during quarterly checks and calibration on the main and check energy meter(s) shall be conducted in the presence of authorised representatives of NTPC and UPSEB and the results/correction so arrived at shall be applicable and binding on NTPC and UPSEB.

4.2.7 Corrections in billing, whenever necessary, shall be applicable for the period between the previous meter reading and the date and time of the replacement of recalibrated correct meter and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested as per Indian Standard (British Standard where Indian Standard is not existing). The error at the load and power factor nearest to the average monthly load served at the point during the period shall be taken as the error to be applied for correction.

4.2.8 During the period of calibration of the defective meter(s) another export and import meter(s) duly calibrated would be installed by NTPC at NTPC Station's bus bars in the presence of the other parties and jointly sealed. In case spare meter(s) are not available with NTPC the main and check meter(s) shall be calibrated by rotation. During the period of removal of main meter, the energy accounting will be done based on check meter readings applied with correction factor of the check meter obtained during testing/calibration of check meter.

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4.2.9 If both the main and check meter(s) fail to record or if any of the PT fuses are blown out, then the energy will be computed on a mutually agreeable basis between NTPC and UPSEB for that period of defect. In case there is no mutual agreement, the decision of Member Secretary of NREB would be final and binding.

4.2.10 For the purpose of test and calibration, the Substandard (SS) meter calibrated and sealed by Government Authorised Meter Testing House/Laboratory shall be utilised. This Substandard meter shall be got calibrated once in every six months at the Government Authorised Meter Testing House/Laboratory.

4.2.11 The readings of the meters shall be taken jointly by both the parties. The parties installing meters shall also be responsible for maintaining properly their respective meters.

Joint meter readings of the main as well as check meters shall be taken by the parties at 1200 hours (noon) on the 1st day of each calendar month. In case any of the parties is not available for joint meter readings at the specified time, the meter reading taken by the other party shall be binding on both the parties and shall be taken into account for preparation of Energy Accounts.

4.2.12 If at any time any party to the Agreement feels that a meter is not recording correctly it shall give notice to the other party. NTPC shall then get the testing and calibration of the meters owned by NTPC and located at Tanda TPS in co-ordination with the other party. If error on such testing is found to exceed the error limits specified in the relevant Indian Standard (British Standard where Indian Standard is not existing), for this class of meters, necessary adjustments in the bills shall be made from the date of notice or from such other date as can be satisfactorily established to be proper for such adjustment.

## 5.0 TARIFF

5.1 The Tariff and Terms and Conditions for the energy to be supplied by NTPC from Tanda TPS shall be as per the notification(s) issued/to be

...ing would specifically be taken into account while working out tariff for Tanda TPS:

- (i) Return would be 16% on equity or as revised from time to time by Govt. of India/CERC.
- (ii) NTPC will undertake renovation and modernisation expenditure at the Power Station in a phased manner based on its technical assessment and as per their procedures and guidelines. The renovation and modernisation expenditure will however be considered for fixed charge computation only from the date asset is put to use and capitalised. NTPC will complete the renovation and modernisation work within four years from the date of transfer.

The capital cost for tariff purpose will include the transfer price of Rs.1000 Cr. plus phased capital expenditure on renovation and modernisation and other capital works.

The tariff shall include provision for annual adjustment of Fixed Charges in case of change in Capital cost based on Audited Accounts with reference to Capital cost considered in tariff.

- (iii) In case an order by any Statutory Authority or Court of Law restrains NTPC from charging a tariff based on the transfer price of Rs.1000 crores, The Govt. of Uttar Pradesh and UPSEB shall within 30 days of such an order, implement an appropriate mechanism acceptable to NTPC to fully compensate NTPC for any difference between the above transfer price and the capital cost (excluding any additional expenditure on renovation and modernisation and other capital works which may be incurred by NTPC subsequent to the date of transfer of this station) adopted in tariff.
- (iv) The total capital cost for the purpose of tariff shall be divided into debt and equity in the ratio 70:30. Similar dispensation will

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- be applicable in case of future investments made by NTPC including those on renovation and modernisation of the station.
- (v) Interest shall be computed on the outstanding loans considering the scheduled repayments in line with Government of India notification no.251(E) dated 30.3.92 and repayment period in respect of loan portion shall be based on the terms applicable on Govt. of India loans to central public sector undertakings.
  - (vi) Incentive for Plant Load Factor (including deemed generation) in respective years shall be at the rate of 0.5% on Equity for every 1% increase in the Plant Load Factor above the base level. The base PLF level for incentive shall be the rolling average for the immediately preceding three financial years, subject to a minimum of 40 percent. The first year for this purpose shall be from date of transfer to 31.3.2001 and thereafter on financial year basis. The base level after the end of the fifth full financial year shall be 68.49 percent.
  - (vii) Disincentive at the above rate will be applicable in case the PLF in any year falls below 35 percent. However, machines under renovation and modernisation will be excluded while computing PLF for application of disincentive.

Deemed generation for the purpose of Incentive/ Disincentive shall mean for any period the quantum of energy which NTPC was in a position to generate during such period, but could not generate, as a direct result of:

- a) any direction issued by UPSEB, or NRLDC in case of power supply outside Uttar Pradesh, to reduce or restrict generation for any reason whatsoever, and/or
  - b) any failure on the part of UPSEB to draw energy, except under the conditions of force majeure and/or
  - c) Any reduction in generation on account of appropriate payment mechanism not being in place
- (viii) The O&M charges shall be computed @ 2.5% of current capital cost of Rs 1540 Cr plus annual escalation @10%.
  - (ix) Any water charges /cess on water payable for the Tanda TPS will additionally be a pass through in the tariff.

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## 5.2 LEVIES, TAXES, DUTIES, CESS ETC.

The tariff as mentioned at Clause 5.0 is exclusive of any statutory taxes, levies, duties, cess or any other kind of imposition (whatsoever imposed/charged by any Government (Central/State), Regulatory Agencies and/or any other local bodies/authorities on generation of electricity including auxiliary consumption or on any other types of consumption including water transmission, environment protection, sale or on supply of power/energy and/or in respect of any of its installations associated with Generating Stations and/or on Transmission System.

The total amount of aforesaid levies/taxes/duties/cess etc. payable by NTPC to the authorities concerned in any month shall be borne and additionally paid by UPSEB to NTPC and the same shall be charged in the monthly bills raised by NTPC on UPSEB.

Incidence of tax liability on NTPC as per the provisions of the Income Tax Act applicable from time to time shall be recovered from UPSEB duly certified by Statutory auditors of NTPC. The allocation of the Income Tax liability to the respective Power Stations will be in proportion to the capacity of NTPC in operation at the beginning of the respective financial year. The income tax allocated to UPSEB and other Bulk Power Customers, if any, will be in proportion to their energy draws during the year to which income tax pertains.

## 5.3 PROVISIONAL TARIFF

The tariff of the station shall be based on the principles stipulated in clause 5.0 above. However, till the tariff is determined by CERC, a provisional tariff would be applicable from the date of transfer. The

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provisional tariff would be based on the transfer price of Rs. 1000 crs.

Subject to adjustment of tariff w.e.f. due date, the provisional tariff for supply of power from this Station till determination of tariff by CERC would be as under:-

Fixed charges (Rs. cr./month)	Variable Charges (p/kwh)
24.58 (Rs.294.93 Crs/annum)	As per formula at Annexure-I

Note:

The variable charges would initially be worked out based on average of actuals of various operating parameters for the four years period from 1994-95 to 1997-98 viz Aux. Consumption as 12.2%, Specific Oil Consumption as 15 ml/kwh and Station Heat Rate of 3440 Kcal/kwh. The above operating parameters shall be mutually reviewed and revised downwards by NTPC and UPSEB within three months from the date of transfer based on plant assessment by NTPC. If the review is not completed within three months, NTPC will continue to bill and UPSEB will continue to pay provisionally at the above rates.

Subject to the provision of clause 5.1(ii) the fixed charges shall be revised from time to time based on the expenditure incurred on renovation and modernisation and other capital works based on NTPC's technical assessment.

#### 6.0 BILLING AND PAYMENT

All charges under this Agreement shall be billed by NTPC and shall be paid by UPSEB in accordance with the following provisions:

- NTPC shall present bills after the end of each calendar month for energy supplied to UPSEB from Tanda TPS.

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submit the bills to the Chief of Finance and Accounts wing of UPSEB.

- c) The monthly bill for Tanda TPS shall be aggregate of charges in accordance with the provisions of the Agreement. If for certain reasons some of the charges cannot be included in the monthly main bills, such charges shall be billed as soon as possible through supplementary bill(s).
- d) The bill(s) of NTPC shall be paid in full subject to the condition that-
  - i) there is no apparent arithmetical error in the bill(s),
  - ii) the bill(s) is/are claimed as per the agreed tariff referred to in clause 5.0, and
  - iii) energy accounts referred to in clause 4.0.
- e) In disputed cases UPSEB shall file a written objection with NTPC within 45 (forty five) days of presentation of the bill, giving following particulars:
  - i) Item disputed, with full details/data and reasons of dispute, and
  - ii) Amount disputed against each item.

NTPC shall resolve the above dispute(s) with UPSEB as soon as possible.

#### ESTABLISHMENT OF LETTER OF CREDIT (LC) AND PAYMENT OF BILLS

Payment of bills for supply of power from Tanda TPS shall be made by UPSEB through irrevocable revolving Letters of Credit

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(LC) established in favour of National Thermal Power Corporation Ltd. with a public sector bank prior to commencement of power supply from Tanda TPS. The LC shall be opened at the same branch of the bank which maintains the Bank Account of UPSEB to which the maturing obligations under the LCs will be debited.

The LCs shall be established to cover one month average billing of last quarter for power supply from Tanda TPS. In case of first LC, the LC amount shall be as indicated by NTPC.

The LC shall be established for a minimum period of one year and would be renewed/enhanced by UPSEB for the subsequent period ensuring that LC remains valid at all times during the entire/extended validity of this Agreement.

LC shall be without any limitation or restriction with regard to the manner and dates when bill(s) can be presented to Bank by NTPC. The bills so presented by NTPC to the Bank shall be promptly paid on their presentation. The amount of LC shall be reviewed each quarter commencing April, July, October and January in each financial year and its amount shall be enhanced/reduced accordingly. The LC charges shall be borne by UPSEB. The operation of LC shall not depend on the recoupment of the amounts by UPSEB.

In addition to LC as provided above, NTPC will have First Charge on total revenue being received by UPSEB centrally in its banks.

It is specifically agreed between the parties that UPSEB shall meet all its payment obligations under this Agreement for supply of power by NTPC each month through an Irrevocable Revolving Letter of Credit opened in favour of NTPC. As a back up to the LC Arrangement, UPSEB agrees for the creation of First Charge in favour of NTPC in respect of all its revenues

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for making payment to NTPC of any of the NTPC bills remaining unpaid through the LC Arrangement as aforesaid.

UPSEB hereby undertakes in addition to LC provision, to create First Charge in favour of NTPC on its total collections whether received centrally or otherwise and declares that such charge shall take overriding priority over all the charges whether already created or to be created on the revenues received by UPSEB. First Charge shall be created in favour of NTPC by means of a legally enforceable agreement duly registered with appropriate authority within 3 months of signing of this PPA.

For the purpose of operating First Charge on revenues of UPSEB flowing into different banks, UPSEB shall identify one of its Bankers as Principal Bank. The Principal Bank shall evolve a mechanism for operating the First Charge in consultation with other bankers of UPSEB. The Principal Bank shall enter into a Tripartite Agreement with UPSEB and NTPC regarding the mechanism by which First Charge shall be operated in favour of NTPC. The Principal Bank shall be the same public sector bank through which UPSEB has opened an irrevocable LC arrangement referred to above.

If UPSEB fails to make full payments through LC in any month or fails to renew, replenish or enhance the LC as required or if the bill amount exceeds the amount of LC, the Principal Bank shall automatically transfer sufficient funds into NTPC Bank Account with the Principal Bank to the extent of shortfall so that 100% payment of NTPC bill is ensured. Such transfer of funds from the Principal Bank shall be unconditional and at no time UPSEB shall restrain, revoke or modify the authority to this effect without the express consent of NTPC.

The automatic transfer of funds by the Bank to NTPC Bank Account with the Principal Bank shall be carried out by the Bank in preference to meeting any cheques or other payment instructions issued by UPSEB from time to time.

Any bank charges or other expenses in respect of this First Charge Arrangement shall be borne by UPSEB.

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g) REBATE ON PAYMENT THROUGH LC

Rebate on payments, if any, shall be as per the provisions of tariff approved by CERC from time to time and applicable in respect of Tanda TPS and other concerned power stations of NTPC.

h) SURCHARGE DUE ON LATE PAYMENT

In case payment is made after the last day of the month following the month in which the bill is raised by NTPC surcharge @ 2% (two per cent) per month or as notified by CERC shall be charged on the amounts remained unpaid after the said date in proportion to the number of days of delay after the said date.

i) STATE GOVERNMENT GUARANTEE

Notwithstanding the above, UPSEB within three months of signing of this Agreement shall arrange to obtain Guarantee from the State Government of Uttar Pradesh as per mutually agreed draft to be operative at least 3 months prior to the date of commencement of supply of power from Tanda TPS, in favour of National Thermal Power Corporation Ltd. to guarantee the performance of the obligations of UPSEB to make regular payments of the energy bills presented by NTPC for power supplied to UPSEB from its various power stations.

In case the outstanding dues from all power stations increase to more than two (2.0) months of billing (calculated on last 3 months average basis) NTPC shall have right to get the payments inclusive of surcharge directly from GOI through Central Plan Assistance to the State Government of Uttar Pradesh or from the State's RBI account in case of default in

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payments, automatically without referring the matter further to the State Government of Uttar Pradesh or UPSEB.

j) NON-PAYMENT OF BILLS AND NON-ESTABLISHMENT OF LC / GOVT. GUARANTEE.

UPSEB shall open/enhance LC, First Charge Arrangement and furnish State Government Guarantee as per this Agreement within the stipulated time periods as per Clause 6.0(f), and 6.0(i) covering the monthly payments towards power supplied to UPSEB from Tanda TPS. In the event of failure to establish LC and/or open First Charge Arrangement and/or furnish Govt. Guarantee as above and/or to open / enhance LC within the specified period or if any bills remain unpaid for a period exceeding two months from the date of issue of the bill for the power supplies from various NTPC power stations to UPSEB, NTPC may discontinue/reduce supply of power from Tanda TPS to UPSEB and inform NREB accordingly.

7.0 ARBITRATION

7.1 All differences or disputes between the parties arising out of or in connection with this Agreement shall be settled through arbitration as provided herein.

7.2 In the event of such differences or disputes between the parties, any party may by a written notice of 30 days to the other party request for appointment of a Sole Arbitrator to be decided mutually by the parties and, in case of disagreement, to be decided by Chairman, Central Electricity Authority. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications thereto. The Arbitrator shall give a speaking and reasoned award. The decision of the Arbitrator shall be final and binding on the parties. The venue of the arbitration shall be as decided by the Arbitrator.

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7.3 The Arbitrator shall reasonably decide in what proportion his fee and cost of arbitration proceedings shall be borne by the parties. The Arbitrator with the consent of the parties may extend the time to make and publish the award.

7.4 Notwithstanding the existence of any question, disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement.

#### 8.0 FORCE MAJEURE

The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force Majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, Act of God and any other reason beyond the control of concerned party. But any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect. Generation/drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

However, the financial liabilities of the parties under this Agreement shall remain unaltered under the condition of Force Majeure also.

#### 9.0 IMPLEMENTATION OF THE AGREEMENT

All discretions to be exercised and directions, approvals, consents and notices to be given and actions to be taken under these presents unless otherwise expressly provided herein, shall be exercised and given by the signatories to this Agreement or by the authorised representative(s) that each party may nominate in this behalf and notify in writing to the other party by Registered Post. Any other nomination of authorised representative(s) shall be informed likewise in writing to/by UPSEB within one month of signing of the Agreement. Notwithstanding any nomination, the Executive Director(NCR), NTPC, NCR HQ., Engineering Office Complex, Sector-24, Noida- 201 301

(U.P.), Executive Director (NR), NTPC, NR HQ., 5th Floor, Sangam Palace, Civil Lines, Allahabad - 211 001; as well as General Manager (Commercial), NTPC, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110 003 or their authorised representatives at its Registered Office first above mentioned, shall be authorised to act for and on behalf of NTPC.

#### 10.0 NOTICE

All notices required or referred to under this Agreement shall be in writing and signed by the respective authorised signatories of the parties mentioned herein above, unless otherwise notified. Each such notice shall be deemed to have been duly given if delivered or served by registered mail/speed post of Department of Posts with an acknowledgement due to the other parties in terms of Clause 9.0 above.

#### 11.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

The Agreement shall come into force from the date of transfer for all purposes and intent and shall remain operative upto completion of twenty five (25) years from the date of transfer provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such further period of time as the parties may mutually agree. In case UPSEB continue to get power from Tanda TPS even after expiry of this Agreement without further renewal or formal extension thereof then all the provisions of this Agreement shall continue to operate till this Agreement is formally renewed, extended or replaced.

#### 12.0 SUCCESSORS AND ASSIGNS

In case any of the parties to this Agreement is restructured and/or its generation, transmission and distribution activities are taken over by other organisation(s)/agency(ies), partly or wholly, the Agreement shall be binding mutatis mutandis upon the successor organisation(s)/agency(ies), and guarantee by the concerned State Government, shall continue to remain valid with respect to the obligations of the successor organisation(s)/agency(ies).

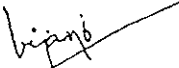
In such an event, the LC arrangement and First Charge Arrangement referred to in para 6.0(f) above shall also be binding in respect of the successor organisation(s)/agency(ies) with such modifications and changes as may be considered necessary.

IN WITNESS WHEREOF the parties have executed these presents through their Authorised Representatives at Lucknow.

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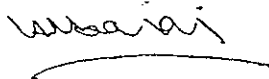
  
For and on behalf of  
Uttar Pradesh State Electricity Board

(विजय कुमार)  
अपर सचिव-प्रधान  
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For and on behalf of  
National Thermal Power Corporation Ltd.





FORMULA FOR VARIABLE CHARGES

The Variable Charges (VC) would be payable on monthly basis by UPSEB in accordance with the following formula:

$$VC \text{ (p/kwh)} = \frac{10 \times Ho}{(100 - AC)} (Pom/Kom) + \frac{10 \times Hc}{(100 - AC)} (Pcm/Kcm)$$

Where

Ho = Heat from secondary fuel oils as derived from parameters mentioned in clause 5.0

AC = Auxiliary Power Consumption in percentage, as mentioned in Clause 5.0.

Pom = Weighted Average price of fuel oils as per PSL at the end of the month at the power station as furnished by NTPC expressed in Rs./KL

Kom = Weighted average Gross Calorific Value (GCV) of fuel oils fired into the boiler during the month expressed in Kcal/Litre.

Hc = Heat Rate mentioned in Clause 5.0 less heat contributed by secondary fuel oils i.e. Ho above.

Pcm = Weighted average price of coal as per PSL at the end of the month at the power station as furnished by NTPC expressed in Rs./MT.

Kcm = Weighted average Gross Calorific Value (GCV) of coal fired at boiler front during the month, expressed in kcal/Kg.

Note:

PSL means the Price Store ledger of NTPC for Fuel oils and coal giving the weighted average issue price of coal and oil every month and duly certified by Statutory Auditors at the end of financial year for each month.

*Signature*

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