

RFP Corrigendum

S. No.	Clause No.	Current Clause	Amendment/Addendum
1.	Definition (Section 2)	“ Bid Deadline ” shall be the last date of submission of online bid i.e. by <u>16th June 2017</u> upto 05:00 PM.	“ Bid Deadline ” shall be the last date of submission of online bid i.e. by 29 th <u>June 2017</u> up to 05:00 PM.
2.	4.3.3	NA	A copy of Draft Power Purchase Agreement countersigned and stamped as a token of acceptance.
3.	4.4	<p>Submission of Original Physical Copies:-</p> <p>The original physical copies of the following shall also be required to be submitted by the Bidder at JREDA office by the Deadline for submission of offline documents:</p> <p>4.4.1 Original Copy of Covering Letter as per Annexure 2;</p> <p>4.4.2 Original Copy of Joint Deed Agreement as per Annexure 3;</p> <p>4.4.3 Original Copy of Power of Attorneys as per Annexure 4 & Annexure 5;</p> <p>4.4.4 Original Copy of Bid Bond of Rs. 3 Lac/MW as per Annexure 6;</p> <p>4.4.5 Demand Draft of Rs. 25,000 (Rs. Twenty Five Thousands Only) towards the Document & Bid Processing Fees.</p>	<p>Submission of Original Physical Copies:-</p> <p>The original physical copies of the following shall also be required to be submitted by the Bidder at JREDA office by the Deadline for submission of offline documents:</p> <p>4.4.1 Original Copy of Bid Bond of Rs. 3 Lac/MW as per Annexure 6;</p> <p>4.4.2 Demand Draft of Rs. 25,000 (Rs. Twenty Five Thousands Only) towards the Document & Bid Processing Fees.</p>
4.	4.8.1	The Bidders should submit their Bids online in electronic form on or before the Bid Deadline i.e. 05:00 PM (IST) on <u>16th June 2017</u>	The Bidders should submit their Bids online in electronic form on or before the Bid Deadline i.e. 05:00 PM (IST) on <u>29th June 2017</u>

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5.	4.8.2	The Bidder shall further submit the original documents as specified in the Clause 4.4 in a sealed envelope so as to reach the following address by 05:00 PM (IST) on 17th June 2017 at the above mentioned address.	The Bidder shall further submit the original documents as specified in the Clause 4.4 in a sealed envelope so as to reach the following address by 05:00 PM (IST) on <u>1st July 2017</u> at the above mentioned address.																				
6.	4.8.3	<p>Selection of Hydro Power Project Developer and Project commissioning shall be carried out according to the timeline given below:-</p> <table border="1"> <thead> <tr> <th>Date</th> <th>Event</th> </tr> </thead> <tbody> <tr> <td>16th June, 2017</td> <td>Last date of downloading of RfP (Upto 5 PM)</td> </tr> <tr> <td>16th June, 2017</td> <td>Last date of Submission of Online Bids (Upto 5 PM)</td> </tr> <tr> <td>17th June, 2017</td> <td>Last date of Submission of Offline Documents (Upto 5 PM)</td> </tr> <tr> <td>19th June, 2017</td> <td>Opening of Technical Bid (At 3:30 PM)</td> </tr> </tbody> </table>	Date	Event	16 th June, 2017	Last date of downloading of RfP (Upto 5 PM)	16 th June, 2017	Last date of Submission of Online Bids (Upto 5 PM)	17 th June, 2017	Last date of Submission of Offline Documents (Upto 5 PM)	19 th June, 2017	Opening of Technical Bid (At 3:30 PM)	<p>Selection of Hydro Power Project Developer and Project commissioning shall be carried out according to the timeline given below:-</p> <table border="1"> <thead> <tr> <th>Date</th> <th>Event</th> </tr> </thead> <tbody> <tr> <td>29th June, 2017</td> <td>Last date of downloading of RfP (Upto 5 PM)</td> </tr> <tr> <td>29th June, 2017</td> <td>Last date of Submission of Online Bids (Upto 5 PM)</td> </tr> <tr> <td>1st July, 2017</td> <td>Last date of Submission of Offline Documents (Upto 5 PM)</td> </tr> <tr> <td>3rd July, 2017</td> <td>Opening of Technical Bid (At 3:30 PM)</td> </tr> </tbody> </table>	Date	Event	29 th June, 2017	Last date of downloading of RfP (Upto 5 PM)	29 th June, 2017	Last date of Submission of Online Bids (Upto 5 PM)	1 st July, 2017	Last date of Submission of Offline Documents (Upto 5 PM)	3 rd July, 2017	Opening of Technical Bid (At 3:30 PM)
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7.	7.3.1	The entire power shall be purchased by Jharkhand Discom and necessary steps shall be taken to have a binding arrangement between the project and Discom. The said arrangement shall be backed by proper security mechanisms like Escrow and Letter of Credit. Also these projects being renewable energy projects shall have a must run status. The electricity shall be purchased by Discom at a tariff determined by JSERC as per prevailing regulations.	The State Distribution Utility of Jharkhand - Jharkhand Bijli Vitran Nigam Ltd (JBVNL) shall have the Right of First Refusal to purchase power generated by the IPP's project. Therefore, the power generated by the IPP's project, shall be first offered to Jharkhand Discom (JBVNL) as per the timeline described in Clause No. 7.3.3. The arrangement between the project and Discom (JBVNL) to sell such power shall be in the form of a Power Purchase Agreement. The said arrangement shall also be backed by proper security mechanism in the form of a Letter of Credit. The electricity shall be purchased by Discom at a tariff determined by JSERC as per prevailing regulations. Further these projects being renewable energy projects shall have a must run status.																				

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			<i>While determining the tariff, the energy considered by JSERC shall include the mandatory minimum free power of 4% only. However, the free power quoted by the Bidder over and above the mandatory minimum free power of 4% shall not be considered in the energy by JSERC for tariff determination.</i>
8.	7.3.2	However, the IPP is free to sell power to any their party other than the Discom if it wish to do so. For sale of power to any third party within or outside the state, the IPP shall be required to pay the open access charges, T&D losses as per the regulations issued by JSERC.	<p>In case the Discom (JBVNL) decides not to proceed with the purchase of power offered under Clause 7.3.1 within <u>90 days</u> from the date of offer from the IPP as prescribed in the timeline as per Clause 7.3.3, the developer/IPP may supply power from its project to any third party and also notify JREDA about the same.</p> <p>For such sale of power to any third party within or outside the state, the IPP shall be required to pay the open access charges, T&D losses as per the regulations issued by JSERC.</p>
9.	7.3.3	Not later than twelve (12) months from the signing of Implementation Agreement, the IPP shall, vide a written communication to Discom under a copy to JREDA indicate its willingness to supply power to the Discom. In case the IPP fails to indicate its willingness as per the timelines under this clause, the Discom shall be under no obligation to procure power from the Project.	<p>Not later than <u>30 days</u> from the signing of Implementation Agreement, the IPP shall offer power in accordance with Clause 7.3.1 vide a written communication to Discom (JBVNL) with a copy to JREDA and <u>execute the Power Purchase Agreement with the Discom (JBVNL)</u> to supply power from its project.</p> <p>The Discom (JBVNL) shall communicate in writing its intent to purchase power or otherwise, not later than <u>90 days</u> from the receipt of such offer from the IPP.</p> <p>In case the Discom (JBVNL) fails to communicate its intent within the above stipulated time period, the IPP may sell the power generated from its project to any third party.</p>
10.	7.4.1	In case where the IPP chosos to supply the power to Discom, the royalty/free power will be settled in the monetary terms as the revenue equivalent to the percentage of free power at the tariff determined by the	In case where the IPP supplies power to Discom (JBVNL), the royalty/free power will be settled in the monetary terms as the revenue equivalent to the percentage of free power at the tariff determined by the Hon'ble Commission, in the following manner:

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		<p>Hon'ble Commission, in the following manner:</p> <p>The IPP would deliver 100% power to Discom. Discom would in distribute the payment in following parts:</p> <p>(a) An amount equivalent to 2% of energy towards Local Area Development Fund;</p> <p>(b) An amount to the account of JREDA as given below:</p> <p style="padding-left: 40px;">Quantum of Free Power quoted by the Bidder</p> <p style="padding-left: 80px;">Plus</p> <p style="padding-left: 40px;">2% of the mandatory of Free Power</p> <p>(c) Balance to the IPP.</p>	<p><u>The IPP would deliver 100% power to Discom. Discom would in turn provide the entire payment to the IPP.</u></p> <p><u>Within 30 days of receipt of payment from the Discom towards Free Power the IPP shall transfer monetary equivalent of Free Power to the account of JREDA as given below:</u></p> <p style="padding-left: 40px;"><u>Monetary Equivalent of Free Power quoted by the Bidder</u></p> <p style="padding-left: 40px;"><u>(Over and above the mandatory minimum power of 4%)</u></p> <p style="padding-left: 80px;"><u>Plus</u></p> <p style="padding-left: 40px;"><u>Minimum Mandatory Free Power of 4%</u></p> <p>In case the payment to JREDA is delayed by the IPP beyond 30 days, a Delayed Payment Surcharge shall be levied at the rate of 1.25% per month or part thereof.</p>
11.	7.4.2	<p>In case where the IPP chooses NOT to supply the power to Discom, the royalty/free power will be settled in the monetary terms as the revenue equivalent to the percentage of free power at the tariff determined on the basis of applicable regulations promulgated by the Hon'ble Commission, in the following manner:</p> <p>The IPP would deliver such % of power to Discom which is equivalent to the sum of mandatory minimum of 4% and the % of Free Power quoted by the Successful Bidder in the bid submitted in response to the RfP. Discom would in distribute the payment in following parts:</p> <p>(a) An amount equivalent to 2% of energy towards</p>	<p>In case where the IPP supplies power to a third party according to Clause 7.3.2, the royalty/free power will be settled in monetary terms as the revenue equivalent to the percentage of free power at rates determined by JREDA considering the Project Cost as approved by the Financial Institution and on the basis of the norms for tariff determination for Small Hydro power plants provided by Jharkhand State Electricity Regulatory Commission, in the following manner:</p> <p><u>The IPP would deliver 100% power to the third party procurer. The third party procurer would in turn provide the entire payment to the IPP.</u></p> <p><u>Within 30 days of end of each calendar month in which electricity has been supplied, the IPP shall transfer monetary equivalent of</u></p>

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		<p>Local Area Development Fund; and (b) An amount to the account of JREDA as given below: <i>Quantum of Free Power quoted by the Bidder</i> <i>Plus</i> <i>2% of the mandatory of Free Power</i></p>	<p><u>Free Power to the account of JREDA as given below:</u> <u>Monetary Equivalent of Free Power quoted by the Bidder</u> <u>(Over and above the mandatory minimum power of 4%)</u> <u>Plus</u> <u>Minimum Mandatory Free Power of 4%</u> In case the payment to JREDA is delayed by the IPP beyond 30 days, a Delayed Payment Surcharge shall be levied at the rate of 1.25% per month or part thereof.</p>
12.	7.9.2	NA	Any Statutory Levies, Taxes & Charges such as Water Cess, etc. applicable to the project as per the prevailing rules and regulations of Central or State government shall be borne by the developer/IPP.

Implementation Agreement Corrigendum

S. No.	Article No.	Current Clause	Amendment/Addendum
1.	Article 1.5	<p>“Concession Period” shall mean a period of Forty (35) years beginning from the date of achievement of Commercial Operations;</p>	<p>“Concession Period” shall mean a period of Thirty Five (35) years beginning from the date of achievement of Commercial Operations;</p>
2.	Article 2.4	<p>This Agreement shall stand terminated upon occurrence of any of the following:</p> <p>(a) Thirty Fifth (35th) Anniversary from the date of issuance of Letter of Intent; or</p> <p>(b) Events leading to early termination as stated in Article 4.1, Article 4.12, Article 6.5 and Article 7.11; or</p> <p>(c) Mutual agreement between the Parties.</p>	<p>This Agreement shall stand terminated upon occurrence of any of the following:</p> <p>(a) Thirty Fifth (35th) Anniversary from the date of achievement of Commercial Operations/COD; or</p> <p>(b) Events leading to early termination as stated in Article 4.1, Article 4.12, Article 6.5 and Article 7.11; or</p> <p>(c) Mutual agreement between the Parties.</p>
3.	Article 4.4	<p>In case of failure to achieve milestone as per Commissioning Schedule provided above in Article 4.2, JREDA shall have a right to encash the Performance Guarantee in the following manner:</p> <p>(a) For delay up to <i>four months</i> - JREDA will encash 20% of the total Performance Guarantee proportionate to the Capacity not commissioned.</p> <p>(b) For delay of more than <i>four months</i> and up to <i>five months</i> - JREDA will encash 40% of the total Performance Guarantee proportionate to the Capacity not commissioned in addition to BG in clause above.</p> <p>(c) For delay of more than <i>five months</i> and up to <i>six months</i> - JREDA will encash the remaining Performance Guarantee proportionate to the</p>	<p>In case of failure to achieve milestone as per Commissioning Schedule provided above in Article 4.2, JREDA shall have right to encash the Performance Guarantee in the following manner:</p> <p>(a) For delay up to <i>four months</i> - JREDA will encash 20% of the total Performance Guarantee proportionate to the Capacity not commissioned.</p> <p>(b) For delay of more than <i>four months</i> and up to <i>five months</i> - JREDA will encash 40% of the total Performance Guarantee proportionate to the Capacity not commissioned in addition to BG in clause above.</p> <p>(c) For delay of more than <i>five months</i> and up to <i>six months</i> - JREDA will encash the remaining Performance Guarantee proportionate to the Capacity not commissioned in addition to BG in clause above.</p>

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		Capacity not commissioned in addition to BG in clause above.	<u>The IPP shall restore the Performance Guarantee to its original value with the 7 (seven) days of encashment of Performance Guarantee</u>
4.	Article 4.5	<p>In case the IPP does not executes PPA with the Discom, the following shall apply:</p> <p>In case the commissioning of project is delayed beyond 6 (six) months, the IPP shall pay to Procurer the Liquidated Damages (LD) at the rate of Rs.1,00,000 per MW per day for the delay in such remaining Capacity which is not commissioned. The amount of liquidated damages worked out as above shall be recovered by Procurer from the payments due to the IPP on account of sale of Hydro power to Procurer. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Guarantee and payment of Liquidated Damages shall be limited to 35 months for projects upto 5 MW, 41 months for projects more than 5 MW and upto 12 MW and 53 months for projects more than 12 MW from the date of signing of Implementation Agreement.. In case of any further delay beyond the maximum time period allowed, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the Allocated Project Capacity.</p>	<p>In case the commissioning of project is delayed beyond 6 (six) months, the IPP shall pay to Procurer the Liquidated Damages (LD) at the rate of Rs.1,00,000 per MW per day <u>through encashment of Performance Guarantee</u> for the delay in such remaining Capacity which is not commissioned. <u>The IPP shall restore the Performance Guarantee to its original value with the 7 (seven) days of encashment of Performance Guarantee</u></p> <p>The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Guarantee and payment of Liquidated Damages shall be limited to <u>35 months for projects upto 5 MW, 41 months for projects more than 5 MW and upto 12 MW and 53 months for projects more than 12 MW</u> from the date of signing of Implementation Agreement.. In case of any further delay beyond the maximum time period allowed, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the Allocated Project Capacity.</p>
5.	Article 4.6	In case the IPP executes PPA with the Discom, the provisions of PPA shall be applicable	<u>The clause has been deleted</u>

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6.	Article 5.2	The entire power shall be purchased by Jharkhand Discom and necessary steps shall be taken to have a binding arrangement between the project and Discom. The said arrangement shall be backed by proper security mechanisms like Escrow and Letter of Credit. Also these projects being renewable energy projects shall have a must run status. The electricity shall be purchased by Discom at a tariff determined by JSERC as per prevailing regulations.	<p>The State Distribution Utility of Jharkhand - Jharkhand Bijli Vitran Nigam Ltd (JBVNL) shall have the Right of First Refusal to purchase power generated by the IPP's project. Therefore, the power generated by the IPP's project, shall be first offered to Jharkhand Discom (JBVNL) as per the timeline described in Article 5.4. The arrangement between the project and Discom (JBVNL) to sell such power shall be in the form of a Power Purchase Agreement. The said arrangement shall also be backed by proper security mechanism in the form of a Letter of Credit. The electricity shall be purchased by Discom at a tariff determined by JSERC as per prevailing regulations. Further these projects being renewable energy projects shall have a must run status.</p> <p><i><u>While determining the tariff, the energy considered by JSERC shall include the mandatory minimum free power of 4% only. However, the free power quoted by the Bidder over and above the mandatory minimum free power of 4% shall not be considered in the energy by JSERC for tariff determination.</u></i></p>
7.	Article 5.3	However, the IPP is free to sell power to any their party other than the Discom if it wish to do so. For sale of power to any third party within or outside the state, the IPP shall be required to pay the open access charges, T&D losses as per the regulations issued by JSERC.	<p>In case the Discom (JBVNL) decides not to proceed with the purchase of power offered under Article 5.2 within <u>90 days</u> from the date of offer from the IPP as prescribed in the timeline as per Article 5.4, the developer/IPP may supply power from its project to any third party and also notify JREDA about the same. For such sale of power to any third party within or outside the state, the IPP shall be required to pay the open access charges, T&D losses as per the regulations issued by JSERC.</p>
8.	Article 5.4	Not later than twelve (12) months from the signing of Implementation Agreement, the IPP shall, vide a written communication to Discom under a copy to JREDA indicate its willingness to supply power to the Discom. In case the IPP fails to indicate its willingness as per the timelines under this clause, the Discom shall be under no obligation	<p>Not later than <u>30 days</u> from the signing of Implementation Agreement, the IPP shall offer power in accordance with Article 5.2 vide a written communication to Discom (JBVNL) with a copy to JREDA and <u>execute the Power Purchase Agreement with the Discom (JBVNL)</u> to supply power from its project.</p> <p>The Discom (JBVNL) shall communicate in writing its intent to</p>

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		to procure power from the Project.	purchase power or otherwise, not later than <u>90 days</u> from the receipt of such offer from the IPP. In case the Discom (JBVNL) fails to communicate its intent within the above stipulated time period, the IPP may sell the power generated from its project to any third party.
9.	Article 5.7	In case where the IPP choses to supply the power to Discom, the royalty / Free Power will be settled in the monetary terms as the revenue equivalent to the percentage of Free Power at the tariff determined by the Hon'ble Commission, in the following manner:	In case where the IPP supplies power to Discom (JBVNL) in accordance with Article 5.2 & Article 5.4, the royalty/free power will be settled in the monetary terms as the revenue equivalent to the percentage of free power at the tariff determined by the Hon'ble Commission, in the following manner:
10.	Article 5.8	The IPP would deliver 100% power to Discom. Discom would in distribute the payment in following parts: (a) An amount equivalent to 2% of energy towards Local Area Development Fund; (b) An amount to the account of JREDA as given below: Quantum of Free Power quoted by the Bidder Plus 2% of the mandatory of Free Power (c) Balance to the IPP.	The IPP would deliver 100% power to Discom. Discom would in turn provide the entire payment to the IPP. <u>Within 30 days of receipt of payment from the Discom towards Free Power, the IPP shall transfer monetary equivalent of Free Power to the account of JREDA as given below:</u> <u>Monetary Equivalent of Free Power quoted by the Bidder</u> <u>(Over and above the mandatory minimum power of 4%)</u> <u>Plus</u> <u>Minimum Mandatory Free Power of 4%</u> In case the payment to JREDA is delayed by the IPP beyond 30 days, a Delayed Payment Surcharge shall be levied at the rate of 1.25% per month or part thereof.
11.	Article 5.9	In case where the IPP chooses NOT to supply the power to Discom, the royalty / Free Power will be settled in the monetary terms as the revenue equivalent to the percentage of Free Power at the tariff determined on the basis of applicable regulations promulgated by the Hon'ble Commission, in the manner outlined in clause 5.10.	In case where the IPP supplies power to a third party according to Article 5.3, the royalty / Free Power will be settled in the monetary terms as the revenue equivalent to the percentage of Free Power at rates determined by JREDA considering the Project Cost as approved by the Financial Institution and on the basis of the norms for tariff determination for Small Hydro

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			power plants provided by Jharkhand State Electricity Regulatory Commission, in the manner outlined in Article 5.10.
12.	Article 5.10	<p>The IPP would deliver such % of power to Discom which is equivalent to the sum of mandatory minimum of 4% and the % of Free Power quoted by the Successful Bidder in the bid submitted in response to the RfP. Discom would in distribute the payment in following parts:</p> <p>(d) An amount equivalent to 2% of energy towards Local Area Development Fund; and</p> <p>(e) An amount to the account of JREDA as given below: <i>Quantum of Free Power quoted by the Bidder</i> <i>Plus</i> <i>2% of the mandatory of Free Power</i></p>	<p>The IPP would deliver 100% power to the third party procurer. The third party procurer would in turn provide the entire payment to the IPP.</p> <p><u>Within 30 days of end of each calendar month in which electricity has been supplied, the IPP shall transfer monetary equivalent of Free Power to the account of JREDA as given below:</u></p> <p><u>Monetary Equivalent of Free Power quoted by the Bidder</u> <u>(Over and above the mandatory minimum power of 4%)</u></p> <p><i>Plus</i></p> <p><u>Minimum Mandatory Free Power of 4%</u></p> <p>In case the payment to JREDA is delayed by the IPP beyond 30 days, a Delayed Payment Surcharge shall be levied at the rate of 1.25% per month or part thereof.</p>

Sd/-
Director,
JREDA, Ranchi

NIT No. : _____

Dated: _____

DRAFT POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF SMALL HYDRO ELECTRIC POWER
ON
LONG TERM (35 YEARS) BASIS

Between

[Insert Name of Successful Bidder]

and

Jharkhand Bijli Vitran Nigam Limited

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This Power Purchase Agreement (the “Agreement”) is made on the[Insert date] day of[Insert month] of Two Thousand Seventeen (___ - ___ -2017) at Ranchi:

Between

M/s _____[Insert Name of Small Hydro Electric Power Developer], a company incorporated under the Companies Act 1956, having its registered office at _____[Insert address of the registered office of Small Hydro Electric Power Developer] (hereinafter referred to as “Seller” or “Small Hydro Electric Power Developer” or “IPP”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

and

Jharkhand Bijli Vitran Nigam Limited, a company incorporated under the Companies Act 1956, having its registered office at Engineering Building, HEC, Dhurwa, Ranchi – 4 (hereinafter referred to as “JBVNL”, or “Procurer” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **Second Part**;

“Seller” or “Small Hydro Electric Power Developer (IPP)” or “Procurer” are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- a) Energy Dept., Govt. of Jharkhand has proposed the setting up of Small Hydro Electric Projects within the State of Jharkhand. As per the directives, 13 Small Hydro Electric Projects totaling to a capacity of 125.20 MW based are proposed to be established by the private project developers who are required to be selected through a competitive bidding basis.
- b) Jharkhand Renewable Energy Development Agency (JREDA), an organization incorporated under Society Act under the Administrative control of Department of Energy, Govt. of Jharkhand for promoting use of renewable energy sources in the State, had initiated a competitive bidding process through issue of RfP (Request for Proposal) Document vide its Tender Reference No. : 34/JREDA/SHP/2016-17 dated 12th November 2016 for selecting IPP for setting up of Small Hydro Electric Project (total 13 sites with an aggregate capacity of 125.20 MW) for supply of Small Hydro Electric Power for 35 years to JBVNL.
- c) M/s _____[Insert name of Independent Power Producer], after meeting the eligibility requirements has been selected by JREDA for the construction, operation & maintenance and supply of power from _____ Small Hydro Electric Project of capacity ___ MW to be established in the State of Jharkhand to the Procurer in accordance with the terms of this Agreement.
- d) JREDA has issued the Letter of Intent to M/s _____ [Insert name of Independent Power Producer] on _____ vide letter no. _____. M/s _____ [Insert name of Independent Power Producer] has accepted the Letter of Intent vide letter dated _____.

- e) Further, _____[Insert name of Independent Power Producer] has informed JREDA regarding the execution of the project through a Special Purpose Vehicle (SPV)¹ namely “M/s _____ [Insert name of Special Purpose Vehicle Company]” (IPP) vide its Letter No _____ Letter No. _____ dated _____ that is in compliance to the provisions of the RfP.
- f) “M/s _____ [Insert name of Special Purpose Vehicle Company]” has executed the Implementation Agreement with JREDA on _____. The IPP has also provided to JREDA, Contract Performance Guarantee of _____.
- g) The Board of Directors of JBVNL in its ___th Meeting held on _____ vide its Resolution no. _____ have passed the resolution according JBVNL to sign the Power Purchase Agreement (PPA) with successful bidders.
- h) The IPP has agreed to sign this Power Purchase Agreement with Procurer for sale of Small Hydro Electric Power by the IPP to the Procurer for 25 years as per the terms and conditions of this Agreement.
- i) Procurer agrees to procure Small Hydro Electric Power up to the Contracted Capacity from the IPP as per the terms of this Agreement.
- j) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the procurement sale of power by IPP to Procurer.
- k) All the other RfP Project Documents will be executed by the Procurers and the Seller simultaneously with the signing of this Agreement.

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 Applicable in case the Selected Bidder is a Bidding Consortium as well as for the Sole Bidder who has selected to incorporate SPV for implementation of the project

1 ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by the Appropriate Commission (as defined hereunder), as amended or re- enacted from time to time.

“Act” or “Electricity Act, 2003”	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Affected Party”	Means the Procurer or Seller whose performance has been affected by an event of Force Majeure;
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	Shall mean the CERC, or the JSERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be
"Appropriate Government"	shall mean Govt. of Jharkhand or Central Government;
“Auxiliary Consumption”	shall be as defined in Clause 2.1 (b) of the JSERC (Determination of Tariff for procurement of power from Small Hydro Power Projects) Regulation, 2016 issued vide Gazette Notification dated 28 th September 2016 or as amended from time to time.
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Billing Period"	Shall be the calendar month ending with the Metering Date. The first Billing Period shall commence from the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs ;
“Billing Date”	shall be the first Business Day after the Metering Date of each Billing Period;
“Business Day”	shall mean with respect to the Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the state of Jharkhand.
“Capacity Utilization Factor” or CUF”	shall be as defined in Clause 2.1 (d) of the JSERC (Determination of Tariff for procurement of power from Small Hydro Power Projects) Regulation, 2016 issued vide Gazette Notification dated 28 th September 2016 or as amended from time to time.
“Change in Law”	shall have the meaning ascribed thereto in Article 10 of this Agreement;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in Jharkhand that has jurisdiction to adjudicate upon issues relating to this Agreement;

“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and / or supply of power;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
“Contracted Capacity”	shall mean __ MW (AC) of Small Hydro Electric Power contracted with Procurer.
“Commission”	shall mean Jharkhand State Electricity Regulatory Commission (JSERC);
“Commercial Operation Date (COD)”	shall mean the actual commissioning date of the full capacity of the Power Project where upon the IPP starts injecting power from the Power Project to the Delivery Point;
“CERC”	shall mean Central Electricity Regulatory Commission
“Date of Commencement of Supply”	Date of Commencement of Supply shall be _____
“Day”	shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
“Delivery Date”	shall mean the date on which the Seller commences supply of the aggregate Contracted Capacity to the Procurer;
“Delivery Point”	shall be the 33/11 kV power sub-station of Discom or 132/33 kV grid sub-station of JUSNL. The metering shall be done at this point of Interconnection. All charges and losses up to the Delivery Point shall be borne by the IPP
“Delivered Energy”	means the kilowatt Hours of electricity actually fed into the Grid system and measured by energy meters at Delivery Point in a Billing Period
“Discom”	Shall mean Jharkhand Bijli Vitran Nigam Limited;
“Dispatch Instruction”	Shall mean any instruction issued by the Procurer through the concerned SLDC/RLDC to the Seller, in accordance with applicable Grid Code and this agreement;
“Dispute”	shall mean any dispute or difference of any kind between the Seller and the Procurer in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;

"Due Date"	shall mean the 60 days of presentation of Bill;
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement"
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Emergency"	means a condition or situation affecting either Procurer's electrical system or the Grid System, including without limitation, frequency variations beyond the Technical Limits, which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric supply by Procurer or the Grid System or could endanger life or property.
" Energy Accounts"	shall mean the regional energy accounts/ state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 11 of this Agreement;
"Expiry Date"	Shall mean the date occurring thirty five (35) years from the Commercial Operation Date of the Small Hydro Electric Project;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 9 of this Agreement"
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Grid /Distribution System"	means 132/33 kV Grid S/s of JUSNL or 33/11 kV power sub-station of Discom through which Delivered Energy is evacuated and distributed.
"Hydro Electric Power"	shall mean power generated from the Small Hydro Electric Power Project;
"Implementation Agreement" or "IA"	Shall mean the agreement signed between JREDA and IPP dated _____
"Incremental Receivables"	shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of State of Jharkhand and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the

	seller and the procurer;
“Inter-connection Point”	shall mean the point where the power from the power station switchyard bus of the Seller is injected into the transmission system of JUSNL / JBVNL (including the dedicated transmission line connecting the power station with the Delivery Point);
“Invoice” or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice / Supplementary Bill by any of the Parties;
“JREDA”	shall mean Jharkhand Renewable Energy Development Agency;
“JBVNL / Discom”	shall mean Jharkhand Bijli Vitran Nigam Limited;
“Jharkhand Urja Sancharan Nigam Limited” or “JUSNL”	Shall mean the State Transmission Utility as specified by the State Government under Sub-section (1) of Section 39 of the Act;
“KV”	shall mean kilo Volt;
“kWh”	shall mean Kilowatt-hour
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 8.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission or any law of a country which may have direct impact on the cost of generation of electricity from the power plant for example countries from where equipment and / or fuel for the plant may be sourced from;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
“Lenders”	shall mean the financial institutions, banks except co-operative banks, multilateral lending agencies, public trusts, funds (which are registered under SEBI) and agents of trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the developer under any of the financing agreements, for meeting all or any part of the total project cost and who hold parri passu charge on the assets, rights, title and interests of the developer;
“Metering Point”	for purposes of recording of Delivered Energy will be the Delivery Point
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
“MW”	Means Megawatts;
“Operating Period”	shall mean the period commencing from the Commercial Operation Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of

	this Agreement;
“Open Access Charges”	shall mean the charges levied by the RLDC / STU/ SLDC of the State of Jharkhand for the grant of Open Access & for scheduling;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
“Power Project” or “Project”	shall mean the Small Hydro Electric Power generation facility of Contracted Capacity of __ MW, located in State of Jharkhand having separate points of injection into the grid at inter-connection/metering point and having a separate boundary, control systems and metering. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Project Site"	means any and all parcels of real property, rights-of-way, easements and access roads related to the Plant;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“PSS”	shall mean Power Sub-station
“Prudent Utility Practices”	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 8.3.4 of this Agreement;
“RLDC”	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs." or “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commercial Operation	Shall be _____

Date” or "Scheduled COD"	
“Scheduled Energy” or “Scheduled Generation”	Shall mean scheduled generation as defined in the ABT
“Scheduled Outage”	Shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code
“SLDC”	shall mean the State Load Dispatch centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State of Jharkhand;
“SLDC Charges”	shall mean the charges levied by SLDC;
“State Transmission Utility” or “STU”	shall mean ”JUSNL” or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
“System Emergency”	means a condition affecting the electrical system including grid of JUSNL or JBVNL which threatens the safety and reliable operation of such system or which is likely to result in the disruption of safety, adequacy and continuity of electric supply of the JUSNL or JBVNL, or which endangers the life or property, or such condition is affected or aggravated by the continued delivery of Delivered Energy from the Project;
“Tariff”	Shall have the same meaning as provided for in Article 7 of this Agreement;
“Tariff Payments”	shall mean the payments to be made under Monthly Bills as referred to in Article 8;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 11 of this Agreement;
“Term of Agreement”	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“Unscheduled Outage”	Shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
“Voltage of Delivery”	shall mean the voltage at which the electricity generated by the project will be delivered to Procurer at the Delivery point

1.2 Interpretation

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/ or Appendices and/ or Annexure(s);
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 "Crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "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;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" "Rs." or "₹" (new rupee symbol) shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to 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, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented only if agreed to between the parties;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

2 ARTICLE 2: TERM OF AGREEMENT

2.1 Effective Date

2.1.1 This Agreement shall be deemed to have come into force with effect from the date of signing of this Agreement and shall remain in full force from the date of commissioning of last unit of the Small Hydro Electric Plant from which the power is committed to be supplied under this Agreement and such date shall be referred to as the Effective Date.

2.2 Term of Agreement

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date (“Term of Agreement”). Unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the parties on mutually agreed terms and conditions, extended by all the parties on mutually agreed terms and conditions, at least one hundred eighty (180) days prior to the Expiry Date.

2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date:

- (a) if either Seller or the Procurer terminates this Agreement, pursuant to Article 11 (Events of Default and Termination), of this Agreement; or
- (b) in such other circumstances as the Seller or the Procurer may agree, in writing;

2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3 ARTICLE 3: COMMENCEMENT OF SUPPLY OF POWER

3.1 Date of Commencement of Supply of Power to Procurer

- 3.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is [insert the date specified by the Procurer].
- 3.1.2 The Seller shall give the Procurer and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

3.2 IPP's Obligations

- 3.2.1 The IPP undertakes to be responsible, at IPP's own cost and risk, for:
- (a) Obtaining all applicable Consents, Clearances and Permits and maintaining all applicable Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
 - (b) The commencement of supply of power up to the Contracted Capacity to Procurer not later than the Date of Commencement of Supply; and continuance of supply of Power throughout the term of agreement;
 - (c) Furnishing the generation and maintenance schedules every year, during peak and non-peak season.
 - (d) Making all payments on account of any taxes, cess, duties or levies or any statutory obligation imposed by any government or competent statutory authority on the land, equipment, material or works of the Project or on the energy generated or consumed by the Project or the IPP or on the income or assets of the IPP.
 - (e) Complying with the provisions of the Grid Code. Notwithstanding any provision in this Agreement, the IPP shall comply with the state Grid Code, dispatch practices, performance standard, protection & safety as required under the rules & regulations in force from time to time in the State of Jharkhand.
 - (f) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 13;
 - (g) Maintaining its controlling shareholding of atleast twenty six percent (26%) of the total paid equity share capital of the IPP for at least five (5) years post COD of the Power Station;
 - (h) Fulfilling all obligations undertaken by the IPP under this Agreement.

3.3 Construction power and power during maintenance/ shutdown

- 3.3.1 The small hydro power generator shall be entitled to draw start up power from the Distribution Licensee's network. The drawal of energy by the generator during the start up from the Distribution Licensee shall be adjusted against the generated energy.

- 3.3.2 The IPP shall apply to the Discom for availing temporary connection for the supply of Power and the Discom shall supply the power in accordance with then prevalent terms and conditions for such consumers at the tariff as determined by JSERC from time to time.
- 3.3.3 The IPP shall also be allowed by the Discom to draw energy for their consumption during the maintenance/ shut down period of the Project after the Commercial Operation date. The Discom shall raise an invoice on the monthly basis as per the temporary rate applicable to HT Industrial Category.
- 3.3.4 The IPP shall run the plant as a part of integrated system to generate power in synchronism with the grid and shall inject three phase 50 Hz (nominal) AC Supply into Discom's system as per the prevailing CERC regulations.
- 3.3.5 The Company shall also generate matching MVARh corresponding to Power Factor between 0.85 lagging and 0.95 leading, so that there is no adverse effect on Discom's Grid system. Monthly average PF shall be computed from ratio of kWh to kVARh injected into Discom's Grid system during the month.
- 3.3.6 The Project shall be operated and maintained in accordance with good and generally accepted prudent utility standards with respect to synchronizing, Voltage, frequency and reactive power control.
- 3.3.7 The transformer at the interconnection point shall have delta connection on low voltage side and star connection on high voltage side. The synchronization shall be done at full load in the presence of authorized representatives of the procurer. Post successful synchronization only, the No objection certificate shall be provided to the seller by the procurer.
- 3.3.8 The equipment of the IPP shall be designed for fluctuations in the frequency within limits of 49.70 Hz and 50.05 Hz.
- 3.3.9 The IPP shall ensure that the power factor of the power delivered to the JBVNL is maintained between 0.85 lagging to 0.95 leading as per the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and its subsequent amendments.
- 3.3.10 Any change in rupturing capacity of switch-gear, settings of the relays or any other protection system shall be subject to approval of the JUSNL or JBVNL.
- 3.3.11 The IPP shall install necessary current limiting devices such as thyristors or any other device and shall provide protection system in compliance with the grid code requirement for short circuit level, neutral grounding, current unbalance, limiting of harmonics, fault-clearing time etc.
- 3.3.11.1 **Harmonics:** The generator shall ensure that the harmonics injected into the grid shall conform to the grid specifications as specified by JSERC or CERC from time to time. In default, the IPP is liable to pay the penalty as may be specified from time to time through regulation by JSERC or CERC as the case may be.

The Project shall comply with the following stipulation issued by Ministry of Power, (Central Electricity Authority) vide notification dated 15.10.2013 and as amended form time to time.

“B1 Requirement of Harmonics, Direct Current (DC) injection and flicker.

- (a) Harmonic current injections from a generating station shall not exceed the limits specified in Institute of Electrical and Electronics Engineers (IEEE) Standard 519.
- (b) The Generating station shall not inject DC current greater than 0.5% of the full rated output at the interconnection point.
- (c) The generating station shall not introduce flicker beyond the limits specified in IEC 61000. Provided that the standards for flicker will come into effect from 1st April 2014.
- (d) Measurement of harmonic content, DC injection and flicker shall be done at least once in a year in presence of the parties concerned and the indicative date for the same shall be mentioned in the connection agreement.”

In addition to the above, the IPP shall have to demonstrate that the harmonic content injections at any point of time shall be within specified limits.

3.4 Transmission Losses

- 3.4.1 Transmission Losses from the Delivery Point onwards would be borne by the Procurer and power lost on account of transmission loss would be to the account of the Procurer.

3.5 Extensions of Time

- 3.5.1 In the event that the IPP is prevented from performing its obligations under Article 3.1 by the Scheduled Commissioning Date due to:
 - (a) Any STU/ Discom(s)/ Procurer Event of Default; or
 - (b) Force Majeure Events affecting STU/ Discom, or
 - (c) Force Majeure Events affecting the IPP,

the date of commencement of supply of power and the Expiry Date shall be deferred for a reasonable period but not less than ‘day for day’ basis, to permit the IPP or STU/ Discom through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the IPP or Procurer, or till such time such Event of Default is rectified by STU/ Discom.

- 3.5.2 Subject to Article 3.4.5, in case of extension occurring due to reasons specified in Article 3.4.1(a), any of the dates specified therein can be extended by Procurer, subject to the condition that the Scheduled Commissioning Date would not be extended by more than eight (8) Months.
- 3.5.3 In case of extension due to reasons specified in Article 3.4.1 (b) and (c), and if such Force Majeure Event continues even after a maximum period of one (1) year, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.
- 3.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.
- 3.5.5 As a result of such extension, the date of commencement of supply of power and the Expiry Date newly determined shall be deemed to be the date of commencement of supply of power and the Expiry Date for the purposes of this Agreement.
- 3.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the date of commencement of supply of power arising due to any reason envisaged in this Agreement shall not be allowed beyond the date determined pursuant to Article 3.4.2 whichever is later.
- 3.5.7 If, due to the delay in commissioning being not allowed by the Appropriate Commission, the Procurer faces any penalty by JSERC on account of not meeting Non-Solar RPO, the same shall be recovered from the IPP.

3.6 Purchase and sale of Contracted Capacity

- 3.6.1 Subject to the terms and conditions of this Agreement, the IPP undertakes to sell to Procurer and Procurer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to Contracted Capacity.
- 3.6.2 Unless otherwise instructed by the Procurer, the IPP shall sell all the Scheduled Energy upto the Contracted Energy to the Procurer pursuant to Dispatch Instructions given by the Procurer.

3.7 Reactive Power Charges

- 3.7.1 The Small Hydro Electric Power plant would be deemed to be the generating company and all functions, obligations and duties assigned to such stations under the Electricity Act 2003 would apply to these power stations. These stations would be required to abide by all applicable codes.
- 3.7.2 Reactive energy charges would be paid by the Seller at the rate notified by Commission from time to time to the Transmission/ Distribution Licensees in whose territorial area the generator unit is located.
- 3.7.3 Reactive energy charges shall be recovered from the bill of the Seller for energy sold to Procurer.

3.8 Right to Contracted Capacity & Energy

- 3.8.1 Subject to provisions of this Agreement, the Procurer shall have the exclusive right to purchase the entire energy upto the Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Scheduled Energy.
- 3.8.2 Procurer, at any time during a Contract Year, shall not be obliged to purchase any additional energy beyond such proportion which Contracted Capacity bears to the Installed Capacity net of Auxiliary Consumption of the project.
- 3.8.3 Notwithstanding Article 3.8.1, the IPP is free to sell such power to any third party prior to the Scheduled Commissioning Date and any capacity, which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date. However, in case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the developer will have to forego the excess generation and reduce the output to the rated capacity.
- 3.8.4 The sale of power under open access within or outside the state from the Small Hydro Electric Power Generating sources will be in accordance with the provisions of JSERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2005 for use of the Intra State transmission, distribution system or associated facilities as amended time to time and CERC (Open Access in Inter State Transmission) (Amendment) Regulation, 2008 or as amended time to time.
- 3.8.5 If the Procurer does not avail of power up to the Contracted Capacity provided by the Seller, the Seller shall be entitled to sell such Contracted Capacity not scheduled by the Procurer, to any person.
- 3.8.6 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purpose of this Agreement.

4 ARTICLE 4: DISPATCH

4.1 Dispatch

- 4.1.1 The Power Project shall be required to maintain compliance to the applicable law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and dispatch and the matters incidental thereto.
- 4.1.2 The Power Project shall be treated as “Must Run” power plants and shall not be subjected to “merit order dispatch”.
- 4.1.3 The quantum of Contracted Capacity will be computed on real time basis based on actual generation of the Power Station. The Parties shall undertake a bi-annual reconciliation on June 30 and Dec 31 of each calendar year, to ascertain the Scheduled Energy actually supplied against the Contracted Capacity required to be supplied in terms hereof, and variations if any, between the two, over such reconciliation period, shall be settled / adjusted in the supplies of Contracted Capacity to be made over the immediately succeeding 6 months period.

4.2 System Operation & Scheduling

- 4.2.1 The State Load Despatch Center shall be the Nodal Agency for system operation, power accounting, scheduling, etc. The fees and charges of SLDC as approved by the JSERC shall be payable by the Seller to the SLDC.
- 4.2.2 The power accounting shall be done in accordance with the balancing and settlement mechanism as approved by the commission from time to time, if made applicable.
- 4.2.3 The implemented power schedule of power generation shall be as per the applicable regulations of JSERC

4.3 Continuity of Service

- 4.3.1 Procurer may require the IPP to temporarily curtail or interrupt delivery of energy when necessary in the following circumstances:
- (a) For repair, replacement and removal of the Procurer’s equipment or any part of its system that is associated with the Company’s facility. However, as far as practicable such an event shall be scheduled during the annual shut down period of the generation facilities.
 - (b) Load crash in Procurer system due to wide-spread rains, cyclones or typhoons.
 - (c) Conditions leading to overloading of interconnecting transformers, transmission lines and switchgears due to outage of some equipment at Procurer’s interconnecting grid or power substation.
 - (d) If Procurer determines that the continued operation of the facility may endanger the safety of the Procurer’s personnel or integrity of the Procurer electric system or have an adverse effect of the electric service to the Procurer other customer(s).
 - (e) Under Force-Majeure Conditions of Procurer.

- (f) Instructions for the disconnection of the generation facility from the Procurer system shall be notified by the State Load Despatch Centre, Ranchi for the period / duration indicated by it. However, Procurer shall take all reasonable steps to minimize the number and duration of such interruptions, curtailments or reductions.

5 ARTICLE 5: METERING

- 5.1 The metering and communication arrangements shall be provided in accordance with the JSERC (Terms and Conditions for Intra-state Open Access) Regulations, 2016 and subsequent amendments thereof, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 in consultation with Distribution Licensee/State Transmission Utility and subsequent amendments thereof. The periodicity of testing, checking, calibration etc., will be governed by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and regulations issued by the Commission from time to time in this regard.
- 5.2 Main and Check Meters shall have facility to communicate its reading to State Load Dispatch Centre on real time basis or otherwise as may be specified by the Commission.
- 5.3 Meter reading shall be taken as per the procedure devised by the Distribution Licensee/State Load Despatch Centre. The term 'Meter' shall include Current transformers, voltage/potential transformers, wiring between them and meter box/panel etc.
- 5.4 Billing of the metered energy shall be carried out on a monthly basis.
- 5.5 Energy meters (Export –Import type) of 0.2 class or better accuracy and having kWh, kVAh & kVArh facility duly inspected and tested by the Procurer shall be installed at Delivery Point (hereinafter called Main Meters) and at the out going feeder of the generating station end (hereinafter called Check Meters) by Procurer and IPP respectively which shall be capable of recording and storing fifteen (15) minutes data of the Electrical Parameters for a minimum of 35 days with MRI downloading facility of the datas. Dedicated CTs and PTs of 0.2 class or better accuracy shall be made available by Procurer at the Delivery point (Grid Sub station / Power substation) and by IPP at the out-going feeder of the generating station end. The Energy meters will be DLMS compliant and with GPRS MODEM and having ABT feature also. The detail specification of Energy Meters will be approved by Procurer prior to placing order for the energy meter by the IPP. The finalization of the metering scheme will be through mutual discussion between Procurer and the IPP at the time of procurement in order to adopt latest developed technology and equipment.
- 5.6 All the meters, CTs and PTs described in Article 5.1 above shall be jointly inspected and sealed on behalf of both Parties and shall not be interfered with except in the presence of the representatives of both Parties. For testing and calibration of meters, a notice of at least seven (7) days shall be given by the Party requesting the testing to enable the authorized representatives of both the parties to be present. All energy meters, CT, PT will be tested at laboratory of Procurer at Ranchi under Director (Metering). Necessary request and requisite testing charges if desired may be obtained from concerned Transmission/Supply Circles / Divisions.
- 5.7 All meters, CT and PT shall be checked for accuracy prior to commissioning & once in every six (6) months by both parties and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for such meters.
- 5.8 Meter readings of the main meter will form the basis of billing.

- 5.9 Where the half yearly check indicates errors in the Main Meters beyond the prescribed limit but no such error is noticed in the Check Meters, billing for the month up to the date & time of such test check will be done on the basis of check meters and the Main Meters will be re-calibrated immediately. Billing for the period after the Main Meters are calibrated shall be as per the calibrated meters.
- 5.10 If during the half yearly checks, both the main meters and the check meters are found to be beyond permissible limits or error, the meters shall be immediately recalibrated and the correction shall be applied to the consumption registered by the Main Meters to arrive at the correct consumption of energy for billing purposes for the period of the month up to the time of such check, billing for the period thereafter till the next monthly meter reading shall be measured by recalibrated Main Meters. In case of meter reading at the generator end is taken for billing purpose then the energy supplied to Procurer will be taken care of after deducting the Auxiliary consumption and transmission / wheeling loss as determined by JSERC from time to time.
- 5.11 Corrections in billing, wherever necessary, shall be applicable to the period between date & time of the previous test calibration and the date & time of the test calibration in the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at 100, 75, 50, 25 & 10 percent load at unity, 0.85 lag & 0.75 lag power factors. Of these fifteen values, the error at the load and power factor nearest the average monthly load served at the point during the period shall be taken as the error to be applied for correction.
- 5.12 The billing will be normally done on the basis of readings recorded by the meters installed at the Delivery point (Main Meters) at grid substation of JUSNL or power substation of Procurer. In case the metering equipment of Delivery point becomes defective, the billing shall be done on the basis of meter readings of the meters installed at generating station switchyard. Under such condition the net power supplied to Procurer system will be calculated as follows:
- 5.13 Net Energy supplied to Procurer (in Kwh) = [Energy recorded at the check meter installed at the out going feeder of the generating station switchyard - Transmission loss - Wheeling loss (at 33 KV or 11 KV)]. Transmission and Wheeling loss will be as determined by JSERC time to time. The defective meters shall however be replaced within three (3) months of the detection by either partly.
- 5.14 If both the Energy Meters located at the outgoing feeder of the generation switch yard and State utility Grid Substation / Power substation fail to record the Electricity supplied then the Electricity supplied will be computed from the log sheets maintained at Procurer's Grid substation / Power Substations for that period of defect. The M.R.I of the meter will be considered an authentic document for verification of the meter reading and will be final & binding on both parties.
- 5.15 For the purpose of test & calibration, the sub standard meter shall be got calibrated and sealed from reputed testing Laboratory. This meter shall be calibrated once in every 2 years.

6 ARTICLE 6: INSURANCES

6.1 Insurance

6.1.1 The IPP shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements and under applicable laws.

6.2 Application of Insurance Proceeds

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

6.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, Procurer shall have no claim on such proceeds of such Insurance.

6.3 Effect on liability of Procurer

6.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the IPP can claim compensation, under any Insurance shall not be charged to or payable by the Procurer.

7 ARTICLE 7: APPLICABLE TARIFF

- 7.1 The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with Tariff Order passed by the relevant Commission under Section 62 of the Electricity Act 2003
- 7.2 The tariff payable by the Procurer shall be inclusive of all taxes, duties and levies or any other statutory liability, as applicable from time to time.
- 7.3 The Procurer will be liable to pay the IPP the tariff as determined by the Commission.

8 ARTICLE 8: BILLING AND PAYMENT

8.1 General

- 8.1.1 From the commencement of supply of power by the Seller, the Procurer shall pay to the Seller the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in this Article 8. All Tariff Payments by the Procurer shall be in Indian Rupees.
- 8.1.2 The designated representatives of the Parties shall record joint readings of the meters of the respective feeders at Delivery point at 1200 Hours on the first day of every calendar month.
- 8.1.3 Monthly energy account depicting energy delivered & wheeled to Procurer, shall be prepared and maintained by SLDC, Ranchi on behalf of Procurer.

8.2 Delivery and Content of Monthly Bills

- 8.2.1 The Seller shall issue to Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- (a) if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- (b) if, the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

- 8.2.2 The Monthly Bill prepared shall include the following;

- (a) Provisional Bill for Small Hydro Electric power supplied in the immediately preceding Month;
- (b) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Small Hydro Electric power supplied in the Month(s) proceeding to the previous month(s);
- (c) Any other prior period adjustments;
- (d) Late Payment Surcharge, if any; and
- (e) Taxes, Duties, Levies etc as applicable.

8.3 Payment of Monthly Bills

8.3.1 The Procurer shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified to the Procurer in accordance with Article 8.3.2 below.

8.3.2 The Seller shall open a bank account at Ranchi, Jharkhand ("Seller's Designated Account") for all Tariff Payments be made by the Procurer to the Seller, and notify the Procurer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurer shall also designate a bank account at Ranchi (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurer, if any, and notify the Seller of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The Seller and the Procurer shall instruct their respective bankers to make all payments under this Agreement to the Procurer's Designated Account or the Seller's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

8.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by the Procurer sixty (60) days beyond its due date, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.

8.3.4 **Rebate**

For payment of any Bill within due date, the following Rebate shall be paid by the Seller to the Procurer in the following manner.

- (a) A Rebate of 2% shall be payable to the Procurer for the payments made through Letter of Credit within thirty (30) days of receipt of the Bill by the Procurer.
- (b) A Rebate of 1% shall be payable to the Procurer for the payments made other than through Letter of Credit within thirty (30) days of receipt of the Bill by the Procurer.
- (c) No Rebate shall be payable on the Bills raised on account of taxes, duties and cess etc.

8.3.5 **Sharing of CDM Benefits**

The proceeds of carbon credit from approved CDM project shall be shared between generating company and concerned beneficiary (ies) as per the applicable regulations of JSERC.

8.4 **Payment Security Mechanism**

Letter of Credit (LC):

- 8.4.1 The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with this Article. The Procurer shall provide to the Seller draft of the Letter of Credit proposed to be provided to the Seller two (2) months before the Scheduled Commissioning Date.
- 8.4.2 Not later than one (1) Month before the start of supply, the Procurer shall through a scheduled bank at Ranchi open a Letter of Credit in favour of the Seller, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every year, in the month of January and revised w.e.f. April for an amount equal to:
- (a) for the first Contract Year, equal to the estimated average monthly billing;
 - (b) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.
- 8.4.3 Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawl in a Month.
- 8.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.4.2 due to any reason whatsoever, the Procurer shall restore such shortfall within seven (7) days.
- 8.4.5 The Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.
- 8.4.6 The Procurer shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 8.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Procurer.
- 8.4.8 If, the Procurer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 8.4.6, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- (a) a copy of the Monthly Bill which has remained unpaid by the Procurer;
 - (b) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;
- 8.5 **Disputed Bill**
- 8.5.1 If the Procurer does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive.
- 8.5.2 If the Procurer disputes the amount payable under a Monthly Bill it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- (a) the details of the disputed amount;
 - (b) its estimate of what the correct amount should be; and
 - (c) all written material in support of its claim.
- 8.5.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, the Seller shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the Procurer and up to and including the date on which such payment has been received as refund.
- 8.5.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- (a) reasons for its disagreement;
 - (b) its estimate of what the correct amount should be; and
 - (c) All written material in support of its counter-claim.
- 8.5.5 Upon receipt of the Bill Disagreement Notice by the Procurer under Article 8.5.4, authorized representative(s) of the Procurer and the Seller shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 8.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.5.4, the matter shall be referred to Dispute resolution in accordance with Article 14.
- 8.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 95% of the Disputed Amount in the Monthly Bill.
- 8.6 Quarterly and Annual Reconciliation**
- 8.6.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 8.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Procurer and the Seller shall jointly sign such reconciliation statement. After signing of a reconciliation statement within 15 days, the Seller shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

8.7 Payment of Supplementary Bill

8.7.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- (a) Adjustments required by the Regional Energy Account (if applicable);
- (b) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

8.7.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the IPP to the IPP's Designated Account by the Due Date. Similarly, the IPP shall pay all amounts due under a Supplementary Bill raised by Procurer, if any, by the Due Date to concerned Procurer designated bank account. For such payments by Procurer, Rebate as applicable to Monthly Bills pursuant to Article 8.3.4 shall equally apply.

8.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.3.

9 ARTICLE 9: FORCE MAJEURE

9.1 Definitions

9.1.1 In this Article, the following terms shall have the following meanings:

9.2 Affected Party

9.2.1 An affected Party means the Seller or the Procurer whose performance has been adversely affected by an event of Force Majeure.

9.2.2 An event of Force Majeure affecting the CTU/STU or any other agent of the Procurer, which has affected the transmission facilities from the Injection Point to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Procurer. Any event of Force Majeure affecting the performance of the seller shall be deemed to be an event of Force Majeure affecting the Seller only if the event affects and results in interruptible or no power supply to the procurer, inter alia.

(a) Any Event of the Force Majeure affecting the performance of the Seller contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event in affecting and resulting in;

- a. Late delivery of plant, machine, equipment, materials, spare parts, Fuel, water or consumables for the Power Project; or
- b. A delay in the performance of any of the Sellers Contractors

9.3 Force Majeure

9.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances as stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care in performing its obligations or complied with Prudent Utility Practices:

- (a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site) , earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last fifty (50) years.
- (b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- (c) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible; or

- (d) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- (e) An event of force majeure affecting the concerned STU/ Discom, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Procurer;
- (f) Industry wide strikes and labor disturbances having a nation-wide impact in India.

9.4 Force Majeure Exclusions

9.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- (a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- (b) Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;
- (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- (d) Strikes or labour disturbances at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- (f) Non-performance caused by, or connected with, the Affected Party's:
 - a. Negligent or intentional acts, errors or omissions;
 - b. Failure to comply with an Indian Law; or
 - c. Breach of, or default under this Agreement.

9.5 Notification of Force Majeure Event

9.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

9.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

9.6 Duty to Perform and Duty to Mitigate

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.7 Available Relief for a Force Majeure Event

9.7.1 Subject to this Article 9

- (a) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event;

10 ARTICLE 10: CHANGE IN LAW

10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

10.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the IPP or any income to the IPP:

- (a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- (b) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- (c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- (d) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the IPP;
- (e) any change in tax or introduction of any tax made applicable for supply of power by the IPP as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the IPP, or (ii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such change in law, is to restore through Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law

10.3.1 The aggrieved Party shall be required to approach the State Commission for seeking approval of Change in Law.

10.3.2 The decision of the Appropriate (State) Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same shall be final and governing on both the Parties.

11 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

11.1 IPP Event of Default

11.1.1 The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer of its obligations under this agreement or a Procurer Event of default, shall constitute an IPP Event of Default:

- (a) the failure to commence supply of power to Procurer up to the Contracted Capacity, relevant to the Scheduled Commissioning Date, by the end of the period specified in Article 3, or
- (b) if
 - a. the IPP assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
 - b. the IPP transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - i. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement, or
 - ii. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (c) if
 - a. the IPP becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - b. any winding up or bankruptcy or insolvency order is passed against the IPP, or
 - c. the IPP goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that a dissolution or liquidation of the IPP will not be a IPP Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the IPP and expressly assumes all obligations of the IPP under this Agreement and is in a position to perform them; or
- (d) the IPP repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Procurer in this regard; or

- (e) except where due to any Procurer's failure to comply with its material obligations, the IPP is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the IPP within thirty (30) days of receipt of first notice in this regard given by Procurer.
- (f) Failure to replace the Performance Bank Guarantee, as per the terms of the Implementation Agreement; or
- (g) change in controlling shareholding before the specified time frame as mentioned in Article 3.2.1 of this Agreement; or
- (h) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the IPP.

11.2 **Procurer Event of Default**

11.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the IPP of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting Procurer:

- (a) Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) subject to Article 8, an amount exceeding fifteen (15%) of the undisputed part of the most recent bill for a period of ninety (90) days after the Due Date and the IPP is unable to recover the amount outstanding to the IPP through the Letter of Credit of 1 month; or
- (b) Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the IPP in this regard; or
- (c) except where due to any IPP's failure to comply with its obligations, Procurer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Procurer within thirty (30) days of receipt of notice in this regard from the IPP to the Procurer; or
- (d) if
 - a. Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - b. any winding up or bankruptcy or insolvency order is passed against Procurer, or
 - c. Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurer and expressly assumes all obligations of Procurer and is in a position to perform them; or;

- (e) Occurrence of any other event which is specified in this Agreement to be a material breach or default of Procurer.

11.3 Procedure for cases of IPP Event of Default

- 11.3.1 Upon the occurrence and continuation of any IPP Event of Default under Article 11.1, Procurer shall have the right to deliver to the IPP a notice stating its intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 11.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 11.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 11.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the IPP Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the IPP with a copy to the Appropriate Commission.
- 11.3.5 Subject to the terms of this Agreement, upon occurrence of a IPP Event of Default under this Agreement, the lenders in consultation with Procurer may exercise their rights, if any, under Financing Agreements, to seek substitution of the IPP by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the IPP and performing the obligations of the IPP, provided that any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Request for Proposal (RfP) issued by Jharkhand Renewable Energy Development Agency (JREDA) and accepts the terms of Power Purchase Agreement signed between IPP and Procurer.
- 11.3.6 The lenders in consultation with Procurer may seek to exercise right of substitution under Article 11.3.5 by an amendment or novation of the PPA in favour of the selectee. The IPP shall cooperate with the Procurer to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized.
- 11.3.7 In case the lending institution exercises the right to step in or take over the Project Procurer will also have right to step in along with the lending institution.

11.4 Procedure for cases of Procurer Event of Default

- 11.4.1 Upon the occurrence and continuation of any Procurer Event of Default specified in Article 11.2 the IPP shall have the right to deliver to Procurer, a IPP Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

11.4.2 Following the issue of a IPP Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

11.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the IPP shall be free to sell the Contracted Capacity to any third party of the IPP's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 11.4.4, this Agreement may be terminated by the IPP.

11.4.5 In case of Termination by either party, there will be no financial liability save and except the accrued liability.

11.5 **Termination due to Force Majeure**

11.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 3.4.2, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

12 ARTICLE 12: LIABILITY AND INDEMNIFICATION

12.1 Indemnity

12.1.1 The IPP shall indemnify, defend and hold Procurer harmless against:

- (a) any and all third party claims against Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the IPP of any of its obligations under this Agreement; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of:
 - a. breach by the IPP of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the IPP, for which specific remedies have been provided for under this Agreement), or
 - b. any of the representations or warranties of the IPP, if any made under this Agreement, being found to be inaccurate or untrue.

12.1.2 Procurer shall indemnify, defend and hold the IPP harmless against:

- (a) any and all third party claims against the IPP, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the IPP from third party claims arising by reason of
 - a. a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurer, for specific remedies have been provided for under this Agreement), or
 - b. any of the representations or warranties of Procurer, if any made under this Agreement, being found to be inaccurate or untrue.

12.2 Procedure for claiming Indemnity

12.2.1 Third party claims

- (a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a) or 12.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 12.1.1(a) or 12.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
 - a. the Parties choose to refer the dispute before the Arbitrator in accordance with Article 14.3.2; and

- b. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

The Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- (a) The Indemnified Party may contest, defend and litigate the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- (b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- (c) An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

12.3 **Indemnifiable Losses**

- 12.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 12.3, such event shall constitute a payment default under Article 11.

12.4 **Limitation on Liability**

12.4.1 Except as expressly provided in this Agreement, neither the IPP nor Procurer nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Procurer , the IPP or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

12.4.2 Procurer shall have no recourse against any officer, director or shareholder of the IPP or any Affiliate of the IPP or any of its officers, directors or shareholders for such claims excluded under this Article. The IPP shall have no recourse against any officer, director or shareholder of Procurer, or any Affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

12.5 **Duty to Mitigate**

12.5.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

13 ARTICLE 13: ASSIGNMENTS AND CHARGES

13.1 Assignments

13.1.1 This Agreement shall be binding upon, and insure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

- (a) Provided that, Procurer shall permit assignment of any of IPP's rights and obligations under this Agreement in favour of the lenders to the IPP, if required under the Financing Agreement.
- (b) Provided that, such consent shall not be withheld by the IPP if procurer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.
- (c) Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

13.2 Permitted Charges

13.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 13.1.

14 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.1 Governing Law

14.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of court in Ranchi, Jharkhand as per applicable law

14.2 Amicable Settlement and Dispute Resolution

14.2.1 Amicable Settlement

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - a. a description of the Dispute;
 - b. the grounds for such Dispute; and
 - c. all written material in support of its claim.
- (b) The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1, furnish:
 - a. Counter-claim and defenses, if any, regarding the Dispute; and
 - b. All written material in support of its defenses and counter-claim.
- (c) Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1 both the Parties shall endeavor and make all efforts to amicably settle the Dispute.
- (d) If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 14.2.1(c)., the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

14.3 Dispute Resolution

14.3.1 Dispute Resolution by the Appropriate Commission

- (a) Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

14.3.2 Dispute Resolution through Arbitration

If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1 (a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:

- (a) The Arbitration Tribunal shall consist of three (3) arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.
- (b) The place of arbitration shall be Ranchi. The language of the arbitration shall be English.
- (c) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- (d) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- (e) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

14.4 Parties to Perform Obligations

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

15 ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Amendment

15.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.

15.2 Third Party Beneficiaries

15.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

15.3 Waiver

15.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

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

15.4 Confidentiality

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

- (a) to their professional advisors;
- (b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (c) disclosures required under Law.

without the prior written consent of the other Parties.

15.4.2 Notwithstanding the provisions under Article 13.5.1, the seller agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the Agreement, to the extent stipulated under the law.

15.5 Severability

15.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

15.6 Notices

15.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

15.6.2 If to the Procurer, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : Jharkhand Bijli Vitran Nigam Limited
Engineering Building, H.E.C. Dhurwa,
Ranchi – 834 004

Attention : Chief Engineer (C&R), JBVNL

Email : coml.rev@rediffmail.com

Telephone No. : 0651 – 240 0826

Fax No. : 0651 – 240 0799

15.6.3 If to the Seller, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address (es) below:

Address :

Attention :

Email :

Fax. No. :

Telephone No. :

15.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

15.7 Language

15.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

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

15.8 Restriction of Shareholders / Owners' Liability

15.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholders of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 2013.

15.9 Taxes and Duties

15.9.1 The IPP shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the IPP, contractors or their employees that are required to be paid by the IPP as per the Law in relation to the execution of the Agreement and supplying power as per the terms of this Agreement.

15.9.2 The Procurer shall be indemnified and held harmless by the IPP against any claims that may be made against the Procurer in relation to the matters set out in Article 15.9.1.

15.9.3 The Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the IPP by the Procurer on behalf of Seller or its personnel provided the seller has consented in writing to Procurer for such work, which consent shall not be unreasonably withheld.

15.10 No Consequential or Indirect Losses

15.10.1 The liability of the Procurer and The Seller shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall the Seller or the Procurer claim from one another any indirect or consequential losses or damages.

15.11 Order of priority in application

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- (a) applicable Law, rules and regulations framed thereunder;
- (b) the state Grid Code; and
- (c) the terms and conditions of this Agreement;

15.12 Independent Entity

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

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

15.13 Compliance with Law

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

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

<p>For and on behalf of _____ [the Seller]</p>	<p>For and on behalf of Jharkhand Bijli Vitran Nigam [the Procurer]</p>
<p>Name: _____</p>	<p>Name: _____</p>
<p>_____ Signature with seal</p>	<p>_____ Signature with seal</p>
<p>WITNESS Name: Signature</p>	<p>WITNESS Name: Signature</p>