

**Pumped Hydro Energy Storage Facility Agreement
(PHESFA)**

Between

Maharashtra State Electricity Distribution Co. Ltd

And

[Insert the name of Developer]

for

**Procurement of 1000MW energy storage capacity
(For 8 Hours discharge with maximum 5 Hours
continuous discharge) for 40 Years**

ENERGY STORAGE (PUMPED HYDRO STORAGE) FACILITY AGREEMENT

This Pumped Hydro Energy Storage Facility Agreement (ESFA) (hereinafter referred to as “**Agreement**”) is entered into on this _____ day of ____ month, of ____ year

BETWEEN

1. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, incorporated under The Companies Act 1956 (1 of 1956) having its registered office at Prakashgad, Plot G 9, Prof. Anant Kanekar Marg, Bandra (East), Mumbai 400 051, (hereinafter referred to individually, as ‘MSEDCL’ or “**Procurer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) of the **FIRST PART**.

AND

2. _____, incorporated under the Companies Act, 2013 having its registered office at _____ India (hereinafter referred to as Developer which expression shall, unless repugnant to the context or meaning thereof, include its successor and assignees of the **SECOND PART**.

The Developer and MSEDCL shall be individually referred to as a “**Party**” and collectively as “**Parties**”.

WHEREAS:

- A. MSEDCL (“**Procurer**”) has resolved to procure energy storage capacity for 1000 MW (For 8 Hours discharge with maximum 5 Hours continuous discharge) from a Pumped Hydro Storage based Energy Storage System (“**PHESS**”) for a period of 40 Years in accordance with the terms and conditions to be set forth in this Agreement.
- B. Procurer had invited proposals by its “**Tender No. CEEPP/PHSP/T01**” dated 09.03.2024 prescribing the technical, commercial terms and conditions for selection of Bidders for procurement of 1,000 MW (For 8 Hours discharge with maximum 5 Hours continuous discharge) from Pumped Hydro Storage based Energy Storage System (PHESS) connected to its STU/MSETCL/CTU system and located anywhere in India for a period of 40 Years. Pursuant to this, MSEDCL has received proposals from bidders including, inter alia, the {the single business entity/ consortium comprising _____, _____ and (collectively the “**Consortium**”) with _____ as its lead member (the “**Lead Member**”).

- C. MERC vide letter dated (-----) has accorded approval for procuring the storage capacity after evaluation of the Proposal received, MSEDCL had accepted the bid of the {single business entity/ Consortium} for development of 1000 MW capacity of Pumped Hydro Storage based Energy Storage System (PHESS) [insert location of the PHESS] and issued its Letter of Award No _____, dated _____ (herein after called the "LOA") to the {single business entity/ Consortium} [“**Selected Bidder**”] requiring, inter alia, the execution of this Agreement.
- D. The single business entity/ Consortium has since promoted and incorporated the Energy Storage System Developer (“**Special Purpose Vehicle**” or “**SPV**”), in accordance with the terms of the Tender and has requested the Procurer through a letter bearing number ____dated ____to accept the [insert Developer name] as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- E. By its letter dated _____the Developer has also joined in the said request of the single business entity/ Consortium to Procurer to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the single business entity/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Developer has further represented to the effect that it has been promoted by the single business entity/ Consortium for the purposes hereof.
- F. Procurer has agreed to the said request of the {single business entity/ Consortium and the} Developer and has accordingly agreed to enter into this Agreement along with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- G. Procurer acknowledges that simultaneously with the execution of this Agreement, the Developer has submitted Bank Guarantee towards Performance Security for the amount and in the manner set out in Clause 4.5.
- H. **Request for Selection (RfS) No. CEPP/PHSP/T01 dated 09.03.2024;** “prescribed the technical, commercial terms and conditions for selection of Bidders for undertaking RFS for Procurement of 1000 MW x 8 Hours discharge with 5 hours continuous discharge / day Storage for 40 Years from Pumped Hydro Storage based Energy Storage System conducted by Procurer shall also be part of the ESFA.

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

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ARTICLE 1: DEFINITION AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 21) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

commissioning, putting into commercial operation and other activities incidental to the construction, and "**construct**" or "**build**" or "**install**" or "**maintain**" shall be construed accordingly;

- g) references to "**development**" include, unless the context otherwise requires, construction, augmentation, up gradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Mumbai generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) references to any date or period shall mean and include such date, period as may be extended pursuant to this Agreement;
- m) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) the words imparting singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) "**lakh**" means a hundred thousand (1,00,000) and "**crore**" means ten million (10,000,000);
- q) "**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.
- r) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" declaration of "Corporate Insolvency Resolution Process (CIRP)" or Liquidation process 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;
- s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Procurer hereunder or pursuant hereto in any manner whatsoever;
 - t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
 - u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
 - x) Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to Procurer shall be provided free of cost and in three copies, and if the Procurer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein;
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to provisions of Clause 1.4.1 in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the term of this Agreement:

- a) Storage Capacity of _____ MW is contracted from Developer from a Pumped Hydro Storage based Energy Storage System ("PHESS") project constructed, commissioned, operated and maintained by the Developer (the total installed capacity may be more than the contracted capacity) on BOOM basis throughout the 40 years term of this PHESFA (unless terminated earlier).
- b) The Developer shall make available to the Procurer a contracted capacity of _____MW capable of scheduled discharge of 8 hours (with maximum continuous 5 hours) per day.
- c) Survey, Investigate, Obtain Statutory approvals, Designing, constructing, erecting, testing, commissioning and completing the Pumped Hydro Storage based Energy Storage System within the Scheduled Commercial Operation Date (SCOD) and making available the Contracted Capacity (fulfillment of Storage requirement) to the Procurers;
- d) Developing the power evacuation infrastructure from Pumped Hydro Storage based Energy Storage System (PHESS) Ex-bus to the Interconnection Point of STU (Maharashtra)/CTU network;
- e) Operation and maintenance of the Pumped Hydro Storage based Energy Storage System (PHESS) in accordance with the provisions of this Agreement; and
- f) Performance and fulfillment of all other obligations of the Developer in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Developer under this Agreement.

ARTICLE 3: TERM OF AGREEMENT

3.1 Effective Date

This Agreement shall come into effect from the date of its execution and such date shall be referred to as the Effective Date.

3.2 Term of Agreement

The Term of this Agreement shall commence on the Effective Date and shall continue for a period of 40 years from the Commercial Operation Date and ending on the Expiry Date. However, the Parties may, 180 (one hundred eighty) days prior to the Expiry Date, decide to extend the term of this Agreement on mutually agreed terms and conditions.

3.3 Period of Supply

The Developer shall make available, the Contracted Capacity to Procurer for the whole year (“**Period of Supply**”) during the entire term of this Agreement:

3.4 Early Termination

This Agreement shall stand terminated before the Expiry Date if either Procurer or Developer terminates the Agreement, pursuant to Article 16 of this Agreement.

3.5 Survival

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 penalty 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 14 (Force Majeure), Article 16 (Termination), Article 17 (Liability and Indemnification), Article 18 (Governing Law and Dispute Resolution), Article 20 (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.

ARTICLE 4: CONDITION SUBSEQUENT

4.1 Conditions Subsequent

Save and except as expressly provided in Article 14 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions subsequent specified in this Article 4 (the "Conditions Subsequent") by the Developer within 24(Twenty four) Month from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by the Procurer.

4.2 Conditions Subsequent for the Developer

The Conditions Subsequent required to be satisfied by the Developer shall be deemed to have been fulfilled when the Developer shall have:

- a) achieved Financial Closure for the PHESS and provided a certificate to the Procurer from the lead banker to this effect;
- b) obtained all the consents, permits and Statutory clearances listed in CEA guidelines for formulation of DPR from various designated agencies/authorities/Central Govt/State Govt etc. required for the project to deliver power at Delivery Point;
- c) complied with the Technical Requirements for Pumped Hydro Storage based Energy Storage System (PHESS) as per the applicable Grid Code/ Central Electricity Authority/ Central or State guidelines and also provides the documentary evidence for the same;
- d) submitted the Detailed Project Report (DPR) for the Project duly approved by CEA as per its guidelines for PHSP, indicating Developer's plans to meet the Annual Availability. The Developer shall also demonstrate the technology tie-ups for its major equipment as per the DPR for the Project
- e) submitted the approval regarding Connectivity granted by Central Transmission Utility (CTU)/ STU (Maharashtra) to the Project after confirming technical feasibility of the said connectivity up to Interconnection/Delivery Point;
- f) Provided documentary evidences for clear title and possession of the land.
- g) Provide documentary evidence for Water allocation/availability for required contracted generation of energy.

- 4.2.1 Developer shall make all reasonable endeavors to satisfy the Conditions Subsequent within the stipulated time.
- 4.2.2 The Developer shall notify the Procurer in writing at least once a month on the progress made in satisfying the Conditions Subsequent. Developer shall promptly inform the Procurer when any Conditions Subsequent is satisfied by it.

4.3 Conditions Subsequent for the Procurer

The Conditions Subsequent required to be satisfied by the Procurer shall be deemed to have been fulfilled when the Procurer shall have:

- 4.3.1 obtained an order of the Appropriate Commission for adopting the Tariff under Section 63 of the Electricity Act, 2003;
- 4.3.2 submitted a copy of this Agreement to their respective SERCs in accordance with the requirements of the respective SERC.

4.4 Damages for delay by the Developer

- 4.4.1 In the event that the Developer does not fulfill any or all of the Conditions Subsequent set forth in Clause 4.2 within the period of 24 (Twenty Four) months from the effective date and the delay has not occurred for any reasons attributable to Procurer or due to Force Majeure, the Developer shall be liable to pay Damages to the Procurer equal to an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Subsequent, subject to a maximum period of 180 (one hundred and eighty) days. Any delay beyond 180 days shall be construed as the Developer Event of Default and in such case provisions of Article 16 (Termination) shall apply.
- 4.4.2 The Damages payable by the Developer as per Clause 4.4.1 above, shall be appropriated from the Performance Security in the event the COD is delayed beyond SCOD and shall be in addition to the Damages payable under Clause 5.13.3 of this Agreement.

4.5 Performance Security

4.5.1 For due and punctual performance of its obligations under this Agreement, relating to the Project, the Developer has submitted to the Procurer, an irrevocable and unconditional bank guarantee from a scheduled bank acceptable to the Procurer for an amount of INR (Rupees _____ only] (“Performance Security), calculated at 10,00,000 INR (Indian Rupees TEN Lakhs only) per MW of Contracted Capacity.

The Performance Security is furnished to the Procurer in the form of Bank Guarantee, in favor of the Procurer as per the format provided in Schedule 1 and having validity up to twelve months beyond the SCOD. The details of the bank guarantee furnished towards the Performance Security are given below:

Bank Guarantee No. _____ dated _____ for an amount of INR _____ (Rupees _____) valid up to Date _____.

4.5.2 Appropriation of Performance Security

Upon occurrence of a Developer Default, the Procurer shall, without prejudice to its other rights and remedies hereunder or available in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Procurer shall be entitled to terminate this Agreement in accordance with Article 16.

4.5.3 Release of Performance Security

Subject to other provisions of this Agreement, Procurer shall release the Performance Security after twelve (12) months from the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement. The release of the Performance Security shall be without prejudice to other rights of Procurer under this Agreement.

ARTICLE 5: OBLIGATION OF THE DEVELOPER

5.1 Obligations of the Developer

5.1.1 Subject to and on the terms and conditions of this Agreement, the Developer shall at its own cost and expense:--

- a)** procure finance for and undertake the designing, constructing, erecting, testing and commissioning of the Pumped Hydro Storage based Energy Storage System (PHESS) in accordance with the Applicable Law(s) & Grid Code and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder;
- b)** comply with all Applicable Laws and obtain applicable Consents, Clearances and Permits (including renewals as required) including CTU/ STU(Maharashtra) connectivity in the performance of its obligations under this Agreement and maintaining all Applicable Permits in full force and effect during the Term of this Agreement and compliance with all applicable guidelines from State/Central Authorities;
- c)** obtain requisite ISTS/InSTS connectivity for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement upto Interconnection/Delivery Point;
- d)** make available the Contracted Capacity at Delivery point to Procurer not later than the Scheduled Commercial Operations Date (SCOD) and continue providing the Contracted Capacity throughout the term of this Agreement;
- e)** connect the Power Project switchyard with the Interconnection Facilities at the Interconnection Point /Delivery Point;
- f)** directly coordinate and deal with the corresponding Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid Code, State & Central Regulations;
- g)** Build, Own, Operate and Maintain the Pumped Hydro Storage based Energy Storage System (PHESS) throughout the term of this Agreement and keep it free and clear of all encumbrances;
- h)** comply with the equity lock-in conditions set out in Clause 5.2;
- i)** be responsible for all payments related to any taxes, cess, duties or levies

imposed by the Government Instrumentalities or competent statutory authority on land, equipment, material, water or works of the project to or on the electricity consumed by the Project or by itself or on the income or assets owned by it at the time of BID submission. Any change after BID due date shall be consider under change-in-law; and

- j)** ensure that the Pumped Hydro Storage based Energy Storage System (PHESS) shall have Automatic Generation Control (AGC) functionality. As per IEGC 2022 and Central Electricity Authority (Technical Standards for Connectivity to the Grid), Regulations, as amended time to time.
 - k)** be responsible for land acquisition and water requirement of Pumped Hydro Storage based Energy Storage System (PHESS) .
 - l)** Each unit of the Pumped Hydro Storage based Energy Storage System (PHESS) shall have the ability to vary the capacity between 20% to 100% of the rated MW capacity with hydro unit overload capacity as per CEA standard.
 - m)** Be responsible for Joint Inspection of Site for Interconnection Point.
- 5.1.2 The Developer shall discharge its obligations in accordance with Good Industry Practices and as a reasonable and prudent person.
- 5.1.3 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a)** make, or cause to be made, necessary applications to the relevant government agencies with such particulars and details, as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b)** procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Power Project;
 - (c)** make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement.
 - (d)** ensure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement; and
 - (e)** not do or omit to do any act, deed or thing which may in any manner be violative of

any of the provisions of this Agreement.

5.2 Equity Lock-in Conditions

- a) The shareholding as on the Effective Date is as follows:

Names of Shareholders	Description of Shareholding

- b) The Developer, for the sole purpose to exercise its rights and performing its obligations and liabilities under this Agreement, hereby undertakes and agrees to comply with the following lock-in conditions:

In case the Selected Bidder is a Consortium then,

- (i) Members of the Consortium shall collectively hold at least 51% of subscribed and paid-up equity share capital of the Developer at all times until first anniversary of the commercial operations date of the Project.
- (ii) Lead Member shall have at least 26% shareholding of the SPV until first anniversary of the commercial operations date of the Project.}

or

{In case the Selected Bidder is a single entity

The Selected Bidder shall hold at least 51% (fifty one percent) of subscribed and paid-up equity share capital of the Developer, until first anniversary of the commercial operations date of the Project. This condition is applicable only in case the single business entity incorporates an SPV to execute the ESFA and implement the Project.

- c) In the event of non-compliance of the above, the same shall constitute an event of default by Developer, and the Procurers shall be entitled to terminate this Agreement in accordance with Article 16.

5.3 Information regarding Interconnection Facilities

The Developer shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Developer's side of the Interconnection Point/ Delivery Point to enable delivery of electricity at the Delivery Point.

5.4 Connectivity to the grid

The Developer shall be responsible for power evacuation from the Pumped Hydro Storage based Energy Storage System (PHESS) to the designated nearest Interconnection Point/ Delivery Point/s as per the inter connection approval given by the STU (Maharashtra)/CTU.

5.5 Procurement of Contracted Capacity

Subject to the terms and conditions of this Agreement, the Developer undertakes to sell to Procurer and subject to Clause 5.6 below, Procurer undertake to procure the entire Contracted Capacity supplied at the Delivery Point for their respective period of supply as defined in clause 3.3 of this agreement.

5.6 Right to Contracted Capacity

Procurer, at any time during the Term of this Agreement, shall not be obliged to procure additional capacity from the Developer apart from the Contracted Capacity.

5.7 Obligations relating to Change in Ownership:

The Developer shall not undertake or permit any change in ownership until First anniversary of the commercial operations date of the Pumped Hydro Storage based Energy Storage System (PHESS). Further any change in Ownership will be with the prior written approval of Procurer.

5.8 Obligations relating to operation of the Power Station:

5.8.1 The Developer shall at all times operate the Pumped Hydro Storage based Energy Storage System (PHESS) in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the RLDC/SLDC may give from time to time in accordance with the provisions of the Act.

5.8.2 The Developer shall enter into and comply with agreements for interconnection of the Pumped Hydro Storage based Energy Storage System (PHESS) to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.9 Obligations relating to RLDC/SLDC charges:

The Developer shall be liable for payment of all the charges, due and payable under

Applicable Laws by the developer to the RLDC/SLDC in respect of all its supplies to the Procurer.

5.10 Obligations relating to reporting requirements:

All information provided by the Developer to the SLDC / RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Procurer. Further, during the development/construction phase of the Pumped Hydro Storage based Energy Storage System (PHESS), the Developer shall furnish the monthly progress report of the PHESS to the Procurer.

5.11 Target Annual Availability (%)

5.11.1 In order to achieve realization of full Annual Fixed Charge (AFC), Developer shall be required to ensure minimum Annual Availability of 90% for the Contracted Capacity (the "**Normative Availability**"). On or before Commencement of Supply and not later than 45 (forty-five) days prior to the beginning of each Financial Year during the Term of this Agreement, as the case may be, the Developer shall provide to the Procurers its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") preferably in lean demand period of MSEDCL, to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Any maintenance carried out by the Developer as per the Maintenance Programme under this Clause and as notified to the Procurers under this Clause shall be deemed to be scheduled maintenance (the "**Scheduled Maintenance**"). For the avoidance of doubt, any closure, suspension, or reduction of Contracted Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of Contracted Capacity. The Developer shall plan its maintenance and allied activities and outages during lean demand period of MSEDCL in consultation with the Procurer and SLDC/RLDC.

5.11.2 The Cumulative Availability (calculated in %) till the end of Nth month during any Financial Year shall be calculated as below:

$$\text{Cumulative Availability (\%)} = \frac{\text{Sum of timeblock wise Declared Availability (MW) till Nth month} \times \left(\frac{1 \text{ Hour}}{\text{No. of timeblock in an hour}} \right)}{\text{Contracted Capacity (MW)} \times 24 \times \text{No. of days in N months}}$$

"Declared Availability" (MW) is the capability of the Project to operate in both pumping and generation mode, only discharge and will be declared by the ESSD

at / before 6 AM on day-ahead basis, for each 15-minute time block for the next day. For example, the Declared Machine Availability for all 96 no. 15-minute time blocks of 1st September 2024 will be submitted by 6 AM of 31st Aug 2024

5.11.3 Procurer/Developer shall be responsible for all scheduling and dispatch activities as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the SLDC/RLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time.

5.11.4 Provided for any particular / individual time-block, only one instruction may be issued, that is, either charge or discharge (not both within the same time-block).

5.11.5 For avoidance of doubt, it is specifically provided that the **Declared Availability** will not take into account the **State of Charge** (as defined below), as the State of charge will vary continuously based on pumping / generation instructions issued by Procurer/SLDC. Procurer/SLDC shall consider State of Charge before issuing the pumping / generation instructions. The Developer shall intimate the State of Charge (expressed in MWh output terms) to the Procurer /SLDC regularly and dynamically.

For illustration purpose, State of Charge and corresponding remaining maximum pumping / generation quantity (MWh) are illustrated below (assuming Contracted Capacity of 2000 MW, 4 hours maximum discharge and Cycle Loss of 25 %):

State of Charge (MWh)	Remaining Maximum Continuous Discharge (output energy) (MWh) (instant MW output capped to Contracted Capacity)	Remaining Maximum Continuous Charge (input energy) (grossed up for Cycle Loss) (MWh)(instant MW input capped to Contracted Capacity)
8,000 (max)	8,000	0
6000	6000	2500
4000	4000	5000
2000	2000	7500
0 (min)	0	10,000 (max)

5.11.6 If the continuous-charge / discharge instruction provided by the Procurer/SLDC exceeds the limits as illustrated above, the continuous-charge / continuous-discharge instruction shall be deemed to have been automatically revised downwards to the limits as illustrated above.

5.11.7 Deemed availability shall be considered in case of charging not provided by the Procurer.

5.12 Penalty for under-achievement of Target Availability

5.12.1 If in a Year, the Actual Annual Availability is lower than 90% (Ninety Five Percent), penalty shall be levied on the Developer, after the end of the Financial Year, as per the following formula:

Penalty (Rs Lakh) = (90% – Actual Annual Availability in % achieved for the Contract Year) x (AFC in Rs Lakh per MW per annum) x (Contracted Capacity in MW)

For illustration: If a Developer/s achieves an Annual Availability of 83% during a Contract Year and the AFC quoted by the Developer/s is INR 10 Lakhs/MW/annum for a Contracted Capacity of 1000 MW, then Penalty for achieving Annual Availability below Target Annual Availability, computed as per above formula is INR 12.0 Crores for the Year.

5.12.2 The Procurer will share the computation of penalty in accordance with clause 5.12.1 above and share the statement of computation with the Developer. The penalty so computed, shall be mentioned by the Developer in its subsequent Monthly Bill for deduction.

5.12.3 Month on month basis monthly fixed charges (MFC) shall be appropriately calculated and paid based on the cumulative availability as below:

$$MFC_n = \left[\frac{FC_n \times \text{Cumulative Availability (\%)} \text{ achieved upto the end } n \text{ month}}{\text{Target Annual Availability (\%)}} \right] FC_{(n-1)}$$

If,

Cumulative Availability (%) achieved upto the end n month for calculation of MFC_n is limited to 90%

Where,

$$FC_n = \frac{[AFC \times CC] \times L}{[T \times \text{No. of days in the year}]}$$

MFC_n = Fixed Charges payable up to the nth month

FC_n = Fixed Charges payable upto and including nth month

FC_(n-1) = Fixed Charges payable upto and including month 'n-1' but not including

month 'n'

AFC = Annual Fixed Charges quoted by the Developer in its Bid in Rupees per MW per Annum

CC = Contracted Capacity in MW

L = Cumulative number of time blocks, corresponding to 8 hours per day, from the 1 st day of the financial year upto and including the month 'n'

T = No. of time blocks per day corresponding to discharge for 8 hours

5.12.4 The calculation of Cumulative Availability shall exclude the following time-blocks:

- a) Time-blocks during which the PHESS can charge/discharge power, but the PHESS is unavailable due to temporary transmission unavailability or grid-related constraints after the Interconnection point, for reasons not attributable to the Developer. The duration of grid unavailability shall be intimated by SLDC/RLDC and shall be factored for Annual Availability computations as per above clause.
- b) Based on machine availability by Developer, SLDC shall provide time block for charging and discharging, and schedule the injection into grid. Any deviation from the injection schedule shall be addressed as per CERC Deviation Settlement Mechanism Regulations as applicable.

5.12.5 The Developer shall have the below Response time

- a) Maximum Ramp-up/Ramp-down Response time in operating conditions: 25% of Contract Capacity per minute
- b) Maximum Response time to reach Contract Capacity: 10 minutes.

5.13 Commissioning of Pumped Hydro Storage Plant

5.13.1 Commissioning

- (a) The Date of Commissioning of PHESS (the “**Scheduled COD**”) shall be shall be **36 months** for at least 50% capacity and full COD in **48 months** from the Effective date of ESFA.
- (b) The Developer shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCOD subject to clause 5.13.4
- (c) The maximum period allowed for commissioning of the full Project Capacity with

applicable liquidated damages shall be limited to the date as on 6 months from the SCOD or upto the extended SCOD (if applicable).

- (d) In case the Developer fails to achieve the commissioning of Project upto SCOD, the Procurer shall be entitled to invoke, encash and appropriate the Performance Security in accordance with Clause 5.15.

The Procurer will share the computation of penalty in accordance with clause (d) above and share the statement of computation with the Developer.

5.13.2 Part Commissioning

Part commissioning of the Project shall be accepted by the Procurer subject to the following:

- (a) The minimum capacity for acceptance of first part commissioning is 50MW and subsequent part(s) shall be 50MW, without prejudice to the imposition of penalty, in terms of this Agreement on the part which is not commissioned.
- (b) However, SCOD will not get altered due to part-commissioning. Irrespective of dates of part commissioning, this Agreement will remain in force for a period of 40 years from the date of full commissioning of the project (the “**Project COD**”).

5.13.3 Delay in Commissioning

- (a) In case of delay in commissioning of the Project beyond SCOD until the date as indicated in Clause 5.13.1(c) above, as part of the liquidated damages, the Performance Security submitted by the Developer/s shall be computed on per-day-basis and proportionate to the balance capacity not commissioned.

For example, in case of 190 MW Contracted Capacity, commissioning of 100 MW capacity is delayed by 18 days beyond the SCOD, then the liquidated damages shall be:

$$\begin{aligned} L.D. &= \text{Performance Security Amount} \times (100/190) \times (18/180). \\ &= (\text{Rs.}12.00 \text{ Lakh} \times 190\text{MW}) \times (100/190) \times (18/180) \\ &= \text{Rs. } 1.20 \text{ Crs.} \end{aligned}$$

- (b) In case the Commissioning of the Project is delayed beyond the date as indicated in 5.13.1 (c), the Contracted Capacity shall stand reduced/ amended to the Part Capacity Commissioned till date. Procurement of the balance capacity shall be at the sole discretion of the Procurer and the AFC for the same shall be lower of the (a) the rates discovered in the latest competitive bid in the country for providing storage services from any technology, or (b) 75% of the AFC quoted by the Developer.
- (c) In case of delay in commissioning of the PHESS due to Force Majeure or due to reasons beyond the reasonable control of the Developer, Procurer may extend the Scheduled COD after examining the issue on a case-to-case basis, subject to

extension of requisite performance security by the developer. Any decision of the Procurer shall be binding on the Developer.

- (d) Procurer will share the computation of penalty in accordance with clause 5.13.3 (a) above and share the statement of computation with the Developer.

5.13.4 Early Commissioning

- (a) The Developer shall be permitted for full as well as part commissioning of the Project even prior to the SCOD.
- (b) In case of part commissioning before the SCOD the Procurer shall procure the capacity at 75% (seventy-five per cent) of the AFC pro-rated for the capacity made available for the duration between date of part commissioning and SCOD.
- (c) Provided that, for any capacity made available by the Developer before SCOD, Procurer shall have the right but not the obligation to procure such capacity.
- (d) In case of early full commissioning of contracted capacity, before the SCOD the Procurer procures the capacity at **100% (hundred per cent)** of the AFC for the duration between date of early full commissioning and Scheduled COD.

Provided that, for any capacity made available by the Developer before SCOD, Procurer shall have the right but not the obligation to procure such capacity.

- (e) In case of early part-commissioning or commissioning of entire capacity prior to the SCOD, and in case the Procurer agrees to procure the early commissioned capacity, the input energy for charging shall be provided by the Procurer at Delivery Point up to the declared Cycle Loss.
- (f) Any energy imported by the PHESS during the construction phase i.e., before synchronization shall be on account of Developer.
- (g) In cases of early full commissioning, till Scheduled Commissioning Date, MSEDCL may utilize the storage facility at 100% (hundred per cent) of the ESFA rate payable to the ESSD. MSEDCL shall procure the capacity at 75% of AFC on pro-rata basis for the capacity made available for the duration between date of part commissioning and SCD. However, in case MSEDCL is not willing to avail ESS facility for the period of part commissioning, then ESSD will be allowed to sell power in exchange or through bilateral contacts with permission of MSEDCL. In this case Procurer will not provide Input Energy to Developer. The Developer should share the profit of part commissioned capacity in the proportion of 50:50 (Procurer: Developer).
- (h) In case of early part or full commissioning before the SCOD, if Procurer doesn't avail the PHESS facility, Procurer will not provide any Input Energy to Developer and Procurer will not provide Fixed Charges for this period. In this case developer shall allow to sell power to third party. The Developer should share the profit in the proportion of 80:20 (Developer: Procurer).

5.14 Extensions of Time

5.14.1 In the event that the Developer is prevented from achieving the progress in fulfilling the Conditions Subsequent within the time stipulated in the ESFA, except for reasons mentioned below, the Procurer may grant extension of time, not more than **120 Days (One hundred Twenty Days)** from the expiry of timeline for achieving Conditions Subsequent as per Clause 4.2. Such extension of time by MSEDCL shall not affect the Commissioning of the Project within the Scheduled Commissioning Date.

In the event that the Developer is prevented from commissioning of the PHESS within the time stipulated in the ESFA due to:

- a) any default by Procurer's Event of Default; or
- b) Force Majeure Events; or
- c) Delay in commissioning/fulfillment of Condition Subsequent on account of delay in STU (Maharashtra)/CTU connectivity operationalization provided:
 - i. the Developer has complied with the complete application formalities with STU (Maharashtra)/ CTU.
 - ii. the Developer has adhered to the applicable procedures in this regard as notified by the CERC/CEA/CTU, and
 - iii. the delay in grant of connectivity by the CTU/STU and/or delay in readiness of the ISTS/InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS /InSTS network, is a factor attributable to the CTU/STU and is beyond the control of the Developer;

The above shall be treated as delays beyond the control of the Developer and SCOD for such PHESS may be revised. Decision on requisite extension on account of the above factor is discretion of the Procurer.

The Developer shall commission the PHESS and seek approval from the Procurer for condoning the delay in commissioning the PHESS urging any of

the grounds mentioned in (a), (b) and (c) above.

- 5.14.2 After hearing the Parties and considering the merits of the grounds urged, Procurer may condone the delay in commissioning of PHESS on any of the grounds stated by the Developer.
- 5.14.3 In case Procurer may condone the delay, the scheduled commissioning date and the expiry date shall be deemed to be extended by the period for which the delay is condoned.
- 5.14.4 In the event that the Developer is prevented from achieving the progress in fulfilling the Condition Subsequent or commissioning the Project for the reasons specified in the Clauses 5.14.1 (a), (b) and (c) and if such events continue, Procurer may terminate the agreement as per the provisions of Article 16.

5.15 Liquidated Damages for delay in COD

The Pumped Hydro Storage based Energy Storage System (PHESS) shall be Commissioned within a period of 4 Years (Four Years) or 48 months (Forty Eight months) (“Scheduled Commercial Operations Date” or “SCOD”) from the date of signing of ESFA. If the Developer is unable to make Contracted Capacity available by the SCOD other than for the reasons specified in Clause 5.14.1, the Developer is liable for Liquidated Damages for the delay in making the Contracted Capacity not available by the Scheduled Commissioning Date. In such a case, the Performance Bank Guarantee amount for the PHESS shall be computed on per-day-basis over 180 days from SCOD and proportionate to the balance Contracted Capacity not commissioned and Performance Bank Guarantee shall be encashed.

For example, in case of 190 MW Contracted Capacity, commissioning of 100 MW capacity is delayed by 18 days beyond the SCOD, then the liquidated damages shall be:

$$\begin{aligned} \text{L.D.} &= \text{Performance Security Amount} \times (100/190) \times (18/180). \\ &= (\text{Rs.12.00 Lakh} \times 190\text{MW}) \times (100/190) \times (18/180) \\ &= \text{Rs. 1.20 Crs.} \end{aligned}$$

- 5.15.1 In case the Commissioning of the PHESS is delayed beyond the date as indicated in 5.15.1, (that is 180 days from SCOD) the Contracted Capacity shall stand reduced/ amended to the Capacity Commissioned and the ESFA for the balance capacity will stand terminated and shall be reduced from the selected Contracted Capacity.
- 5.15.2 The maximum time period allowed for achievement of Commercial Operation Date with payment of Liquidated Damages shall be limited to 6 months from the

SCOD (For example, if the signing of ESFA is 1st April 2024, then

5.15.3 SCOD shall be 31st March 2028, irrespective of holidays.). In case, the achievement of COD is delayed beyond 6 months from the SCOD, it shall be considered as a Developer Event of Default and provisions of Article 16 shall apply.

5.16 Acceptance Test

Prior to synchronization of the PHESS, the Developer shall be required to get the PHESS certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or Chief Electrical Inspectorate of respective state government, to carry out testing and certification for the Pumped Hydro Storage based Energy Storage System (PHESS).

5.17 Third Party Verification

5.17.1 The Developer shall be further required to provide entry to the site of the Pumped Hydro Storage based Energy Storage System (PHESS) free of all encumbrances at all times during the Term of the Agreement to the Procurer, its authorized representatives including representatives from Procurer and a third Party nominated by any Governmental Instrumentality for inspection and verification of the works being carried out by the Developer at the site of the project. The Developer shall provide full support to Procurers and/or the Third Party in this regard.

5.17.2 The third party may verify the construction works/operation of the PHESS being carried out by the Developer and if it is found that the construction works/operation of the PHESS is not as per the CEA standards / Prudent Utility Practices, it may seek clarifications from Developer or require the works to be stopped or to comply with the instructions of such third party.

5.17.3 The third party may carry out checks for testing the Cycle Loss of the PHESS. During a Contract Year, if the Cycle Loss of the project is found to be higher than the declared Cycle Loss, the Developer shall be liable for penalty on non-fulfillment of its obligation in accordance with the provisions of ESFA.

ARTICLE 6: OBLIGATIONS OF THE PROCURER

6.1 Obligations of Procurer

- 6.1.1 Procurer shall, at its own cost and expense undertakes, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 Procurer shall make timely payments of AFC to the Developer as per the procedure set out in Article 13 and maintain the payment security mechanism as prescribed in Clause 13.6.
- 6.1.3 Procurer agrees to provide support to the Developer and undertake to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- a) upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide reasonable support and assistance to the Developer in procuring Applicable Permits required from Indian government agencies for implementation and operation of the Project (PHESS);
 - b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - c) act reasonably, while exercising its discretionary power under this Agreement; and
 - d) support, cooperate with the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- 6.1.4 Procurer shall ensure that the energy required for charging is supplied to Developer at the Delivery Point. However, the deviation charges for charging and discharging shall be borne by Developer, if any, will be dealt as per applicable regulation.
- 6.1.5 Procurer shall provide, Minimum charging power in a 15 min time block will be provided to developer equivalent to rated capacity of turbine unit size.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Developer

In addition to any other representations and warranties contained in the Agreement, Developer represents and warrants that:

- a)** it is duly organized, validly existing and in good standing under the laws of India;
- b)** it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c)** it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d)** it has the financial standing and capacity to undertake the Project (PHESS);
- e)** this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f)** the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g)** there are no actions, suits, proceedings or investigations pending or to the Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h)** it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i)** it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

- j) no representation or warranty by the Developer contained herein or in any other document furnished by it to Procurer or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- k) Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project, and the information provided in the Tender Documents, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.
- l) The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that Procurers shall not be liable for the same in any manner whatsoever to the Developer.

7.2 Representations and Warranties of Procurers

Procurers represents and warrants that:

- a) Procurers has full power and authority to enter into this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and
- b) This Agreement constitutes Procurer's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

7.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 8: Synchronization and Commercial Operation

8.1 Synchronization notice

The Developer shall provide at least thirty (30) days written notice to Procurer of the date on which it intends to synchronize the Power Project (PHESS) to the Grid System.

8.2 Conditions for Grid connection

8.2.1 Subject to Clause 8.1, the Project (PHESS) shall be synchronized by the Developer with the Grid when it meets all the connection conditions prescribed in applicable Grid Code then in effect and meets all Indian legal/Regulatory/Technical or any other requirements essential for synchronization with the Grid.

8.2.2 The synchronization equipment shall be installed by the Developer at its generation facility of the Power Project at its own cost. The Developer shall synchronize its system with the Grid only after the approval of synchronization scheme is granted by the head of the concerned ISTS/InSTS Sub-station/ Grid System and checking/verification is made by the concerned authorities of the Grid.

8.2.3 The Developer shall immediately after each synchronization/ tripping of machine/'s, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code.

ARTICLE 9: DISPATCH

9.1 Dispatch

- 9.1.1 The Power Project (PHESS) shall be required to maintain compliance to the applicable Grid Code/ Central Electricity Authority/ Central or State guidelines requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time.
- 9.1.2 SCADA shall be installed and commissioned by the Developer. The Developer shall integrate the SCADA system with the relevant SLDC/RLDC and shall make the SCADA system ready to accept commands from relevant SLDC/RLDC and provide necessary feedback/data to relevant SLDC/RLDC. Relevant SLDC/RLDC shall not incur any additional cost for operating the SCADA system.

9.2 Discharge of the Pumped Hydro Storage based Energy Storage System (PHESS)

- 9.2.1 The Project (PHESS) shall be designed and constructed so as to operate in generation mode (discharge mode) as well as load mode (charging / pumping).
- a) The Developer shall be responsible for discharge of 8 hours (maximum continuous 5 hours) on daily basis, as per the schedule provided by respective SLDC/Procurer. Further, SLDC/Procurer will take dynamic decision depending upon the grid condition and Project (PHESS) State of Charge for the available quantum of power required for charging and discharging, subject to maximum continuous discharge of 5 hours for the Contracted Capacity.
- b) **Alternate Source of Supply:** During the Operating Period, if the Developer is unable to provide supply of power to the Procurer(s) up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to Supplier Event of Default, the developer is free to supply power up to the Aggregated Contracted Capacity from an alternative generation source (only from PHSP project) to meet its obligation under this Agreement. Such power shall be supplied to the Procurer(s) at the same Tariff as per the terms of this Agreement and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the developer would be liable to bear such additional charges.
- c) The developer shall be permitted to supply power to the Procurer from any alternative source for a maximum continuous duration of six (6) months or a maximum non continuous period of twenty-four (24) months during the Operating Period, excluding any period of supply from alternative generation source that the developer avails prior to the commencement of supply from the generation source named in this Agreement.

ARTICLE 10: METERING

10.1 Meters

- 10.1.1 For installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto, the Developer and Procurer shall follow and be bound by the Applicable Laws including Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 10.1.2 The Developer shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters up to inter-connection point.
- 10.1.3 In addition to ensuring compliance of the applicable codes, the Developer shall install main & check meters at the interconnection point , along with Stand-by meter(s) as per the applicable Central/State regulations

10.2 Measurement of Energy

- 10.2.1 Measurement of electrical energy shall be done at the Interconnection point or points by the metering system. Metering shall be at CTU/STU (ISTS/InSTS) Substation. For commercial settlement, inter-connection point/ delivery point shall mean the point at Substation of CTU/STU.
- 10.2.2 All costs, charges and losses up to Delivery Point during discharge mode will be to the account of the Developers.
- 10.2.3 All costs, charges, wheeling and distribution losses applicable till the Delivery Point during pumping mode will be to the account of the Procurer for the period of supply.

10.3 Reporting of Metered Data and Parameters

- 10.3.1 The Developer will install necessary equipment at Project site for regular monitoring of weather parameters, minimum head level available in the reservoir, conversion cycle loss, auxiliary consumption and simultaneously for monitoring of the electric power generated (generation mode) and electric power consumed (pumping mode) from the Project (PHESS).

- 10.3.2 Online arrangement would have to be made by the Developer for submission of above data regularly for the entire period of this ESFA to RLDC/SLDC and Procurer.
- 10.3.3 Reports on above parameters on monthly basis shall be submitted by the Developer to RLDC/SLDC and Procurer for entire period of this Agreement.
- 10.3.4 The Developer and Procurers shall follow the forecasting and scheduling process as per the prevailing regulations in this regard by MERC /CERC.

ARTICLE 11: INSURANCES

11.1 Insurance

The Developer shall effect and maintain or cause to be affected and maintained, at its own cost and expense, throughout the Term of this Agreement, 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.

11.2 Application of Insurance Proceeds

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

11.2.2 If a Force Majeure Event renders the Project (PHESS) 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.

11.3 Effect on liability of Procurers

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 Developer can claim compensation, under any Insurance shall not be charged to or payable by Procurer.

ARTICLE 12: APPLICABLE TARIFF

12.1 Annual Fixed Charge (AFC)

- 12.1.1 The Procurer shall pay to the Developer, Annual Fixed Charges (AFC) at INR___ per MW per annum (without any escalation), payable for Availability of the Project (PHESS) to the extent of Normative Availability thereof and shall be computed and paid on monthly basis in accordance with the provisions of this Agreement corresponding to the Period of Supply mentioned in Clause 3.3, during the term of this agreement.
- 12.1.2 The AFC shall be billed by the Developer and paid by the Procurer on monthly basis, as Monthly Fixed Charge (MFC) and MFC shall be computed in accordance with clause 5.12.3.
- 12.1.3 MFC shall be calculated on month on month basis appropriately based on the cumulative availability. The target availability for the contract year is 90%.
- 12.1.4 Full AFC upto the current month shall be payable for achievement of Target Annual Availability. In case of cumulative availability being lower than 90%, penalty will be applicable in accordance with Clause 5.12.1 of this Agreement.
- 12.1.5 The MFC payable shall be further adjusted on account of variation between Cycle Loss and the Declared Cycle Loss as per the Clause 12.2.2.
- 12.1.6 Penalty applicable shall be computed and billed by Developer along with MFC bill at the end of every applicable month in an assessment Contract Year. Any claim towards the penalty shall be adjusted in the same Monthly Bill and the Procurer will have the rights to settle or dispute the claims in this regard as per Clause 13.3 and Clause 13.7.
- 12.1.7 Reactive Energy Billing: The Reactive power charges and charges against power drawn from grid as per CERC/SERC regulations, shall be payable by Developer.
- 12.1.8 In case of tripping/ non availability of PHESS Project after scheduling of energy for the pumping power till the schedule revise to zero, cost of the pumping energy scheduled shall be deducted from MFC at the rate of Average Power Purchase Rate notified/approved/issued for the control period by MERC to MSEDCL .Further, the responsibility of revision of schedule in this case is with the Developer.

12.2 Energy consumption during pumping mode

12.2.1 Cost of supplying pumping energy including cost of power, Transmission charges and losses, Electricity Duty, etc up to Delivery Point shall be borne by Procurer, also factoring the Cycle Loss declared by Developer at [----%]. If for any month, it is found that the Developer has not been able to adhere to the declared Cycle Loss, such shortfall in performance shall be adjusted in the MFC payable to the Developer.

12.2.2 The adjusted MFC payable to the Developer on account of higher Cycle Loss than the Declared Cycle Loss shall be as below:

Adjusted MFC

$$= MFC - [(Input\ Energy\ at\ Actual\ Cycle\ Loss - Input\ Energy\ at\ Declared\ Cycle\ Loss) \times Additional\ Input\ Energy\ Charges]$$

Where,

Additional Input Energy Charges will be as below:

Deviation from declared Cycle Loss	Excess Input Energy to be billed at
≤10%	1.5 x Average Power Purchase Rate notified/approved/issued for the control period by MERC to MSEDCL
> 10%*	2.00 x Average Power Purchase Rate notified/approved/issued for the control period by MERC to MSEDCL

*The overall efficiency of the hydro generating units/plants shall not be less than 75% at any point of time.

Average Power purchase rate (APPR) shall be as notified/approved/issued by the MERC for the applicable year. In case there is no approved rate for the said period, then the last rate approved may be considered and same shall be reconciled after the notification of APPR by MERC for the corresponding year. There is no Adjusted AFC (payable on monthly basis) applicable, if the actual Cycle Loss is lower than the Declared Cycle Loss.

Illustration:

If the Declared Cycle Loss is 25% whereas the Actual Cycle Loss is 27%, then the applicable amount on 2% (i.e., 25%-27%) additional input energy shall be billed and recovered from the Developer at the approved Average Power purchase rate (MERC approved value for the applicable year). Considering quoted AFC ----

Sr No	Particulars	Unit	Legend	Amount
1.	Declared Cycle Loss	%	A	25
2.	Monthly Output	MWh	B	2,40,000
3.	Input Energy required @Declared Cycle Loss	MWh	$C = B/(1-A)$	3,20,000
4.	Actual Cycle Loss	%	D	27
5.	Actual Input Energy Required	MWh	$E = B/(1-D)$	3,28,767
6.	Excess Input Energy required	MWh	$F = E - C$	8767
7.	APPR rate (as approved by MERC at national level)	INR per unit	G	4.40 (illustrative)
8.	Additional input energy charges	INR per unit	$H = G * 1.50$	6.6
	Additional input energy cost Rs.	INR	$I = F * H * 1000$	57863013.70
9.	MFC	INR	J	250000000
10.	Adjusted MFC	INR	$H = I - (H * F)$	192136986

- 12.2.3 The Output/Discharge Energy at all times during the contract period shall be equal to the Contracted Capacity.
- 12.2.4 The calculation for Cycle Loss shall be part of the Monthly Bill raised by the Developer and Procurer will have the rights to accept or dispute the claims in this regard as per Clause 13.3 and Clause 13.7
- 12.2.5 Based on machine availability by developers, SLDC/Procurer shall provide time block for pumping and generation, and schedule the injection into grid. Any deviation from the schedule shall be addressed as per CERC Deviation Settlement Mechanism Regulations as applicable.
- 12.2.6 In case of generation of excess power by ESSD due to reduction in Round Trip Loss, ESSD will be allowed to sell power in exchange or through bilateral contacts with a profit sharing in proportion of 40:60 (Procurer: Developer). However, MSEDCL will reserve the First Right of Refusal.

ARTICLE 13: BILLING AND PAYMENT

13.1 General

13.1.1 On achievement of COD and thereon commencement of supply of power, Procurer shall pay to the Developer the MFC, on or before the Due Date, in accordance with Article 13. All payments by Procurer shall be in Indian Rupees.

13.2 Delivery and Content of Monthly Bills/Supplementary Bills

13.2.1 The Developer shall issue to Procurer a signed monthly bill/Supplementary Bill for the immediately preceding Month based on the period of supply of the Procurer, along with all relevant documents.

13.2.2 Each monthly bill shall include all charges as per this Agreement for the Contracted Capacity supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties.

13.3 Payment of Monthly Bills

13.3.1 The Procurer shall, within 30 (thirty) days of receipt of a Monthly Invoice/Supplementary Invoice in accordance with Clause 13.2.1, (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").

13.3.2 The due date of making of payments shall be 30th day (if such day is not a business day, the immediately succeeding business day) after energy bill is received by the MSEDCL through email (ceppmsedcl@gmail.com) upto 12:00 Hrs, after 12:00 Hrs next day shall be considered as bill receipt day. For the purpose of determination of due date, the day 1 shall be the 'X'+1 day, where 'X' is the date of receipt of bill by the Procurer.

13.3.3 All payments required to be made under this Agreement shall also include any deduction or set off for:

- a. deductions required by the Law; and
- b. amounts claimed by Procurer, if any, from the Developer, through an invoice to be payable by the Developer, and not disputed by the Developer within

thirty (30) days of receipt of the said Invoice and such deduction or set-off

shall be made to the extent of the amounts not disputed. It is clarified that Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Day's period.

- c. The Developer shall open a bank account at ___ [Insert name of place] (the "Developer's Designated Account") for all Payments (including Supplementary Bills) to be made by Procurers to the Developer and notify Procurers of the details of such account at least 90 (ninety) days before the dispatch of the first monthly bill.

13.4 Late Payment Surcharge

In the event of delay in payment of a monthly bill by Procurer beyond its Due Date, a late payment surcharge shall be payable to the Developer as per Electricity (Late Payment Surcharge and related matters) Rules, 2023 as amended from time to time or any subsequent re-enactment thereof. The Late Payment Surcharge shall be claimed by the Developer through the Supplementary Bill.

13.5 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the Developer to Procurer in the following manner.

- a) A Rebate of 1.5% shall be payable to the Procurer for the payments made on or before the 7th Business Day from the date of receipt of the Invoice.
- b) Any payments made beyond the date as mentioned above in point "a" upto the Due Date shall be allowed a rebate of 1%.
- c) Provided that, any payment made by Procurer on date of presentation of Bill, a Rebate of 2% shall be payable.
- d) For the above purpose, the date of presentation of bill shall be same day in case it is delivered on or before 12:00 noon, else it would be the next Business Day.
- e) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess.

13.6 Payment Security Mechanism

13.6.1 Procurer, not later than 30 (Thirty) days prior to commencement of supply, shall provide to the Developer, in respect of payment of its Monthly Bills corresponding to their respective period of supply, an unconditional, monthly revolving and irrevocable letter of credit (“Letter of Credit”), which may be drawn upon by the Developer in accordance with this Article.

The Letter of Credit, shall be procured by the Procurer from a scheduled bank at Mumbai [Identified Place] and shall be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of six (6) Months respectively.

Provided that the Developer shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill.

13.6.2 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 13.6.1 due to any reason whatsoever, Procurer whose Letter of Credit has been invoked shall restore such shortfall within fifteen (15) days.

13.6.3 Procurer shall ensure that the Letter of Credit shall be renewed not later than 30(thirty) days prior to its expiry

13.6.4 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Procurer.

13.6.5 If Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, the Developer may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference to or instructions from Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents

- a) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to Developer and;
- b) a certificate from the Developer to the effect that the Monthly Bill or Supplementary Bill at item (a) above, or specified part thereof, is in accordance with the Agreement and has undisputed and remained unpaid beyond the Due Date.

13.7 Performance Guarantee

- 13.7.1 The Developer shall, for the performance of its obligations hereunder during the Operation Period, be deemed to provide to the Procurer upon occurrence of COD of the last unit, an irrevocable and unconditional guarantee pursuant to the provisions of this Clause 13.7 (the "Performance Guarantee"), for a sum equivalent to the Fixed Charge due and payable by the Procurer to the Developer as on COD for Normative Availability in respect of a period of 15 (fifteen) days in accordance with the provisions of this Agreement. The Performance Guarantee shall constitute the first and exclusive charge on all amounts due and payable by the Procurer to the Developer, and the Procurer shall be entitled to enforce the Performance Guarantee by making a deduction from the amounts due and payable by it to the Developer in accordance with the provisions of Clause 13.8. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation.
- 13.7.2 Notwithstanding anything to the contrary contained in this Agreement, the Procure may encash the Performance Guarantee and appropriate the proceeds thereof as Damages for not meeting the obligations of the Supplier under this Agreement.
- 13.7.3 Upon occurrence of a Developer Default, the Procurer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Guarantee as Damages for such Developer Default. For the avoidance of doubt, the Parties expressly agree that upon the Performance Guarantee being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

13.8 Disputed Bill

- 13.8.1 If the Procurer does not dispute a Monthly Bill or a Supplementary Bill raised by the Developer by the Due Date, such Bill shall be taken as conclusive subject to reconciliation as per Clause 13.9.
- 13.8.2 If the Procurer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the disputed amount and it shall within Thirty (30) 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;

(c) and all written material in support of its claim.

13.8.3 If the Developer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Clause 13.7.2 the Developer shall revise such Bill and present along with 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 disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

13.8.4 If the Developer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Clause 13.7.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (the "Bill Disagreement Notice") to the Procurer providing:

- (a) reasons for its disagreement;
- (b) its estimate of what the correct amount should be;
- (c) and all written material in support of its counter-claim.

13.8.5 Upon receipt of the Bill Disagreement Notice by the Procurer under Clause 13.7.4, the Parties shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

13.8.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Clause 13.7.4, the matter shall be referred to Dispute resolution in accordance with Article 18.

13.8.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the Disputed Amount in the Monthly Bill.

13.9 Payment of Supplementary Bill

13.9.1 Developer may raise Supplementary Bill for payment on account of:

- a) Adjustments required by the Monthly Energy Accounts (if applicable); or
- b) Change in Law as provided in Article 15

13.9.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Developer to the Developer's Designated Account by the Due Date. For such payments by Procurer, Rebate as applicable to Monthly Bills pursuant to Clause 13.5 shall equally apply.

13.9.3

13.9.4 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 Clause 13.4

13.10 Annual Reconciliation

13.10.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to annual reconciliation at the end of each Financial Year within 30 days of issuance of final energy accounts by competent authority to take into account the Energy Accounts, AFC adjustments, rebates, Late Payment Surcharge, penalty for deviation from Target Annual Availability, penalty for deviation from Declared Cycle Loss or any other reasonable circumstance provided under this Agreement.

13.10.2 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 18.

13.10.3 The Parties, therefore, agree that as soon as all such data in respect to a full Financial Year has been finally verified, adjusted and the final energy account has been issued by competent authority, the Developer and Procurer shall jointly sign such reconciliation statement.

13.10.4 Upon reconciliation, if any amount is payable by either party to the other party the invoice shall be raised within seven (7) days of signing of a reconciliation statement, and requisite payments to be made within fifteen (15) Days of issuance of such invoice.

ARTICLE 14: FORCE MAJEURE

14.1 Definitions

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

14.2 Affected Party

14.2.1 An Affected Party means Procurer or the Developer whose performance has been affected by an event of Force Majeure.

14.3 Force Majeure

A **'Force Majeure'** means any event or circumstance or combination of events those stated below which 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 the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice and has Material Adverse Effect on the Affected Party:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake above 6.5 on Modified Richter scale, landslide, drought, cyclone, flood exceeding 1 in 10,000 frequency, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site) if and only if it is declared/ notified by the competent state / central authority / agency (as applicable) or verified to the satisfaction of Procurer;
- b) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- c) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractor .;
- d) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

- e) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- f) any judgment or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement or
- g) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Developer or any of the Contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit.
- h) The discovery of geological conditions, toxic contamination or archaeological remains on the Project site or PHESS Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or any event or circumstances of a nature analogous to any of the foregoing.
- i) Any delay in Government/Sponsor Agency/Government agency Decision making or decision taken by the Government/Sponsor Agency/Government agency which is inimical to the development of the Project as envisaged in this Agreement.
- j) An event of force majeure affecting the concerned STU/CTU, as the case be, thereby affecting the evacuation of power.

14.4 Force Majeure Exclusions

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 ;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d) Strikes 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:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement.
- g) Non-availability of Water other than drought

14.5 Notification of Force Majeure Event

- 14.5.1 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.
- 14.5.2 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.
- 14.5.3 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.
- 14.5.4 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.

14.6 Duty to Perform and Duty to Mitigate

To the extent not prevented by a Force Majeure Event pursuant to Clause 14.3, 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.

14.7 Available Relief for a Force Majeure Event

Subject to this Article 14:

- 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, including but not limited to those specified under Article 5 & 6;
- 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 including any cost query shall be made by either Party affected by a Force Majeure Event.

14.8 Performance Excused

- a) The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, to the extent it is unable to perform on account of such Force Majeure Event, for a period equal in length to the duration for which such Force Majeure Event subsist, provided that such period shall not exceed 180 (one hundred and eighty) days from the date of issuance of the Force Majeure Notice, or any extended period as mutually agreed. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event. However, in case of the Force Majeure Event continuing upto a period of 180 days or any extended period as mutually agreed, either Party has the right to terminate the Agreement.

- b) For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the Procurer shall be entitled for a day-to-day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the Agreement period, as the case may be. The term of this Agreement will be suitably extended as per the above extension.
- c) Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- d) Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Termination Due to Force Majeure Event

In the event a Force Majeure Event subsists for a period of more than 9 months during the Term of this Agreement, either Party shall be entitled to terminate this Agreement by issuing a termination notice to the other Party. (Termination payment)

14.10 No Liability for Other Losses

Save as otherwise provided in these Guidelines, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

ARTICLE 15: CHANGE IN LAW

Definitions:

In this Article 15, the following terms shall have the following meanings:

"Change in Law" means the occurrence of any of the following events after the **after the Bid Submission Date** resulting in any additional recurring/ non-recurring expenditure by the Developer or any income to the Developer:

- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Applicable Law, including rules and regulations framed pursuant to such Law;
- b. change in the interpretation or application of any Applicable Law by any Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- c. any change in taxes and duties or introduction of any taxes and duties made applicable for setting up of the Project for supply of power by the Developer as per the terms of this Agreement. The Developer shall consider all the prevailing taxes and duties applicable on the date of submission of Bid while submitting the Bid for the Project(s). If any such above prevailing taxes and duties are not considered or omitted or ignored, then it shall be accepted that the Developer has considered all such taxes and duties in its Bid. Any change in law pertaining to taxes and duties after the date of submission of Technical Bid shall be to the account of Procurers and appropriate change in tariff, either increase or decrease in proportionate, due to the change in taxes and duties shall be as per clause 15.2 (Relief for Change in Law) of this Agreement;

But shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Developer, or (ii) any change on account of regulatory measures by the Appropriate Commission, or (iii) any change in the Appropriate Commission's approved Tariff as compared to the approved tariff exist as on the Bid Due Date.

15.1 Relief for Change in Law

- 15.1.1 The aggrieved Party shall be eligible for such compensation so as to restore it to the original position as if the Change in Law had not occurred and shall be required to approach the Appropriate Commission for seeking approval of Change in Law.
- 15.1.2 The decision of the Appropriate 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.

ARTICLE 16: Termination

16.1 Termination for Developer Event of Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Developer shall be deemed to be in default of this Agreement (the "**Developer Event of Default**"), unless the default has occurred solely as a result of any breach of this Agreement by Procurer or due to Force Majeure. The defaults referred to herein shall include the following:

- a) The Developer has failed to achieve the COD within the period as specified in Clause 5.13.1 for any reason whatsoever;
- b) After COD of the PHESS, the Developer fails to achieve availability of 80% (eighty percent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months;
- c) After COD of the PHESS, the Developer fails to maintain cycle loss below 25% (twenty-five percent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months;
- d) The condition relating to equity lock-in period specified in Clause 5.2 of this Agreement is not complied.
- e) the Performance Security has been encashed and appropriated in accordance with Clause 4.5.2 and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- f) The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- g) The Developer is in material breach of any of its obligations pursuant to this Agreement, including failure to fulfill Condition Subsequent, and such material breach is not rectified by the Developer within thirty (30) days of receipt of first notice in this regard given by Procurer.
- h) Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;

- i) A resolution has been passed by the shareholders of the Developer for voluntary winding up of the Developer;
- j) Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Procurer, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement;
- k) A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable; and
- l) The Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 120 days.
- m) the Developer is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- n) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets that has a material bearing on the Project
- o) the Developer has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect
- p) the Developer submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;
- q) the Developer issues a Termination Notice in violation of the provisions of this Agreement; or
- r) The Developer commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

16.2 Termination for Procurer Event of Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and Procurer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (Sixty) days, Procurer shall be deemed to be in default of this Agreement (a **“Procurer Event of Default”**), unless the default has occurred solely as a result of any breach of this Agreement by Developer or due to Force Majeure. The defaults referred to herein shall include the following:

- a) Procurer has unreasonably withheld or delayed grant of any approval or permission which the Developer is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- b) Procurer is in material breach of any of its obligations, under this Agreement and has failed to cure such breach within 60 (Sixty) days of receipt of notice thereof issued by the Developer and which has led to the Project forfeiting the benefits accruing under Applicable Law;
- c) Procurer has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- d) Any representation made or warranty given by Procurer under this Agreement has been found to be false or misleading.

16.3 Procedure for cases of Developer/Procurer Event of Default

- 16.3.1 Upon the occurrence and continuation of any Developer Event of Default under Article 16, Procurer shall be entitled to terminate this Agreement by issuing a notice stating its intention to terminate this Agreement (Procurers Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 16.3.2 Following the issue of a Procurers 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.
- 16.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 16.3.4 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 Developer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer shall be entitled to terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Developer.
- 16.3.5 Upon occurrence and continuation of any Procurer Default specified in Clause 16.2, the Developer shall have the right to deliver to Procurer, a Developer Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 16.3.6 Following the issue of a Developer 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.
- 16.3.7 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 16.3.8 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 Developer shall be entitled to sell the Contracted Capacity to any third party of the Developers choice and the Developer shall be entitled to terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Procurer.

16.4 Termination Payment

- 16.4.1 Upon Termination on account of a Developer Default, the Developer shall pay to the Procurer, by way of Termination Payment, an amount equal to the AFC that would have been due and payable for Normative Availability for a period of 1 (one) year as if the PHESS had operated for such 1 (one) year from the date of Termination
- 16.4.2 Upon Termination on account of a Procurer Default, the Procurer shall pay to the Developer, by way of Termination Payment, an amount equal to the AFC that would have been due and payable for Normative Availability for a period of 6 (six) months as if the PHESS had operated for such 6 (six) months from the date of Termination..
- 16.4.3 Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Procurer of its payment obligations in respect thereof hereunder.
- 16.4.4 The Developer expressly agrees that Termination Payment under this Article 16.4 shall constitute a full and final settlement of all claims of the Developer on account of Termination of this Agreement for any reason whatsoever and that the Developer or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, and contractor otherwise.

ARTICLE 17: Liability and Indemnification

17.1 Indemnity

17.1.1 The Developer 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 Developer 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 Developer of any of its obligations under this Agreement, (provided that this Article 17 shall not apply to such breaches by the Developer, for which specific remedies have been provided for under this Agreement)

17.1.2 Procurer shall indemnify, defend and hold the Developer harmless against:

- a) any and all third-party claims against the Developer, 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 their 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 Developer from third party claims arising by reason of a breach by Procurer of any of its obligations.

17.2 Procedure for claiming Indemnity

17.2.1 Third party claims

- a) Where the indemnified party is entitled to indemnification from the indemnifying party pursuant to Article 17, the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 17 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:

- i. the Parties choose to refer the contest the claim of third party; and
 - ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the third-party claim, 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 third-party claim, if such claim is settled in favor of the third party.
- b) The Indemnified Party may contest the claim of the third party for which it is entitled to be Indemnified under Article 17 and the indemnified 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.

An indemnifying party may, at its own expense, assume control of the defense 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 defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

17.3 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the indemnifying party pursuant to Article 17, 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 non-payment of such losses after a valid notice under this Article 17, such event shall constitute a payment default under Article 16.

17.4 Limitation on Liability

Except as expressly provided in this Agreement, neither the Developer 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 Developer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

17.5 Duty to Mitigate

The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 17.

ARTICLE 18: Governing Law and Dispute Resolution

18.1 Governing Law

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 under this Agreement shall be under the exclusive jurisdiction of appropriate courts in Mumbai, Maharashtra.

18.2 Amicable Settlement and Dispute Resolution

- i.** 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.
- ii.** The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Clause 18.2 (i), furnish:
 - a.** counter-claim and defenses, if any, regarding the Dispute; and
 - b.** all written material in support of its defenses and counter-claim.
- iii.** Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Clause 18.2 (i) if the other Party does not furnish any counter claim or defense under Clause 18.2 (ii) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Clause 18.2 (iii), the Dispute shall be referred for dispute resolution in accordance with Clause 18.3.

18.3 Dispute Resolution

Dispute Resolution by Appropriate Commission

- a. If any dispute is not settled amicably under Clause 18.2, the same shall be referred by any of the Parties to Appropriate Commission for dispute resolution in accordance with the provisions of the Electricity Act 2003.

18.4 Performance during Dispute

Pending the submission of and/or decision on a Dispute by Appropriate Jurisdiction, the Parties shall continue to perform their respective obligations under this Agreement, subject to any interim order that may be passed by Appropriate Jurisdiction, without prejudice to a final adjustment in accordance with such decision by Appropriate Jurisdiction.

ARTICLE 19: Assignment and Charges

19.1 Assignments

- 19.1.1 This Agreement shall be binding upon, and inure 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.
- 19.1.2 Provided that, Procurer shall permit assignment of any of Developer's rights and obligations under this agreement in favor of the lenders to the Developer, if required under the financing agreements.
- 19.1.3 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.

ARTICLE 20: Miscellaneous

20.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party and which is not covered in LPS rule shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing medium term prime lending rate of State Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise authorized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 20 shall neither be deemed nor construed authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

20.2 Confidentiality

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; or
- 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;
- d. without the prior written consent of the other Party.

20.3 Waiver of immunity

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

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

20.4. Waiver

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

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

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

20.5. Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Supplier in the Project Assets shall be deemed to be acquired and owned by the Supplier. For the avoidance of doubt, the Utility shall not in any manner be liable in respect of any claims for depreciation to be made by the Supplier under Applicable Laws

20.6. Exclusion of implied warranties etc.

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

20.7. Survival

Termination shall;

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

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

20.8. Entire Agreement

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

20.9. Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or

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

20.10. No partnership

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

20.11. Third Parties

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

20.12. Successors and assigns

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

20.13. Notices

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

- a) in the case of the Developer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Developer may from time to time designate by notice to Procurer; provided that notices or other communications to be given to an address outside _____ [insert location of concerned Procurer] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Developer may from time to time designate by notice to Procurer;

- b) in the case of Procurer, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the _____ with a copy delivered to Procurer Representative or such other person as Procurer may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in [insert location of concerned Procurer] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery, provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

20.14. Delayed payments

- a) The Parties hereto acknowledge and agree that the Electricity (Late Payment Surcharge and related Matters) Rules 2022 (“LPS Rules”) shall be applicable. In the event of payment by the Utility beyond the Due Date, a Late Payment Surcharge (LPS) shall be payable by the Utility to Supplier on the outstanding payment beyond the Due Date. The rate of Late Payment Surcharge for first month of default as well as for successive months of default will be as per the terms of the LPS Rules. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.
- b) Late Payment Surcharge shall be claimed by the Supplier through Supplementary Bill. All payments by the Utility to the Supplier for power procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill. All the bills payable by the Utility to Supplier for the energy procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Utility shall be adjusted first against the oldest bill and then to the second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.

20.15. No partnership

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

20.16. Third parties

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

20.17. Successors and assigns

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

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

20.18. Counterparts

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

ARTICLE 21: Definitions

21.1 Definitions

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

"Accounting Year" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.

"Act" or "Electricity Act, 2003" shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time“

"Actual COD" shall mean the Date of full commissioning of the PHESS

"Affected Party" shall have the meaning set forth in Clause 14.2“

"Affiliate" shall mean a Company that, directly or indirectly,

- i. controls, or
- ii. is controlled by,
- iii. is under the common control with the Bidder or is a Member in a Bidding Consortium developing the Project.

The expression ‘control’ shall mean the ownership, directly or indirectly, of 51% (fifty one percent) or more of the voting shares of such company or right to appoint majority directors.

"Agreement" "or "Energy Storage Facility Agreement" "or" "ESFA" shall mean this Energy Storage Facility Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof”

"Annual Fixed Charge (AFC)" shall mean Annual fixed cost of storage payable annually to the Developer/s at the Delivery Point for a period of 40 years. The Annual Fixed Charge payable to the Developer/s shall be expressed in INR/MW/Annum.

"Appropriate Commission" shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in sub- section (1) of section 82 of the Electricity Act 2003 as the case may be.

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

"Applicable Permits" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facilities during the subsistence of this Agreement“

"Bidder" or **"Bidding Company"** shall mean a Company, public sector enterprise or undertaking, foreign company, AIF, Foreign Investment Fund or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ Member in a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require.;

"Bidding Consortium" or **"Consortium"** shall refer to a group of companies that has collectively submitted the response in accordance with the provisions of RfS no. CEPP/PHSP/T-01 dated 09/03/2024;

"Bidding Document/Tender": This RfS, Pumped Hydro Energy Storage Facility Agreement (PHESS), including annexures, amendments / corrigenda thereof.

"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;

"Business Day" shall mean with respect to Developer and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Mumbai, Maharashtra;

"Change in Law" shall have the meaning ascribed thereto in Article 15 of this Agreement.

"CERC" shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors.

“

“Commercial Operation Date (COD)” shall mean the date on which the commissioning certificate is issued upon successful commissioning of the full Contracted Capacity or the last part capacity of the PHESS (where upon the developer starts injecting power from the PHESS to the Delivery point) as the case maybe.

“Competent Court of Law” shall mean any court or tribunal or any similar judicial or quasi- judicial body in Mumbai, Maharashtra that has jurisdiction to adjudicate upon issues relating to this Agreement.

"Company" means the Company acting as the Developer under this Agreement;

Conversion Efficiency: Conversion Efficiency measured at the Delivery Point, and in reference to a complete cycle (full charge and full discharge) is ratio of output energy delivered at Delivery Point to input supplied energy at Delivery Point.

“Conversion Loss/ Cycle Loss”: $\text{Cycle Loss} = 100\% - \text{Conversion Efficiency}$

"Conditions Subsequent" shall have the meaning set forth in Article 4.

“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 sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Developer Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 16 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances.

"Construction Works" means all works and things necessary to complete the Project Facilities in accordance with this Agreement

"Contracted Capacity" shall mean [Insert capacity] MW of pumped hydro storage contracted with Procurer for discharge by the Developer to Procurer at the Delivery Point. The pumped hydro storage should be capable of delivering 8 hours of discharge in a 24 hour period 00:00 hrs to 24:00 hrs. with maximum 5 hours' continuous discharge. Capacity of the Pumped hydro storage system (Excluding auxiliary consumption) in MW contracted with Procurer for supply by the Bidder at the Delivery Point from the PHESS.

“Contract Year” shall mean the period beginning from the SCOD 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 (i) in the financial year in which the Actual Commissioning Date would occur, the Contract Year shall end on the date immediately before the Actual Commissioning Date and a new Contract Year shall commence once again from the Actual Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and

(ii) Provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement.

“Contractor” means the person or persons excluding Other Developer, as the case may be, with whom the Developer has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Developer”

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

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

Provided that if the cure of any breach by the Developer requires any reasonable action by the Developer that must be approved by Procurer or the Independent Engineer hereunder authorized representative of Procurer, the applicable Cure Period shall be extended by the period taken by Procurer or the Independent Engineer hereunder authorized representative of Procurer to accord their approval;

“CTU (Central Transmission Utility)” shall mean the Central Transmission Utility as defined in sub-section (10) of section 2 of the Electricity Act 2003

“Declared Cycle Loss” shall mean Cycle Loss declared by the Developer in the

bid submission;

Delivery Point:- at Maharashtra State Transmission System periphery,(i.e. the interconnection of Maharashtra STU, and CTU Western Region (WR)) for inter-state developers/projects and at Maharashtra STU sub-station (220 kV and above) for Intra-state Developers/projects. **Delivery Point**”: for intra-state PHESS, The Delivery Point shall be the point at STU/MSETCL periphery, where the power from the Project is injected into the identified STU Substation (including the dedicated transmission line connecting the Project(s) with the Maharashtra STU substation system) and for ISTS connected PHESS, Delivery Point shall be point at interface point at CTU substation.

Declared Availability: “Declared Availability” (MW) is the capability of the Project to operate in both pumping and generation mode, and will be declared by the ESSD at / before 6 AM on day-ahead basis, for each 15-minute time block for the next day. For example, the Declared Machine Availability for all 96 no. 15-minute time blocks of 1st September 2024 will be submitted by 6 AM of 31st Aug 2024

"Developer Event of Default" shall have the meaning set forth in Article 16.1 of this Agreement.

"Dispute" shall have the meaning set forth in Article 18.2 of this Agreement.

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 18

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

"Due Date" shall have the same meaning ascribed thereto in Article 13 of this Agreement.

"Effective Date" shall mean date as defined in Clause 3.1;

"Electricity Laws" shall mean the Electricity Act, 2003 and the rules and regulations made there under 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 that is likely to endanger the security of the individuals on or about the Project Facilities, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets“

"Encumbrances" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site / Project Facilities.

"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.

"ESSD" shall mean **"Energy Storage System Developer"** and shall refer to the Selected Bidder or Successful Bidder or Special Purpose Vehicle formed by Successful Bidder to provide the storage capacity from pumped hydro storage plant project as per terms and conditions of RfS.

"ESFA" shall mean an "Energy Storage Facility Agreement"

"Events of Default" shall mean the events as defined in Article 16 of this Agreement

"Procurer Default" shall have the meaning set forth in Article 16 of this Agreement;

"Expiry Date" Shall mean the date occurring Forty (40) years from the Actual Commissioning Date or Actual COD unless extended by the Parties as per this Agreement.

"Financial Closure" shall mean the execution of all the Financing Agreements required for the Power Project/PHESS and fulfillment of Condition Subsequent and waiver, if any, of any of the Condition Subsequent for the initial draw down of funds there under.

"Financing Agreement" shall mean the agreements pursuant to which the Developer has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Procurer.

"Force Majeure" **"or "Force Majeure Event"** shall have the meaning ascribed to it in Article 14

"GoI" means Government of India

"Good Industry Practices" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

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

"Installed Capacity" shall mean {the name plate capacity of all the units of the PHSP Project reckoned at Generator Terminals or the AC Rating of the Project at Delivery Point}.

"Insurances" shall mean the insurance cover to be obtained and maintained by the Developer in accordance with Article 11 of this Agreement.

"Interconnection Facilities" shall mean the facilities on Developer's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 10, the Metering System required for supply of power as per the terms of this Agreement.

"Inter-Connection Point/ Metering Point" "Inter-Connection Point" shall mean the point at 220 kV and above where the power from the Project is injected into the nearest ISTS/InSTS Substation as the case may be. Metering shall be done at this interconnection point where the power is injected into Grid. For

interconnection with grid and metering, the Bidder/s shall abide by the relevant CERC/SERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and Amendment Regulation, 2010 and Technical Standard for Connectivity of the Grid (Amendment) Regulation, 2013, the Grid Code as amended and revised from time to time. The total cost of metering, recording & transferring /communicating the data from its pooling stations to 765/400/220 kV Grid Substation (GSS) of CTU/STU would be borne by the Developer/s.

ISTS: ISTS means “Inter-State Transmission System”

InSTS: InSTS means “Intra-State Transmission System”/ Maharashtra State Electricity Transmission Company Limited (MSETCL) or STU.

“Invoice” or “Bill” shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties.

“Late Payment Surcharge” shall have the meaning ascribed thereto in Clause 13.4 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 ;

“Letter of Award” or “LoA” shall mean the letter issued by MSEDCL to the Selected Bidder for award of the Contracted Capacity.

“Letter of Credit” or “LC” shall have the meaning ascribed thereto in Clause 13.6 of this Agreement.

“Lenders' Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes“

“Month” shall mean a month in a calendar year as per Gregorian calendar;

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

"O&M" means the operation and maintenance of the Project Facilities and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement;

"Other Developer" shall mean all the bidders other than the Single Business Entity/Consortium, declared as Selected Bidder under the RFS and the SPV, if any formed by such Selected Bidders, with whom the Storage Procurement Agreements are executed in accordance with the provisions of the RFS to undertake any Project(s) thereunder.

"Parent" shall mean a Company, which holds not less than 51% equity either directly or indirectly in the Project Company or a Member in a Consortium providing Contracted Capacity;

"Paid-up share capital" shall mean Paid-up share capital as defined in Section-2 of the Companies Act, 2013.

"Part Commissioning" shall mean the minimum capacity for acceptance of first part commissioning at one project site shall be 50% of the allocated Project Capacity or [50] MW, whichever is lower, without prejudice to the imposition of penalty, in terms of the ESFA on the part which is not commissioned

"Payment Security Mechanism" shall have the meaning ascribed thereto in Clause 13.6 of this Agreement.

"Performance Security" shall have the meaning set forth in Clause 4.5;

Project/ Pumped Hydro Energy Storage System (PHESS)/ Pumped Hydro Storage Project/s" shall mean the Pumped Hydro Storage Plants (PHSP)/ Pumped hydro storage system, comprising all the various components for charging (pumping) and discharging (generation), having single point of injection into the grid at Interconnection/ Delivery/ Metering Point, and having requisite control systems and separate metering system for each interconnection points with ISTS/InSTS.

The Project shall include all Pumped hydro generation units, auxiliaries and associated facilities, bay(s) for transmission system in the their switchyard, dedicated transmission line up to the injection point 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 to Procurer/s under this Agreement.

The Project shall also , includes all components of the storage facility such as Upper Reservoir, Lower Reservoir, penstocks, head and tail works, main and regulating reservoirs dams and other hydraulic works, intake water conductor system, tail water conductor system, surge well, power Station and generating/pumping Units;

“Preliminary Default Notice” shall have the meaning ascribed thereto in Article 16 of this Agreement.

"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 Clause 13.5 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.

"Rupees", "INR" shall mean Indian rupees, means the lawful currency of the Republic of India;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

“Scheduled Commercial Operations Date (SCOD)” shall mean a maximum period of 4 (four) years or 48 (Forty Eight) months from effective date;

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or 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;

"SLDC" shall mean the Load Despatch Centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located.

"SLDC Charges" shall mean the charges levied by the SLDC of the state where the Delivery Point is located.

"State" means the State of Maharashtra and "State Government" means the government of that State;

"State of Charge" (expressed in MWh output terms) means the level of water available at any given point of time and determines the remaining maximum pumping / generation quantity (MWh).

"State Transmission Utility" or **"STU"** shall mean [Maharashtra State Electricity Transmission Company Limited] under Sub-section (1) of Section 39 of the Electricity Act 2003.

"Target Annual Availability" shall have the same meaning as provided for in Clause 5.11 of this Agreement.

"Tariff" shall have the same meaning as provided for in Article 12 of this Agreement.

"Tariff Payment" shall mean the payments to be made under Monthly Bills as referred to in Article 13 and the relevant Supplementary Bills.

"Tax" means and includes all taxes, fees, cesses, duties (including stamp duties), levies that may be payable by the Developer for execution of the agreement and during the term of this Agreement under Applicable Law; but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Rights

hereunder;

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

"Term of Agreement" shall have the meaning ascribed thereto in Article 3 of this Agreement.

"Tests" means the tests to be carried out in accordance with the Specifications and Standards or the Maintenance Requirements and as finalized by the Developer in consultation with Procurer/Independent Engineer authorized representatives of Procurer.

"Total Project Cost" means the cost incurred by the Developer for development and construction of the Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties.

"Week" shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Procurer by

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of Developer by

(Signature)

(Name)

(Designation)

In presence of:

- 1.
- 2.

SCHEDULE –1

PERFORMANCE Guarantee

The,
Distribution Company [State of]

WHEREAS:

- (A)(the “**Supplier**”) and [the Maharashtra State Electricity Distribution Company Limited] represented by and having its principal offices at Prakashgad, Plot G-9, Bandra (East), Mumbai, Maharashtra 400051 (“**Utility**”) have entered into a Power Supply Agreement dated ... (the “**Agreement**”) whereby the Utility has agreed to the Supplier undertaking the construction and operation of the Power Station with a generating capacity of 1600 MW in the State of on build, own, operate an Maintain (the “**BOOM**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [**an amount equivalent to MFC payable for fifteen days**] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ... through our Branch at(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

Supplier, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.
5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Guarantee shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Guarantee and such substitution shall be repeated until the Performance Guarantee has been released in accordance with the Clause 13.4 of EFSA, and provided the Supplier is not in breach of this Agreement. Upon request made by the Supplier for release of the Performance Security along with the particulars required hereunder, duly certified

by a statutory auditor of the Supplier, the Utility shall release the Performance Guarantee forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 36 (thirty six) months from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.
12. Notwithstanding anything to the contrary contained herein-
 - i. Our liability under this Guarantee shall not exceed Rs. _ ... (Rupees ... only)
 - ii. This Bank Guarantee shall be valid up to [...] (being the date of expiry of the guarantee)
 - iii. The beneficiary's right as well the Bank's liability under this Guarantee shall stand extinguished unless a written claim or demand is made under this Guarantee on or before [...] (being the date of expiry of claim period)

Signed and sealed thisday of ..., 20..... at

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

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

NOTES:

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