

Transmission Agreement
for
Jhajjar Power Transmission Project

Haryana Vidyut Prasaran Nigam Ltd.
(A Fully Owned Company of the Government of Haryana)

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Part I
Preliminary

TRANSMISSION AGREEMENT

THIS AGREEMENT is entered into on this the Twenty Seventh day of May, 2010.

BETWEEN

- 1 Haryana Vidyut Prasaran Nigam limited, State Transmission Company represented by its Chief Engineer, Planning and having its principal offices at C-4, Shakti Bhawan, Sector-6, Panchkula (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- 2 Jhajjar KT Transco Private Limited (Corporate Identity Number U45204GJ2010PTC060815), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 101, Part III, GIDC Estate, Sector 28, Gandhinagar- 382 028, Gujarat, India., (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Authority had resolved to procure a transmission system comprising: (a) a 400 kV transmission line from Jharli (Jhajjar) to Kabulpur (Rohtak) **with a design capacity to transfer electricity equivalent to 2430 MW**; (b) a 400 kV transmission line from Kabulpur (Rohtak) to Dipalpur (Sonapat) **with a design capacity to transfer electricity equivalent to 2430 MW**; and (c) a 400 kV single circuit Loop in Loop out transmission line at 400 kV substation Dipalpur of 400 kV double circuit Abdullapur to Bawana line with a design capacity to transfer electricity equivalent to 1125 MW and having 2 (two) 400 kV substations at Kabulpur (Rohtak) and Dipalpur (Sonapat) in the State of Haryana on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the

terms and conditions to be set forth in a transmission agreement to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

- (B) The Authority had accordingly invited proposals by its Request for Qualification No. RFQ/HVPNL/PPP-1 dated 13.01.2009 (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the above referred transmission system on DBFOT basis and had shortlisted certain bidders including, inter alia, the consortium comprising Kalpataru Power Transmission Limited Mumbai (“**KPTL**”) and Techno Electric & Engineering Co. Ltd. Kolkata (collectively the “**Consortium**”) with KPTL as its lead member (the “**Lead Member**”).
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the Consortium and issued its Letter of Award No 30/305/PPP/102/vol-II dated April 15, 2010 (hereinafter called the “**LOA**”) to the Consortium requiring, inter alia, the execution of this Transmission Agreement within 30 (thirty) days of the date of issue thereof.
- (E) The Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA, including the obligation to enter into this Transmission Agreement pursuant to the LOA for executing the Project.
- (F) By its letter dated May 19, 2010, the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Transmission Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.
- (G) The Concessionaire has agreed to make an application to the Commission for grant of a Transmission Licence for construction and operation of the Transmission System.
- (H) The Authority has agreed to the said request of the Consortium and the Concessionaire, and has accordingly agreed to enter into this Transmission Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) 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 Haryana, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Panchkula are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**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;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to

increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (v) 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;
- (w) 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;
- (x) 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**”);
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (z) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer 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 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

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

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

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

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II
The Concession

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 Concession Period:

- (a) construction and procurement of the Transmission System on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Transmission System in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire 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 Concessionaire under this Agreement.

ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right and authority to construct, operate and maintain the Project and provide Transmission Services (the “**Concession**”) for a period of 25 (twenty-five) years commencing from the date of grant of the Transmission License (“**Commencement Date**”), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, Line ROW, access and licence to the Licensed Premises for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) finance and construct the Transmission System;
 - (c) manage, operate and maintain the Transmission System in accordance with this Agreement;
 - (d) make available the System Capacity on an exclusive basis to the Authority for use under and in accordance with Applicable Laws;
 - (e) make available the Additional Capacity to the Users in accordance with Applicable Laws and the terms of this Agreement;
 - (f) to receive Unitary Charge from the Authority in respect of the System Capacity and Transmission Tariff from the Users in respect of the Additional Capacity;
 - (g) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - (h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - (i) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Transmission System nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.1.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D.

3.2 Extension of Concession Period by the Commission

3.2.1 In the event that extension of the Concession Period shall have become due under and in accordance with the provisions of this Agreement, the Concessionaire shall apply to the Commission forthwith for extension of the Transmission License in accordance with Applicable Laws, and the Authority shall support its application before the Commission:

3.2.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that extension of the Transmission License is not granted by the Commission for any reason, the Authority shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Concessionaire a lump sum amount equal to 50% (fifty percent) of the cumulative Unitary Charge that would have been payable to the Concessionaire if the Concession Period shall have been extended in accordance with this Agreement. For the avoidance of doubt, the Parties agree that the payment of such amount shall be deemed to form part of the Secured Obligations and may be recovered by the Concessionaire under and in accordance with Article 27. It is further agreed that in the event an extension of the Concession Period due under the provisions of Clause 37.3.6 is not granted by the Commission for any reason, the Authority shall pay to the Concessionaire only the Termination Payment due and payable under the provisions of Clause 37.3.4, and no additional amount shall be due and payable under this Clause 3.2.2.

3.3 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of the Applicable Laws, substitute itself by the State Transmission Utility or Distribution Licencee(s), as the case may be and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws; provided, however, that prior to any substitution hereunder, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 27.

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ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 60 (sixty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Licensed Premises in accordance with the provisions of Clause 10.3.1;
 - (b) Blank
 - (c) Blank
 - (d) procured the issuance of an order by the Government within 45 (forty-five) days of the date on which an application has been made by the Concessionaire under section 164 of the Act for placing of the electric lines or electric plant forming part of the Transmission System or for the purpose of telephonic or telegraphic communications necessary for proper coordination of works and operations;
 - (e) procured approval of the Government within 45 (forty-five) days of the date on which an application has been made by the Concessionaire under Section 68 of the Act in respect of overhead lines;
 - (f) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 27.1;
 - (g) executed the Deed of Hypothecation in accordance with the provisions of Clause 27.1.2; and
 - (h) procured approval of the Commission for payment of the Unitary Charge by the Authority to the Concessionaire in accordance with the provisions of this Agreement.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority ;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) Left Blank
- (e) procured the Transmission License for the Project;
- (f) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (g) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (h) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (i) delivered to the Authority from Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (j) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

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

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

4.2 Damages for delay by the Authority

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

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of an amount equal to the Bid Security.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Transmission System and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws, the Transmission Licence and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall install, operate and maintain the System Capacity in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of System Capacity is 98% (ninety eight per cent) in each year of the Concession Period (the “**Normative Availability**”).

Explanation:

Availability of the System Capacity shall mean, for any month or year, as the case may be, the hours during that month or year when the System Capacity is available for transmission of electricity and shall be expressed as a percentage of total hours in that month or year, as the case may be, and shall be calculated in accordance with the formula prescribed in Schedule- Y and shall include the deemed availability for and in respect of the events described in Clause 17.8.2, but shall exclude any unavailability which has been caused by the events described in Clause 5 of Schedule-Y and any Force Majeure Event (the “**Availability**”). For the avoidance of doubt, Availability shall, during the months when COD or the Transfer Date occurs, be determined with reference to the number of days when the System Capacity was in operation, and shall be determined likewise for any single day of operation.

- 5.1.5 The Concessionaire 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 necessary applications to the Commission with such particulars as may be required for grant of a Transmission Licence and keep in force and effect the Transmission Licence in conformity with the Act;
 - (b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

- (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Transmission System;
- (d) perform and fulfil its obligations under the Financing Agreements;
- (e) 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;
- (f) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;
- (g) procure the Line ROW and maintain the same;
- (h) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (i) 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 or Applicable Laws;
- (j) procure that all equipment and facilities comprising the Transmission System are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (k) procure the Normative Availability of the System Capacity for use by and on behalf of the Authority;
- (l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (m) comply with the provisions of Applicable Laws with regard to metering for the Transmission System;
- (n) comply with the terms and conditions of the Transmission Licence;
- (o) transfer the Transmission System to the Authority upon Termination of this Agreement, in accordance with the provisions thereof; and
- (p) comply with the directions of the Commission issued from time to time under the Act.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under

any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt of the Concessionaire.
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- 5.2.6 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the

counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.7 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

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5.5 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.7 Obligations relating to medical aid

For providing aid and assistance in medical emergencies relating to the Transmission System, the Concessionaire shall, at each Sub-station, set up and operate a medical aid post (the “**Medical Aid Post**”) equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.8 Obligations relating to inter-connection

The Concessionaire shall enter into and comply with agreements for interconnection of the Transmission System 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 SLDC charges

The Concessionaire shall be liable for payment of all the charges, due and payable under Applicable Laws, by a transmission licensee to the SLDC for and in respect of the Transmission System, and to the extent such charges relate to the System Capacity, the Authority shall reimburse the same to the Concessionaire upon receipt of particulars thereof.

5.10 Obligations relating to reactive power

The Concessionaire shall, in accordance with Applicable Laws, pay or receive, as the case may be, all charges and payments in respect of reactive power. The Concessionaire shall, along with the Monthly Invoice, provide to the Authority the particulars of all payments and receipts in respect of the reactive energy charges for the System Capacity and the net balance thereof shall be paid to or recovered from the Authority. For the avoidance of doubt, all charges in respect of reactive power shall be to the account of the Authority and shall be settled once every month hereunder.

5.11 Obligations relating to electricity for self-consumption

The Concessionaire shall, at its own cost and in accordance with Applicable Laws, procure the electricity required for consumption at its residential and office premises and for auxiliary consumption of the Sub-stations.

5.12 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Transmission System and Transmission Services. Provided, however, that all payments made with respect to service tax, value added tax or general sales tax, if any, levied on or in respect of the Unitary Charge shall be reimbursed by the Authority upon receipt of particulars thereof.

5.13 Obligations relating to system operation

The Concessionaire shall at all times operate the Transmission System in accordance with the Applicable Laws and the provisions of the State Grid Code and shall comply with such directions as the SLDC may give from time to time in accordance with the provisions of the Act.

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5.15 Reporting requirements

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

5.16 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority and the Commission, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.17 Branding of Transmission System

The Transmission System or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Transmission System to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may, at every Substation, display its own name at a spot where other public notices are displayed. It is further agreed that the Transmission System shall be known, promoted, displayed and advertised by the name of the Authority.

ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes 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 Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring the Applicable Permits, including the Transmission Licence, required from any Government Instrumentality for implementation and operation of the Transmission System;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) facilitate the procurement of Line ROW by the Concessionaire;
- (d) procure that no barriers are erected or placed on or about the Transmission System by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
- (e) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Transmission System;
- (f) assist the Concessionaire in procuring police assistance for removal of trespassers and for security on or at the Transmission System;
- (g) 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;
- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws; and
- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the

Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Reimbursement of payments made by Concessionaire

Upon receipt of particulars from the Concessionaire, the Authority shall reimburse the amounts due to the Concessionaire under and in accordance with Clauses 5.9, 5.10 and 5.12 for SLDC charges, reactive energy charges and specified taxes, respectively.

6.3 Obligations relating to Open Access

The Authority shall provide Open Access to the System Capacity under and in accordance with the Applicable Laws.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

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

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Consortium Members, together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty-six per cent) of such Equity during the Construction Period;
- (l) the Consortium Members and its/their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the Consortium Member is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Transmission System shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing

or attempting to influence any officer or employee of the Authority in connection therewith; and

- (q) all information provided by the Consortium Members in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

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

Part III

Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 15 crore (Rupees fifteen crore) in the form set forth in Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level 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 Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

The site of the Transmission System shall comprise of (a) the real estate for Licensed Premises, as described in Schedule-A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee, and (b) the real estate for the lines and transmission towers of the Transmission System, as described in Schedule-A, and in respect of which the right of way shall be procured by the Concessionaire (the “**Line ROW**”) under and in accordance with this Agreement (collectively, the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Transmission System as set forth in Schedule-A.

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Licensed Premises for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Premises pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Transmission Services, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing roads along the alignment of the Transmission System or an alternative thereof are open to road traffic at all times during the Construction Period.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for

any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Licensed Premises by the Concessionaire or its sub-licensees, the licence in respect of the Licensed Premises shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Licensed Premises are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Licensed Premises

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Licensed Premises. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Licensed Premises to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Licensed Premises during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Licensed Premises required and necessary for the Transmission System, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of the Transmission System.

- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 2,000 (Rupees two thousand) per day for every 500 (five hundred) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Licensed Premises not being granted to the Concessionaire or any construction on such part of the Licensed Premises remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.
- 10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Licensed Premises and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Act; provided also that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof.

10.4 Premises to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Licensed Premises shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Licensed Premises for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Licensed Premises and the Transmission System from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Transmission System and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Licensed Premises shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such

instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period.

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10.10 Line ROW

10.10.1 The Concessionaire shall procure and maintain the Line ROW at its own risk and cost. For the avoidance of doubt, it is agreed that the minimum width of the right of way to be acquired shall conform to the provisions of Schedule-A. It is further agreed and acknowledged that the cost and expense of acquiring the Line ROW is deemed to be included in the Total Project Cost and that the Concessionaire shall not be entitled to demand any payment in respect thereof from the Authority.

10.10.2 The Authority undertakes and agrees to execute and to provide to the Concessionaire the authorisation and documents that may be required to be executed and provided under Applicable Laws by the Authority to the Concessionaire for procuring the Line ROW. In the event of delay caused in procuring the Line ROW due to the failure of the Authority to execute and provide forthwith any documents pursuant to this Clause 10.10.2, the Concessionaire shall be entitled to an extension of the Concession Period equal to the delay.

10.10.3 The Concessionaire agrees and undertakes to indemnify, defend, save and hold harmless the Authority and its officers, servants, agents and Government Instrumentalities against any and all suits, proceedings, actions, demands and claims for any loss, damage, cost and expense of whatever kind and nature, in connection with the acts or omissions of the Concessionaire in the procurement of Line ROW save and except any loss, damage, cost and expense relating to any act or omission of the Authority.

10.10.4 The provisions of Clause 11.2 shall apply *mutatis mutandis* for the shifting of any obstructing utilities within or on the Line ROW.

10.10.5 The provisions of Clause 10.10 shall apply *mutatis mutandis* to Change of Scope.

ARTICLE 11
UTILITIES, ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Transmission System. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and transmission systems

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Transmission System in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining transmission system to the Transmission System, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of the Agreement.

11.4 Felling of trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Transmission System. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the ownership rights to the felled trees shall vest in the legal owner thereof and the felled trees shall be disposed in such manner and subject to such conditions as the owner may reasonably determine.

ARTICLE 12

CONSTRUCTION OF THE TRANSMISSION SYSTEM

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Transmission System under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Transmission System as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;

- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Transmission System, location and layout of the transmission towers and Sub-stations and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Transmission System as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Transmission System and of the buildings and structures forming part of Project Facilities.

12.3 Construction of the Transmission System

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Transmission System as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 420th (four hundred and twentieth) day from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Transmission System shall be completed on or before the Scheduled Completion Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Date shall not apply to Real Estate Development.
- 12.3.2 The Concessionaire shall construct the Transmission System in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of

0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 In the event that the Transmission System is not completed within 90 (ninety) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

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ARTICLE 13
MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Transmission System at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until

such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Transmission System is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any person or property.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance

with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 60 (sixty) days prior to the likely completion of the Transmission System, the Concessionaire shall notify the Independent Engineer of its intent to subject the Transmission System to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Transmission System with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Transmission System or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Transmission System with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works, and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the “**Completion Certificate**”).

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the “**Provisional Certificate**”) if the Tests are successful and the Transmission System can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued if the tests undertaken in terms hereof establish that the Transmission System, including interconnection with the grid, has been completed and can be safely and reliably placed in commercial operation. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List, including any shortfall in System Capacity, shall be completed or rectified, as the case may be, by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4.3 Notwithstanding anything to the contrary contained in Clause 14.4.2, the Parties hereto expressly agree that the Completion Certificate shall, subject to the provisions of this Agreement, be issued if the tested capacity is capable of providing at least 90% (ninety per cent) of Availability; provided, however, that for every shortfall of 1% (one per cent) or part thereof in the Availability, the Base Unitary Charge set forth in Clause 26.2.1 shall be deemed to be reduced by 1.5% (one point five per cent) thereof; provided further that upon reduction of the Base Unitary Charge hereunder, the System Capacity shall be deemed to be reduced in accordance with the capacity specified in the Completion Certificate and the provisions of this Agreement shall apply as if the System Capacity is the capacity determined hereunder. For the avoidance of doubt, the Concessionaire may at any time rectify the shortfall hereunder and require the Independent Engineer to issue a revised Completion Certificate under and in accordance with this Article 14 and the revised Completion Certificate, if any, shall be deemed to be the Completion Certificate, from the date thereof, for the purposes of this Agreement.

14.5 Withholding of Provisional Certificate

- 14.5.1 If the Independent Engineer determines that the Transmission System or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Transmission System is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Transmission System and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

14.7 Phased completion of Transmission System

The Transmission System may, for the purposes of completion, be divided into 3 (three) distinct sections, namely, section A comprising 400 kV double circuit Quad Moose ACSR lines from Jharli – Kabulpur and Kabulpur - Dipalpur and loop in loop out at Dipalpur substation of one circuit of 400 kV double circuit Triple Snowbird ACSR Abdullapur – Bawana line; section B comprising of 1x315 MVA, 400/220 kV + 1x100 MVA, 220/132 kV transformers each at Kabulpur and Dipalpur Substations; and section C comprising of 1x315 MVA 400/220 kV + 1x100 MVA, 220/132 kV transformers each at Kabulpur and Dipalpur Substations; , and the Provisional Certificate may, at the request of the Concessionaire, be issued separately for each of the 3 (three) sections. Upon issue of Provisional Certificate for any of the aforesaid sections, such section shall enter into commercial service in accordance with the provisions of Article 15, whereupon the Unitary Charge proportionate to such section shall become payable. For the avoidance of doubt, the Parties agree that the proportionate Unitary Charge for sections A,, B and C shall be 60% (sixty per cent), 20% (twenty per cent) and 20% (twenty per cent) of the Unitary Charge respectively and the provisions of this Agreement shall apply *mutatis mutandis* to each such Provisional Certificate and the sections completed thereunder. The Parties further agree that notwithstanding anything to the contrary contained in this Clause 14.7, the obligations contained in Clauses 12.3 and 15.2 shall continue to be binding on the Concessionaire.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

- 15.1.1 The Transmission System shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14. The commercial operation date of the Transmission System shall be the date on which the Transmission System is deemed fit for energising the same upon issuance of such Completion Certificate or the Provisional Certificate (the “**COD**”). The Transmission System shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect the Unitary Charge in accordance with the provisions of Article 26, provided, however, that the entry of Transmission System into commercial service shall always be subject to compliance with the provisions of Clause 18.3. For the avoidance of doubt, the Parties expressly agree that if COD is delayed solely for reasons attributable to the Authority, including delay in energising the Transmission System, the Unitary Charge shall be due and payable hereunder as if COD has occurred.
- 15.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event COD is achieved prior to the Scheduled Completion Date, the Unitary Charge due and payable to the Concessionaire for the period prior to the Scheduled Completion Date shall be 30% (thirty per cent) of the Base Unitary Charge specified in Clause 26.2.1. Provided, however, that no payment on account of Base Unitary Charge hereunder shall be due or payable for any period prior to 90 (ninety) days from the Scheduled Completion Date.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 31st (thirty first) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Transmission Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Transmission System and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

- 16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Transmission System; provided that in the event

that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Transmission System and issuing the Provisional Certificate.

- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Authority[£], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Transmission System. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 41.3. It is

[£] The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Transmission System in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Transmission System to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) ensuring safe, smooth and uninterrupted flow of electricity on the Transmission System during normal operating conditions;
- (b) undertaking operation and maintenance of the Transmission System in an efficient, coordinated and economical manner, in compliance with the Grid Code, and making available the System Capacity to the Authority, and the Additional Capacity to Users in accordance with Applicable Laws;
- (c) procuring that the Availability of the System Capacity is not less than the Normative Availability;
- (d) minimising disruption to transmission in the event of accidents or other incidents affecting the safety and use of the Transmission System by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Transmission System;
- (f) undertaking routine maintenance including prompt repairs of all components of the Transmission System so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
- (g) undertaking major maintenance such as line replacement, repairs to structures, and repairs and refurbishment of associated sub-stations including equipment;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Transmission System;
- (i) protection of the environment and provision of equipment and materials therefor;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Transmission System;

- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (l) complying with Safety Requirements in accordance with Article 18;
- (m) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and
- (n) maintaining reliability in operating the Transmission System.

17.1.2 The Concessionaire shall remove promptly from the Transmission System all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Transmission System in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads or other structures situated on the Licensed Premises.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Commission or the SLDC, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Transmission System conforms to the maintenance requirements set forth in Schedule-K (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Transmission System in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule, including the proposed scheduled outages, if any, for maintenance;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Transmission System;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) intervals of carrying out intermediate and periodic overhaul of the equipment.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.4.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4 and as notified to the Authority under the provisions of Clause 26.5.2 shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”). For the avoidance of doubt, any closure, suspension or reduction of System Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of System Capacity.

17.5 Safety, breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Authority and Users, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Transmission System shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth transmission of power. For this purpose, it shall maintain and operate 1 (one) round-the-clock vehicle and rescue equipment.

17.6 De-commissioning due to Emergency and Forced Outage

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and shut-down of the whole or any part of the Transmission System, the Concessionaire shall be entitled to de-commission and shut down the whole or any part of the Transmission System for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Transmission System or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and shut down have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Transmission System and shall notify the Authority of the same without any delay.

17.6.3 Any decommissioning or closure of any part of the Transmission System and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Section closure

17.7.1 The Concessionaire shall not shut down or de-energise any section of the Transmission System for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.

17.7.2 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to shut down or de-energise the designated section for the period specified therein, and in the event of any delay in re-energising such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Unitary Charge for each day of delay until the section has been re-energised for transmission.

17.8 Unscheduled Maintenance

- 17.8.1 Any maintenance, repair or rectification of the Transmission System not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, it is agreed that any de-commissioning and Forced Outage of the whole or any part of the Transmission System under the provisions of Clause 17.6 shall be deemed to be Unscheduled Maintenance. It is further agreed that any closure, suspension or reduction of transmission capacity arising out of Unscheduled Maintenance shall, subject to the provisions of Clause 17.8.2, be deemed as Non-Availability of System Capacity and excluded from the computation of Availability.
- 17.8.2 Notwithstanding anything to the contrary contained in Clause 17.8.1, any loss or reduction in availability of System Capacity occurring due to any of the following events, shall, save and except to the extent such events are not attributable to any act or omission of the Concessionaire, be deemed as Availability:
- (a) tripping, outages or shut down of the System Capacity or part thereof, availed by other agency(s) for construction or maintenance of other transmission systems;
 - (b) manual tripping of lines due to over voltage or under frequency in pursuance of the directions of SLDC or RLDC; or
 - (c) Forced Outage caused by a grid incident or disturbance not attributable to the Concessionaire, such as, faults in sub-station or bays owned by other agencies causing outage of the Transmission System or part thereof, or tripping of lines due to grid disturbance:

Provided that the loss or reduction in availability of System Capacity hereunder shall be of no greater scope and of no longer duration than is reasonably required by the aforesaid events:

Provided further that the Concessionaire shall make all reasonable efforts to mitigate or limit the loss or reduction in availability of System Capacity arising out of such events and shall cure the same with due diligence and urgency:

Provided also that the Concessionaire shall notify the Authority forthwith upon restoration of the availability of System Capacity hereunder.

17.9 Damages for breach of maintenance obligations

- 17.9.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.1% (zero point one per cent) of Unitary Charge, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.9.2 The Damages set forth in Clause 17.9.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.10 Authority's right to take remedial measures

17.10.1 In the event the Concessionaire does not maintain and/or repair the Transmission System or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.10.1 shall be without prejudice to its rights and remedies provided under Clause 17.9.

17.10.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses.

17.11 Overriding powers of the Authority

17.11.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to any person or property the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.11.2 In the event that the Concessionaire, upon notice under Clause 17.11.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.11.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M

Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.10 along with the Damages specified therein.

17.11.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Transmission System or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.11.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.12 Restoration of loss or damage to the Transmission System

Save and except as otherwise expressly provided in this Agreement, in the event that the Transmission System or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Transmission System conforms to the provisions of this Agreement.

17.13 Modifications to the Transmission System

The Concessionaire shall not carry out any material modifications to the Transmission System save and except where such modifications are necessary for the Transmission System to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the Transmission System has a material effect on the safety of users or integrity of system operation, the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure specified in Clause 18.3. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.14 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Transmission System is not available to the Authority on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Transmission System except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Transmission System.

Notwithstanding the above, the Concessionaire shall keep available all unaffected parts of the Transmission System provided they can be operated safely.

17.15 Left Blank

17.16 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Transmission System except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Transmission System that may cause a material adverse effect on the movement to and from the Transmission System.

17.17 Advertising on the Transmission System

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall diminish the aesthetic quality of the Transmission System or violates Applicable Laws. All advertising on the Transmission System shall also conform to Good Industry Practice.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Transmission System. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Transmission System, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Transmission System in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the “**Safety Fund**”) to be funded, owned and operated by the Authority or a substitute thereof.

18.3 Safety Certification prior to COD

The Authority shall, not later than 1 (one) year prior to the Project Completion Date, or the likely COD notified by the Concessionaire, as the case may be, designate an Electrical Inspector to observe any or all the Tests specified in Schedule-I to determine and certify that the Transmission System is safe for entering into commercial service; provided that the Electrical Inspector may require the Concessionaire to conduct or cause to be conducted such additional tests as may be prudent and necessary in accordance with Applicable Laws and Good Industry Practice, and the costs of such additional tests shall be shared equally between the Concessionaire and the Authority; provided further that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire. For the avoidance of doubt, the Parties expressly agree that the additional tests, if any, required to be conducted hereunder shall be notified by the Authority to the Concessionaire not later than 1 (one) year prior to the Scheduled Completion Date.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly/ Daily status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Transmission System including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Transmission System relating to the safety and security of the Transmission System and persons affected by it. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences on the Transmission System shall include:

- (a) death or injury to any person;
- (b) any obstruction on the Transmission System;
- (c) disablement of any element of the Transmission System during operation thereof;
- (d) communication failure affecting the operation of the Transmission System;
- (e) smoke or fire; or
- (f) such other relevant information as may be reasonably required by the Authority or the Independent Engineer.

19.3 Inspection

The Independent Engineer shall inspect the Transmission System at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.4 Tests

For determining that the Transmission System conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.5 Remedial measures

19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.5.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Transmission System into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Transmission System conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.9.

ARTICLE 20

SECURITY OF THE TRANSMISSION SYSTEM

20.1 Security

- 20.1.1 The Authority acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, procure or cause to be procured security of the Transmission System for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Transmission System and such agreement may *inter alia* provide for sharing of costs as may be agreed upon.
- 20.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Sub-stations and shall be responsible for the security arrangements for the Transmission System in order to maintain orderly conduct of its business and the security thereof.
- 20.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Transmission System. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Transmission System, without unduly or unreasonably disrupting the operations of the Transmission System or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations thereunder.
- 20.1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.
- 20.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Transmission System without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

20.2 Insurance Premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Transmission System is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 50% (fifty percent) of such increase to the Authority by means of a corresponding increase in the Unitary Charge.

ARTICLE 21

KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Transmission System such that it achieves or exceeds the performance indicators specified in this Article 21 (the “**Key Performance Indicators**”)

21.2 Availability

The Concessionaire shall procure that during the Operation Period, the Availability of the System Capacity is not less than the Normative Availability and incentives and penalties in relation to Availability shall be payable or recoverable, as the case may be, by the Authority in accordance with the provisions of Article 26.

21.3 Reliability

21.3.1 The reliability of the System Capacity in an Accounting Year (the “**Reliability**”) shall be measured in terms of the number of Forced Outages occurring on the individual elements of the System Capacity in successive Reliability measurement units (the “**Reliability Measurement Unit**” or “**RMU**”). One Reliability Measurement Unit shall mean 1.5 (one point five) Forced Outages affecting the continuity or stability of supply for any element of the System Capacity in any Accounting Year, but only if it is caused on account of any event other than Force Majeure or an event described in Clause 17.8.2, and shall be calculated in accordance with the Specifications and Standards.

Explanation

An element of the System Capacity shall mean any bay at a Sub-station, but shall not include a spare bay. For the purposes of this Clause 21.3.1, a Sub-station shall be deemed to comprise a number of bays, and the term “bay” shall mean a part of a Sub-station containing switching and control devices connected to the bus-bar of the Sub-station, designed for an electrical supply line, power transformer, bus coupler or bus reactor.

21.3.2 The Concessionaire shall procure a Reliability such that there are no more than 1.5 (one point five) RMU in each Accounting Year. In the event that the Reliability in an Accounting Year exceeds 1.5 (one point five) RMU, the Concessionaire shall pay to the Authority a penalty equal to 1% (one per cent) of the Unitary Charge for each RMU in excess of 1.5 (one point five) RMU.

21.3.3 The penalties pursuant to Clause 21.3.2 shall be due and payable on a monthly basis, and any errors thereof shall be corrected and reconciled within 15 (fifteen) days of the close of the relevant Accounting Year.

21.4 Transmission Losses

- 21.4.1 The transmission losses of the 315 MVA, 400/220 kV and 100 MVA, 220/132 kV transformers forming part of the System Capacity shall be 530 kW and 220 kW respectively (the “**Normative Loss**”). The Authority may, in its discretion and at its own expense, and no more than once in every 6 (six) months, conduct tests in accordance with Good Industry Practice, to ascertain that the transmission losses of each transformer are no greater than the Normative Loss. For the avoidance of doubt, it is clarified that the period of any outage, closure, suspension or reduction of System Capacity on account of the tests conducted under this Clause 21.4.1 shall be deemed to be included in Availability. It is further clarified that the transmission losses hereunder shall mean the aggregate of no load losses and load losses.
- 21.4.2 The Concessionaire agrees and undertakes that in the event any transformer forming part of System Capacity is subjected to major repair or replacement, the Concessionaire shall, at its own cost and expense, conduct tests in accordance with Good Industry Practice, to determine the transmission losses of such transformer. For the avoidance of doubt, it is clarified that the period of any outage, closure, suspension or reduction of System Capacity on account of the tests conducted and the time taken in re-installation of the relevant equipment under this Clause 21.4.2 shall be deemed to be included in Non-Availability.

Explanation:

Transmission losses shall mean the difference between the energy imported into a transformer and the energy exported therefrom (the “**Transmission Losses**”).

- 21.4.3 In the event the Transmission Losses are determined to be higher than the Normative Loss, then for every kW in excess of the Normative Loss, the Concessionaire shall pay to the Authority, a penalty equal to Rs. 1000 (Rupees one thousand) per kW per month; provided that the rate of penalties specified herein shall be increased by 5% (five per cent) thereof for every successive Accounting Year falling after the 1st (first) Accounting Year of the Operation Period. Such penalties shall be due and payable on a monthly basis, and any errors in the account thereof shall be corrected and reconciled within 15 (fifteen) days of the close of the relevant Accounting Year. For the avoidance of doubt, the rate of penalty for the 2nd (second) and 3rd (third) Accounting Years shall be Rs. 1050 (Rupees one thousand and fifty) and Rs. 1102.5 (Rupees one thousand one hundred and two point five) respectively. For the avoidance of doubt, the Parties agree that the penalty hereunder shall not be applicable for the period for which a transformer is out of service.
- 21.4.4 In the event the Transmission Losses are less than the Normative Loss, the Authority shall pay to the Concessionaire an incentive equal to Rs. 600 (Rupees six hundred) per kW per month; provided that the incentive specified herein shall be increased by 5% (five per cent) thereof for every Accounting Year falling after the 1st (first) Accounting Year of the Operation Period. Such incentive shall be due and payable on a monthly basis, and any errors in the account thereof shall be corrected and reconciled within 15 (fifteen) days of the close of the relevant

Accounting Year. For the avoidance of doubt, the rate of incentive for the 2nd (second) and 3rd (third) Accounting Years shall be Rs. 630 (Rupees six hundred and thirty) and Rs. 661.5 (Rupees six hundred and sixty one point five) respectively.

21.5 Monthly status report

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 21 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Transmission System. The monthly report shall include a quantification of the penalties calculated in accordance with Clause 21.6.

21.6 ISO certification

- 21.6.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 18001:2006 and ISO 9001:2000 certifications or a substitute thereof for all the facilities at the Transmission System, and shall provide a certified copy thereof to the Authority forthwith.
- 21.6.2 In the event of default in obtaining the certifications specified in Clause 21.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certifications for all facilities of the Transmission System.
- 21.6.3 If the period of default in obtaining the ISO certifications under this Clause 21.6 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay penalties to the Authority in an amount equal to 1% (one per cent) of the Unitary Charge for every 1 (one) month of default beyond the above 3 (three) month period.

ARTICLE 22

CHANGE IN TRANSMISSION SPECIFICATIONS

- 22.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Transmission System (the “**Modified Specifications**”)
- 22.2 In the event that the Authority introduces any Modified Specifications, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16; provided, however, that in the event that such Change in Scope causes any increase or decrease, as the case may be, in the O&M Expenses of the Concessionaire, the Unitary Charge shall be modified in accordance with the principles specified in Article 41.

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 6 (six) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-M, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-M to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

- 23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-N.
- 23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-N.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-M, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

- 23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.
- 23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is

terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Part IV
Financial Covenants

ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 30 (thirty) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.

24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 25

GRANT

25.1 Grant

25.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. 93.90 crores (Rs Ninety three crores and ninety lakhs), in accordance with the provisions of this Article 25 (the “**Grant**”).

25.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 25.2, and the balance remaining, if any, shall be disbursed as O&M Support in accordance with the provisions of Clause 25.3.

25.2 Equity Support

25.2.1 Subject to the conditions specified in this Clause 25.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “**Equity Support**”).

25.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than the Equity, and shall be further restricted to a sum not exceeding 20 % (twenty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 25.2.2 shall include Equity Support.

25.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

25.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

25.2.5 Subject to the provisions of the Scheme of Financial Support to Public Private Partnership in Infrastructure as notified by the Central Government (the “**Scheme for Financial Assistance**”), the Authority shall, for funding the Grant specified in Clause 25.1.1, use its best endeavours and provide all reasonable support to the Concessionaire for obtaining viability gap funding under the Scheme for Financial Assistance. For the avoidance of doubt, it is expressly agreed that in the event of the Concessionaire being able to receive such viability gap funding for the Project, the same shall, for the purposes of this Agreement be deemed to be Grant by the Authority hereunder, to be disbursed in accordance with the provisions of the Scheme for Financial Assistance. It is further agreed that the Authority shall at all times discharge its obligation to disburse Grant under and in accordance with

this Article 25 whether or not funds are disbursed to the Concessionaire under the Scheme for Financial Assistance.

25.3 O&M Support

25.3.1 The balance of the Grant, if any, remaining after disbursement of the Equity Support shall be disbursed to the Concessionaire in accordance with Clause 25.3.2 for meeting O&M Expenses and Debt Service of the Project (the “**O&M Support**”).

25.3.2 The O&M Support shall be disbursed by the Authority in quarterly instalments and the first such instalment shall be released within 90 (ninety) days of COD. Each instalment shall be a sum equal to 5 (five) per cent of the Equity Support and such instalments shall be disbursed by the Authority until the Grant is exhausted.

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ARTICLE 26

UNITARY CHARGE

26.1 Unitary Charge

26.1.1 The Authority shall pay to the Concessionaire a sum, determined in accordance with the provisions of this Article 26, as the monthly fee for provision of Transmission Services (the “**Unitary Charge**”).

26.2 Base Unitary Charge

26.2.1 The base Unitary Charge for the Accounting Year, in which COD occurs, shall be Rs. 4,50,00,000/- (Rupees four crore, fifty lakh only), and the same shall be revised annually in accordance with the provisions of this Article 26 (the “**Base Unitary Charge**”). For the avoidance of doubt, the Base Unitary Charge for a part of any month shall be determined on a proportionate basis.

26.2.2 The Base Unitary Charge for the Accounting Year in which COD occurs shall be the sum specified in Clause 26.2.1, and for each subsequent Accounting Year, the applicable Base Unitary Charge shall be determined by decreasing the Base Unitary Charge for the immediately preceding Accounting Year by 3% (three per cent) thereof. For the avoidance of doubt and by way of illustration, the Base Unitary Charge for the first Accounting Year, in which COD occurs, shall be the amount specified in Clause 26.2.1 and for the second and third Accounting Year it shall be a sum equal to 97% (ninety seven per cent) and 94.09% (ninety four point zero nine per cent) respectively of the amount specified in Clause 26.2.1.

26.3 Indexed Unitary Charge

The Base Unitary Charge determined for each Accounting Year in accordance with Clause 26.2 shall be revised to reflect 40% (forty per cent) of the variation in WPI occurring between the Reference Index Date for January of the year in which the Bid was submitted and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken (the “**Indexed Unitary Charge**”). For the avoidance of doubt and by way of illustration, if the WPI increases by 10% (ten per cent) between the Reference Index Dates for January 2009 and January 2011, the Indexed Unitary Charge for the Accounting Year commencing from April 1, 2011 shall be 104% (one hundred and four per cent) of the Base Unitary Charge for that Accounting Year.

26.4 Computation of Unitary Charge

The Base Unitary Charge, as corrected for variation in WPI in accordance with the provisions of Clause 26.3 shall be the Unitary Charge payable for provision of Transmission Services in each month of the relevant Accounting Year.

26.5 Declaration of Availability

26.5.1 Unless otherwise notified by the Concessionaire, the Availability of System Capacity shall be deemed to be 100% (one hundred per cent) at all times.

- 26.5.2 The Concessionaire shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in availability arising as a result thereof. The Concessionaire shall, as soon as may be, notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.
- 26.5.3 In the event that the availability at any time is determined to be lower than 100% (one hundred per cent) of the System Availability or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the “**Mis-declaration**”) shall be deemed to have occurred and Availability for the relevant month shall, for the purposes of payment of Unitary Charge, be deemed to be reduced as if the Mis-declaration had occurred for that entire month.
- 26.5.4 Notwithstanding the provisions of Clause 26.5.3, any reduction in Availability arising out of decommissioning due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Concessionaire shall have notified the Authority in accordance with the provisions of Clauses 17.6 or 34.5, as the case may be.

26.6 Incentive and Damages

- 26.6.1 In the event that the Availability in any month exceeds the Normative Availability, the Concessionaire shall be entitled to an incentive which shall be calculated and paid on a *pro rata* basis in the same proportion as the Unitary Charge bears to the Normative Availability. For the avoidance of doubt and by way of illustration, the Parties agree that if the *pro rata* Unitary Charge for 1% (one per cent) of Normative Availability is Rs. x , the incentive payable for Availability of 0.7% (zero point seven per cent) in excess of Normative Availability shall be Rs. $0.7x$. The Parties further agree that the incentive shall not be due or payable for more than 2% (two per cent) of the Normative Availability.
- 26.6.2 In the event that Availability in any month is less than the Normative Availability, the Unitary Charge for such month shall be proportionately reduced and such reduction shall be multiplied by a factor of 1.5 (one point five) by way of penalty. For the avoidance of doubt and by way of illustration, the Parties agree that if the *pro rata* Unitary Charge for 1% (one per cent) of Normative Availability is Rs. x , the penalty payable for reduction of 1% (one per cent) in Availability below the level of Normative Availability shall be Rs. $1.5x$.
- 26.6.3 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the incentive or penalty, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the incentives or penalties determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

26.7 Taxes and duties

- 26.7.1 It is expressly agreed by the Parties that the Unitary Charge and incentive shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 26.7.2. It is further agreed that the Concessionaire shall pay all taxes and duties, including the taxes and duties specified in Clauses 26.7.2, in accordance with Applicable Laws.
- 26.7.2 The Unitary Charge and incentive payable under this Article 26 shall be exclusive of Service Tax, Value Added Tax or General Sales Tax, or any replacement thereof, if applicable, and any Service Tax, Value Added Tax or General Sales Tax thereon shall be paid by the Concessionaire and reimbursed by the Authority upon submission of necessary particulars by the Concessionaire.
- 26.7.3 Any payment to be made by the Authority shall be subject to any tax deduction at source, if required to be made by the Authority as per Applicable Laws.

26.8 Billing and Payment

- 26.8.1 Commencing from the month following the month in which COD occurs, the Concessionaire shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Authority, an invoice in the agreed form (the "**Monthly Invoice**") signed by the authorised signatory of the Concessionaire setting out the computation of the Unitary Charge to be paid by the Authority to the Concessionaire in respect of the immediately preceding month in accordance with the provisions of this Agreement.
- 26.8.2 The Concessionaire shall, with each Monthly Invoice submit, (i) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (ii) proof of Availability for the period billed; (iii) SLDC charges as specified in Clause 5.9; (iv) charges and payments in respect of reactive power as specified in Clause 5.10; (v) official documents in support of the variation in WPI as specified in Clause 26.3; (vi) detailed calculations of the Unitary Charge in accordance with Article 26; (vii) detailed calculations of the incentives and/or penalties in accordance with Clause 26.6; (viii) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (ix) details of the Revenue Share payable by the Concessionaire in respect of Transmission Tariff and Other Business; (x) details in respect of penalties or incentives payable in respect of Key Performance Indicators in accordance with the provisions of Article 21 ; and (xi) the net amount payable under the Monthly Invoice.
- 26.8.3 The Authority shall, within 15 (fifteen) days of receipt of an invoice in accordance with Clause 26.8.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Concessionaire, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**").
- 26.8.4 All penalties and any other amounts due and payable by the Concessionaire in accordance with the provisions of this Agreement may be deducted from the Unitary Charge due and payable to the Concessionaire and in the event the

deductions hereunder exceed the Unitary Charge in that month, the balance remaining shall be deducted from the Unitary Charge due and payable to the Concessionaire for the immediately following month.

26.9 Disputed amounts

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

26.9.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 26.10.

26.10 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 26.8. In the event of delay beyond such period, the Authority shall pay interest for the period of delay, calculated at a rate equal to 5% (five per cent) above the Bank Rate on the amounts payable.

26.11 Discount for early payment

The Parties expressly agree that in the event the Authority pays the Unitary Charge within 15 (fifteen) days of the date of submission of the invoice thereof, the Authority shall be entitled to deduct 0.5% (zero point five per cent) of the amount specified in the Monthly Invoice by way of discount for early payment.

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ARTICLE 27

PAYMENT SECURITY

27.1 Default Escrow Account

- 27.1.1 The Authority and the Concessionaire shall, within 30 (thirty) days from the Commencement Date, but in any case prior to the Appointed Date, execute a default escrow agreement with the Authority's bank substantially in the form specified in Schedule-P (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Concessionaire. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 40% (forty per cent) of the Authority's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Authority expressly agrees and undertakes that throughout the term of the Concession Period, no less than 40% (forty per cent) of its total Revenues shall continue to be deposited at that bank and Revenues equivalent to 3 (three) times the applicable Unitary Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 27.1 and the Default Escrow Agreement.
- 27.1.2 The Authority and the Concessionaire shall, within 60 (sixty) days from the Commencement Date, but in any case prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-Q (the "**Deed of Hypothecation**"), whereby the Authority shall hypothecate to the Concessionaire an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.
- 27.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 105% (one hundred and five per cent) of the Unitary Charge (the "**Minimum Monthly Payment**") shall be withheld in the Default Escrow Account for payment to the Concessionaire against such Monthly Invoice and the balance remaining shall be available to the Authority for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.
- 27.1.4 The Authority shall procure that the Concessionaire has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

27.2 Letter of Credit

- 27.2.1 The Authority shall no later than 30 (thirty) days prior to the likely date of COD, provide to the Concessionaire, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the

“Letter of Credit”), which may be drawn upon by the Concessionaire for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-O and shall come into effect on COD.

27.2.2 The Letter of Credit shall be procured by the Authority from a bank where at least 40% (forty per cent) of the Authority’s total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Authority.

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

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

27.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice the Authority shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 27.2.1.

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

27.3 Third party usage of System Capacity

27.3.1 In the event the Concessionaire is unable to recover its Unitary Charge through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Unitary Charge or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall have the right to use the whole or part of the System Capacity for transmission of electricity for Users and to levy and appropriate the transmission charges therefor at rates not exceeding the Transmission Tariff.

For the avoidance of doubt, the Parties agree that any entity other than the Parties hereto shall be deemed to be a third party.

27.3.2 The use of System Capacity pursuant to Clause 27.3.1 shall not extinguish any liability of the Authority or any claim that the Concessionaire may have against the Authority, save and except to the extent of amounts recovered under the provisions of Clause 27.3.1.

27.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Authority to make the Termination Payment within 30 (thirty) days of demand by the Concessionaire, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and transferred to the Escrow Account until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Authority expressly agrees and undertakes that 40% (forty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

ARTICLE 28

ADDITIONAL CAPACITY

28.1 Additional Capacity

- 28.1.1 The Concessionaire may, in its discretion and in accordance with Applicable Laws, Specifications and Standards and Maintenance Requirements, construct, install and operate any transmission capacity which is in addition to and in excess of the System Capacity (the “**Additional Capacity**”) and demand and appropriate the Transmission Tariff from Users thereof in accordance with the provisions of this Article 28.
- 28.1.2 The Concessionaire may enter into contracts with Users, in accordance with Applicable Laws, for use of the Additional Capacity.
- 28.1.3 In the event that any part of the System Capacity is not utilised by the Authority or its nominees, the same shall be deemed to be Additional Capacity, but only for the period when it is not being utilised or is not scheduled for utilisation by the Authority. For the avoidance of doubt, the revenues from use of Additional Capacity hereunder shall be subject to payment of Revenue Share under and in accordance with the provisions of Clause 28.2.
- 28.1.4 The tariff to be levied and recovered by the Concessionaire from Users shall not exceed the transmission tariff that is levied and charged by the Authority for similar services during the same period (the “**Transmission Tariff**”).

28.2 Obligation to share revenues

- 28.2.1 The Concessionaire shall pay to the Authority, 40% (forty percent) of the revenues accruing from the Transmission Tariff, including proceeds of any rentals, deposits, capital receipts or insurance claims, received in each month for and in respect of the Additional Capacity (the “**Revenue Share from Additional Capacity**”). The Parties agree that the Revenue Share from Additional Capacity payable for any month shall be set off against the Unitary Charge payable by the Authority for that month: Provided, however, that the revenue share payable to the Authority for and in respect of the revenues accruing under the provisions of Clause 28.1.3 shall be 80% (eighty per cent) thereof and the provisions of this Agreement shall be construed accordingly.

For the avoidance of doubt, a deposit in respect of which the Concessionaire has paid a Revenue Share hereunder shall qualify for reduction in the total revenue during the year in which the deposit is refunded by the Concessionaire.

- 28.2.2 In the event of any dispute relating to the Revenue Share from Additional Capacity, the Dispute Resolution Procedure shall apply.

28.3 Revenue Statement

- 28.3.1 During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of the Transmission Tariff and other receipts from Additional Capacity and the Revenue Share from Additional Capacity, substantially in the form set forth in Schedule-R (the “**Revenue Statement for Additional Capacity**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may

reasonably require, at specified intervals, in discharge of its statutory functions and contractual rights hereunder.

28.3.2 The Concessionaire shall, for each Accounting year, consolidate the Revenue Statements for Additional Capacity and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Authority within 60 (sixty) days of the close of that Accounting Year.

28.4 Use of Additional Capacity by the Authority

Notwithstanding anything to the contrary contained herein, in the event of any reduction or shortfall in the Normative Availability of the System Capacity, the Concessionaire shall meet such shortfall by making available the Additional Capacity to the Authority to the extent of such shortfall.

ARTICLE 29

OTHER BUSINESS

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29.8 Other Business of the Concessionaire

29.8.1 The Concessionaire may, in accordance with the provisions of section 41 of the Act, engage in any business for the optimum utilisation of the assets of the Concessionaire (the “**Other Business**”).

29.8.2 The Concessionaire shall pay to the Authority, 25% (twenty-five per cent) of the gross revenues, including the proceeds of any rentals, deposits, capital receipts or insurance claims, received in each month from the Other Business in each month (the “**Revenue Share from Other Business**”) which shall be set-off against the Unitary Charge payable by the Authority for that month.

29.8.3 In the event of any dispute relating to the Revenue Share from Other Business, the Dispute Resolution Mechanism shall apply.

29.9 Revenue Statement

29.9.1 During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of gross revenues received from Other Business, substantially in the form set forth in Schedule-S (the “**Revenue Statement for Other Business**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions and exercise of its contractual rights hereunder.

29.9.2 The Concessionaire shall, for each Accounting year, consolidate the Revenue Statements for Other Business and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Authority within 60 (sixty) days of the close of that Accounting Year.

ARTICLE 30

REVENUE SHORTFALL LOAN

30.1 Revenue Shortfall Loan

- 30.1.1 If the Realisable Tariff in any Accounting Year shall fall short of the Subsistence Revenue as a result of an Indirect Political Event, a Political Event or a Authority Default, as the case may be, the Authority shall, upon request of the Concessionaire, provide a loan for meeting such shortfall (the “**Revenue Shortfall Loan**”) at an interest rate equal to 2% (two per cent) above the **Bank Rate**.
- 30.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 30.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months thereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 30.1.
- 30.1.3 The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 30 (thirty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed account of the Indirect Political Event, Political Event or the Authority Default, as the case may be, and its impact on the collection of Realisable Tariff.

30.2 Repayment of Revenue Shortfall Loan

A sum equal to 50% (fifty per cent) of the ‘profit before tax’ of the Concessionaire, as and when made, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Concessionaire to the Authority within 90 (ninety) days of the close of the Accounting Year in which such profits have been made; provided that the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon no later than one year prior to the expiry of the Concession Period and in the event that any sum remains due or outstanding at any time during such period of one year, the Authority shall be entitled to terminate this Agreement forthwith. For the avoidance of doubt, it is agreed that the repayment of Revenue Shortfall Loan shall be in accordance with and subject to the provisions of Article 31.

ARTICLE 31

ESCROW ACCOUNT

31.1 Escrow Account

31.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-T.

31.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all revenues from the Transmission Tariff and Other Business, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, including the Unitary Charge:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

31.3 Withdrawals during Concession Period

31.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Transmission System;
- (b) all payments relating to construction of the Transmission System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) any other amounts due and payable to the Authority, including Revenue Share from Additional Capacity and Revenue Share from Other Business, to the extent not set off in accordance with the provisions of this Agreement;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Authority.

31.4 Withdrawals upon Termination

31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Transmission System;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Revenue Share and any other amounts due and payable to the Authority;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;

- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.

ARTICLE 32

INSURANCE

32.1 Insurance during Concession Period

32.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

32.1.2 Without prejudice to the provisions contained in Clause 32.1.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Transmission System;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

32.2 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary

pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority .

32.4 Remedy for failure to insure

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

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.6 Concessionaire's waiver

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

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Transmission System, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 33

ACCOUNTS AND AUDIT

33.1 Audited accounts

- 33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the revenues from Unitary Charge, Transmission Tariff, Other Business and all incomes derived/collected by it from or on account of the Transmission System and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 33.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Unitary Charges, (b) revenues from the Transmission Tariff for each category of Users, (c) revenues from Other Business, and (d) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

- 33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-U. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

33.3 Certification of claims by Statutory Auditors

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

33.4 Set-off

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

33.5 Dispute resolution

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

Part V
Force Majeure and Termination

ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Transmission System for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver transformers, conductors, or other major equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this

Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Licensed Premises that could not reasonably have been expected to be discovered through a inspection of the Licensed Premises; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) 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;
- (c) any civil commotion, boycott or political agitation which prevents transmission of electricity by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements;

provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to transmit electricity despite making best efforts or it is directed by the Authority or SLDC or any Governmental Instrumentality to suspend transmission during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from transmitting electricity on account thereof; provided that in the event of reduction in transmission where the Availability on any day is less than 90% (ninety per cent) of the Average Daily Availability, the Authority shall extend the Concession Period in proportion to the loss of such Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) in Availability for four days as compared to the Average Daily Availability shall entitle the Concessionaire to extension of one day in the Concession Period.

34.7 Allocation of costs arising out of Force Majeure

- 34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 34.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Transmission System (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
 - (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Unitary Charge or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

34.7.3 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Termination Payment for Force Majeure Event

34.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

34.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
- (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

34.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were a Authority Default.

34.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in

accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

34.11 Excuse from performance of obligations

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

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

ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 35.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Unitary Charge, Transmission Tariff and revenues from Other Business, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

Subject to the provisions of Clause 35.5, in the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to reduction in collection of Unitary Charge, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the payment of Unitary Charge was reduced on account thereof, as the case may be; and in the event of reduction in Unitary Charge where the daily collection is less than 90% (ninety per cent) of the Average Daily Unitary Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Unitary Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Unitary Charge as compared to the Average Daily Unitary Charge for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

35.4 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive Unitary Charge, and collect Transmission Tariff or revenues from Other Business pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3. For the avoidance of doubt, the Authority shall continue to pay the Unitary Charge under and in accordance with this Agreement and deposit the same in the Escrow Account.

36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Transmission System and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

36.3 Revocation of Suspension

36.3.1 In the event that the Authority shall have rectified or removed the cause of

Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

36.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Transmission Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 37

TERMINATION

37.1 Termination for Concessionaire Default

37.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire 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 Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Transmission System without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the

Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) the Concessionaire fails to achieve a monthly Availability of 80% (eighty per cent) for a period of six (6) consecutive months or for a cumulative period of six (6) months within any continuous period of eighteen (18) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, or (ii) an act or omission of the Authority, not occurring due to any default of the Concessionaire;
- (p) the Damages for Reliability exceed 1% (one per cent) of the Unitary Charge for each month during a period of six (6) consecutive months or for a cumulative period of six (6) months within any continuous period of eighteen (18) months;
- (q) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (r) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (s) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (t) the Concessionaire 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 Authority, a Material Adverse Effect;
- (u) a resolution for winding up of the Concessionaire is passed;
- (v) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and

undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date;
 - (iii) each of the Project Agreements remains in full force and effect; and
 - (iv) such amalgamation or reconstruction is approved by the Commission.
- (w) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (x) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (y) the Transmission Licence has been suspended or has otherwise expired;
- (z) a notice for revocation of the Transmission License has been issued and such notice has not been set aside by the Commission within a Cure Period of 45 (forty five) days;
- (aa) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (ab) the Concessionaire 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 Authority.

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days,

whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

37.1.4 Upon the occurrence of a Concessionaire Default on account of the issuance of a notice for revocation of the Transmission License by the Commission, the Concessionaire shall:

(a) obtain the prior approval of the Commission under Section 19(6) of the Act for the sale and transfer of the Transmission System to the Authority under and in accordance with the provisions of this Agreement; and

(b) the Transmission System shall vest in the Authority under and in accordance with Applicable Laws and the provisions of this Agreement.

For the avoidance of doubt, the Parties expressly agree that notwithstanding anything to the contrary contained in this Agreement, in the event the Transmission System is required to be sold and is sold to a third party in accordance with the provisions of Section 20 of the Act, the Concessionaire shall deposit the proceeds from such sale into the Escrow Account. The Parties further agree and undertake that the Concessionaire shall be entitled to retain an amount equal to 90% of Debt Due less Insurance Cover, and shall transfer the balance of the purchase price to the Authority within a period of (15) fifteen days from the receipt of the sale proceeds by the Concessionaire.

37.2 Termination for Authority Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or

such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

37.3.2 Upon Termination on account of a Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due;

- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

Provided that the Termination Payment shall not be less than an amount equivalent to 3 (three) times the total Unitary Charge payable during the preceding Accounting Year.

- 37.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority 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 Authority of its payment obligations in respect thereof hereunder.
- 37.3.4 Upon expiry of the Concession Period by efflux of time, Termination Payment equal to the product of 30 (thirty) and the Unitary Charge, due and payable for and in respect of the last month of the Concession Period, shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Transmission System, shall have been acquired and installed after the 18th (eighteenth) anniversary of COD, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 37.4.1, be made by the Authority to the Concessionaire.
- 37.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 37.3.4, in the event any Project Assets, essential for the efficient, economic and safe operation of the Transmission System, shall have been acquired and installed after the 18th (eighteenth) anniversary of COD, with prior written consent of the Authority (which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.
- 37.3.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time prior to the 20th (twentieth) anniversary of COD, by notice require the Authority to grant an extension of the Concession Period for a further period of 10 (ten) years in accordance with the Applicable Laws, and in such an event, the Termination Payment specified in Clause 37.3.4 shall not be due and payable to the Concessionaire. Upon expiry of the extended Concession Period hereunder, the Transmission System shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Transmission System to the Authority hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Agreement shall apply *mutatis mutandis* to the extended Concession Period hereunder.
- 37.3.7 The Concessionaire expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that

the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.4 Certain limitations on Termination Payment

37.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

37.4.2 Additional Termination Payment due and payable in respect of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) 40% (forty per cent) of the sum of Total Project Cost and Equity Support, if any.

37.4.3 Additional Termination Payment due and payable in respect of Additional Capacity, which is constructed, installed and operated as a part of the Transmission System, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) 30% (thirty per cent) of the sum of Total Project Cost and Equity Support:

Provided, however, that in the event the Additional Capacity is capable of being physically segregated from the System Capacity and operated as such, the Authority shall have no obligation to acquire the Additional Capacity and make Termination Payment in respect thereof, and such Additional Capacity shall continue to be retained by the Concessionaire.

37.4.4 Left Blank

37.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Transmission System forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

38.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Transmission System, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Transmission System is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Transmission System and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Transmission System and shall be assigned to the Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Transmission System, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Transmission System, free from all Encumbrances, absolutely unto the Authority or to its nominee.

38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a

third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Transmission System shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-V (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Transmission

System, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Transmission System on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Divestment costs etc.

- 38.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Transmission System in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 38.5.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Transmission System for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Transmission System during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Transmission System conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to the monthly Unitary Charge payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Transmission System at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Transmission System is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 40

ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Transmission System;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Transmission System, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Transmission System;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-W.

40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this

Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

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

40.5 Any assignment under this Article 40 shall be subject to the approvals and consents required therefor under Applicable Laws, including approval of the Commission. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 41

CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 25 lakh (Rupees twenty five lakh) and 0.5% (zero point five per cent) of the Unitary Charge in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 25 lakh (Rupees twenty five lakh) and 0.5% (zero point five percent) of the Unitary Charge in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled

in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

41.5 No claim in the event of recovery from Users

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

ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

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

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

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Transmission System, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defence of claims

42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume

and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43

RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Licensed Premises as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Transmission System by third parties in accordance with and subject to the provisions of this Agreement.

43.2 Access rights of the Authority and others

43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Transmission System and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

43.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

43.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Licensed Premises; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

43.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Transmission System.

ARTICLE 44

DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.

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

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with *the* Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Panchkula, and the language of arbitration proceedings shall be English.

44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

- 44.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 44.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 Adjudication by the Commission

- 44.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 44.3, be submitted for adjudication by the Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly.

For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

- 44.4.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 44.3 shall be followed to the extent applicable.

ARTICLE 45

DISCLOSURE

45.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Transmission Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and Sub-stations. The Concessionaire shall prominently display at every Sub-station, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.2 Disclosure of Documents relating to safety

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

45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, but subject to the Applicable Laws, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 46

REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

- 46.1.1 The Concessionaire shall maintain a public relations office at every Sub-station where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at every Sub-station so as to bring it to the attention of all Users.
- 46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

- 46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal in accordance with Applicable Law, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 47

MISCELLANEOUS

47.1 Governing law and jurisdiction

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

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

47.3 Depreciation and interest

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

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

47.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

47.5 Waiver

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

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

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

47.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Transmission System nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.7 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.

47.8 Survival

47.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, 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.

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

47.9 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 Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

47.10 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.

47.11 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.

47.12 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.

47.13 Successors and assigns

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

47.14 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 Concessionaire, 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 Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Panchkula (Haryana) or Chandigarh 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 Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chief Engineer (Planning) with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Panchkula (Haryana) or Chandigarh 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.

47.15 Language

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

47.16 Counterparts

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

ARTICLE 48

DEFINITIONS

48.1 Definitions

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

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

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

“**Additional Capacity**” shall have the meaning set forth in Clause 28.1.1;

“**Additional Termination Payment**” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets and Additional Capacity, as further limited by the provisions of Clauses 37.4.2 and 37.4.3, as the case may be;

“**Additional Concession Period**” shall have the meaning set forth in Clause 3.1.1;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire save and except in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three per cent) thereof at the commencement of each month following the 4th

(fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning set forth in Clause 34.1;

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

“**Appendix**” shall have the meaning set forth in Clause 10.3.1;

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

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

“**Appointed Date**” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“**Approved Valuer**” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority Default**” shall have the meaning set forth in Clause 37.2.1;

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

“**Average Daily Availability**” means the Availability, in terms of percentage, determined for the month preceding the relevant Force Majeure Event;

“**Average Daily Unitary Charge**” means the amount arrived at by dividing the total Unitary Charge of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily Unitary Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Unitary Charge collected with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Unitary Charge payable for any segment of the Transmission System has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Unitary Charge for such period;

“**Availability**” shall have the meaning set forth in Clause 5.1.4;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

“**Base Unitary Charge**” shall have the meaning set forth in Clause 26.2.1;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Consortium in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 6,00,00,000 (Rupees six crore), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

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

- (a) the enactment of any new Indian law as applicable to the State;
- (b) the repeal, modification or re-enactment of any existing Indian law;

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

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium Members, together with their Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of any Consortium Member to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 16.1;

“**Commencement Date**” shall have the meaning ascribed to the term in Clause 3.1.1;

“**Commission**” means the State Electricity Regulatory Commission or any successor thereof;

“**Company**” means the company acting as the Concessionaire under this Agreement;

“**Completion Certificate**” shall have the meaning set forth in Clause 14.2;

“**Concession**” shall have the meaning set forth in Clause 3.1.1;

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

“**Concession Period**” means the period starting on and from the Commencement Date and ending on the earlier of the 25th anniversary of the Commencement Date and the date of termination of the Agreement;

“**Concessionaire Default**” shall have the meaning set forth in Clause 37.1.1;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

“**Consortium**” shall have the meaning set forth in Recital (B);

“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

“**Construction Works**” means all works and things necessary to complete the Transmission System in accordance with this Agreement and includes Transmission Lines, Sub-stations, conductors and other equipment;

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

“**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;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

“**DBFOT**” or “**Design, Build, Finance, Operate and Transfer**” shall have the meaning set forth in Recital (A);

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

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Deed of Hypothecation” shall have the meaning set forth in Clause 27.1.2;

“Default Escrow Account” shall have the meaning set forth in Clause 27.1.1;

“Default Escrow Agreement” shall have the meaning set forth in Clause 27.1.1;

“Default Escrow Bank” shall have the meaning set forth in Clause 27.1.1;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning set forth in Clause 44.1.1;

“Disputed Amounts” shall have the meaning set forth in Clause 26.8.3;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 44;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Transmission System as set forth in Schedule-H, and shall include ‘as built’ drawings of the Transmission System;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Transmission System in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Electrical Inspector” means an electrical inspector appointed by the Government under the provisions of the Act;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Transmission System, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Transmission System and Real Estate Development, any encumbrances 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Transmission System, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

“Equity Support” shall have the meaning set forth in Clause 25.2.1;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning set forth in Clause 31.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 31.1.1;

“Escrow Default” shall have the meaning set forth in Schedule-T;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning set forth in Schedule-W;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Transmission System and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments

including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 34.1;

“**Forced Outage**” means an outage of the Transmission System due to a fault or any other reason which was not anticipated and includes any trippings, breakdown or unscheduled shutdown;

“**GOI**” means the Government of India;

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

“**Government**” means the Government of the State;

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

“**Grant**” shall have the meaning set forth in Clause 25.1.1;

“**Golden Share**” shall have the meaning set forth in Clause 5.4.1;

“**Grid Code**” means the grid code issued by the Commission under and in accordance with the Act;

“**Indian Electricity Grid Code**” means the grid code issued by the Central Electricity Regulatory Commission under and in accordance with the Act;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 42;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 42;

“**Independent Engineer**” shall have the meaning set forth in Clause 23.1;

“**Indexed Unitary Charge**” shall have the meaning set forth in Clause 26.3;

“**Indirect Political Event**” shall have the meaning set forth in Clause 34.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and includes all insurances required to be taken out by the Concessionaire under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Intellectual Property**” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Key Performance Indicators**” shall have the meaning set forth in Clause 21.1;

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

“**Lead Member**” shall have the meaning set forth in Recital (B);

“**Lenders’ Representative**” means the person duly authorised 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;

“**Letter of Credit**” shall have the meaning set forth in Clause 27.2.1;

“**Licensed Premises**” shall have the meaning set forth in Clause 10.2.2;

“**Line ROW**” shall have the meaning ascribed to the term in Clause 10.1;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 17.4.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 17.2;

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

“**Maximum Monthly payment**” shall have the meaning set forth in Clause 27.1.1;

“**Minimum Monthly Payment**” shall have the meaning set forth in Clause 27.1.3;

“**Misdeclaration**” shall have the meaning set forth in Clause 26.5.3;

“**Monthly Invoice**” shall have the meaning set forth in Clause 26.8.1;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“**Non-Availability**” means any partial or total lack of Availability, save and except to the extent arising out of an event described in Clause 17.8.2;

“**Non-Political Event**” shall have the meaning set forth in Clause 34.2;

“**Normative Availability**” shall have the meaning set forth in Clause 5.1.4;

“**Normative Loss**” shall have the meaning set forth in Clause 21.4.1;

“**O&M**” means the operation and maintenance of the Transmission System and includes all matters connected with or incidental to such operation and maintenance, and provision of transmission services and facilities in accordance with the provisions of this Agreement;

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning set forth in Clause 19.3;

“**O&M Support**” shall have the meaning set forth in Clause 25.3.1;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Other Business**” shall have the meaning set forth in Clause 29.8.1;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 33.2.1;

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

“**Payment Due Date**” shall have the meaning set forth in Clause 26.8.3;

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

“**Political Event**” shall have the meaning set forth in Clause 34.4;

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

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, all agreements relating to Real Estate Development and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.10 (ten) crore;

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

- (a) rights over the Site in the form of licence, Right of Way, Line ROW or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;
- (c) Project Facilities situated on the Site;
- (d) Blank
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Transmission System;

“**Project Completion Date**” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“**Project Completion Schedule**” means the progressive Project Milestones set forth in Schedule-G for completion of the Transmission System on or before the Scheduled Completion Date;

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“**Project Milestones**” means the project milestones set forth in Schedule-G;

“**Provisional Certificate**” shall have the meaning set forth in Clause 14.3.1;

“**Punch List**” shall have the meaning ascribed to it in Clause 14.3.1;

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

“**Real Estate Development**” shall have the meaning set forth in Clause 3.1.3;

“**Reliability**” shall have the meaning set forth in Clause 21.3.1;

“**Reliability Measurement Unit or RMU**” shall have the meaning set forth in Clause 21.3.1;

“**Realisable Tariff**” means the Unitary Charge and Transmission Tariff due and realisable under this Agreement, but does not include the Unitary Charge and Transmission Tariff that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Tariff shall, save as provided in Clause 26.4, be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

“**Reference Index Date**” means, in respect of the specified month, that last day of the preceding month with reference to which the WPI is revised;

“**Reference Exchange Rate**” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital (C);

“**Request for Qualification**” or “**RFQ**” shall have the meaning set forth in Recital (B);

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

“**Revenue Share**” means and refers to the Revenue Share from Additional Capacity and the Revenue Share from Other Business;

“**Revenue Share from Additional Capacity**” shall have the meaning set forth in Clause 28.2.1;

“**Revenue Share from Other Business**” shall have the meaning set forth in Clause 29.8.2;

“**Revenue Statement for Additional Capacity**” shall have the meaning set forth in Clause 28.3.1;

“**Revenue Statement for Other Business**” shall have the meaning set forth in Clause 29.9.1;

“**Revenue Shortfall Loan**” shall have the meaning set forth in Clause 30.1.1;

“**Right of Way**” means the constructive possession of the Licensed Premises, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Transmission System and Real Estate Development in accordance with this Agreement, but excludes the Line ROW;

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

“**Safety Consultant**” shall have the meaning set forth in Clause 18.1.2;

“**Safety Requirements**” shall have the meaning set forth in Clause 18.1.1;

“**Safety Fund**” shall have the meaning set forth in Clause 18.2.;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.3.1;

“**Scheduled Maintenance**” shall have the meaning set forth in Clause 17.4.4;

“**Scheduled System Augmentation Date**” shall have the meaning set forth in Clause 12.4.1;

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

“**Secured Obligations**” means:

- (a) the amounts due to the Default Escrow Bank from the Authority in relation to the Letter of Credit;
- (b) obligations of the Authority for payment of Unitary Charge and incentives under and in accordance with the Transmission Agreement; and
- (c) obligation of the Authority to make Termination Payment under and in accordance with the Transmission Agreement upon termination thereof;

“**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 Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Shareholders’ Agreement**” shall have the meaning set forth in Clause 5.4.1;

“**Site**” shall have the meaning set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Transmission System, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in

the design and engineering for the Transmission System submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Assets**” means and includes all or any of the following:

- (a) all buildings and immovable fixtures or structures forming part of Other Business;
- (b) such of the Project Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but before the 20th (twentieth) anniversary thereof; and

but shall in no case include land;

“**State**” means the State of Haryana and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

“**Sub-station**” means a station for transforming or converting electricity for the transmission thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Subsistence Revenue**” means the total amount of revenue from the Project that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M

Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, plus Grant, if any during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under Clause 34.7.2 or 35.2;

“**Substitution Agreement**” shall have the meaning set forth in Clause 40.3;

“**Suspension**” shall have the meaning set forth in Clause 36.1;

“**System Capacity**” shall mean a transmission system comprising: (a) a 400 kV transmission line from Jharli (Jhajjar) to Kabulpur (Rohtak) with a design capacity **equivalent to 2430MW** (b) a 400 kV transmission line from Kabulpur (Rohtak) to Dipalpur (Sonapat) with a design **capacity equivalent to 2430MW**; (c) a 400 kV single circuit Loop-in-Loop-out transmission line at 400 kV Substation Dipalpur of 400 kV Double Circuit (D/C) Abdullapur to Bawana line and having 2(two) 400kV sub-stations which shall have been constructed and completed in accordance with the provisions of this Agreement.

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

“**Termination**” means the expiry or termination of this Agreement and the Concession hereunder;

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

“**Termination Payment**” means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.4;

“**Tests**” means the tests set forth in Schedule-I to determine the completion of Transmission System in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the capital cost incurred on construction and financing of the System Capacity and shall be limited to the lowest of:

- (a) the capital cost of the System Capacity, less Equity Support as set forth in the Financial Package;
- (b) the actual capital cost of the System Capacity upon completion of the System Capacity less Equity Support; and

(c) a sum of Rs.382 crore (Rupees three eighty two crore), less Equity Support;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

“Transfer Date” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“Transmission Licence” shall mean the transmission licence granted to the Concessionaire in accordance with the Act;

“Transmission Losses” shall have the meaning set forth in Clause 21.4.2;

“Transmission Services” shall mean the transmission of electricity by the Concessionaire for and on behalf of the Authority by means of the System Capacity, and the transmission of electricity for Users by means of the Additional Capacity, and shall include all the functions associated therewith;

“Transmission System” means the transmission system constructed and operated by the Concessionaire under and in accordance with this Agreement and includes the System Capacity and the Additional Capacity;

“Transmission Tariff” shall have the meaning set forth in Clause 28.1.4;

“Unitary Charge” shall have the meaning set forth in Clause 26.1.1;

“Unscheduled Maintenance” shall have the meaning set forth in Clause 17.8.1;

“User(s)” shall mean the third parties using the Transmission System or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning set forth in Clause 38.4; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Unitary Charge in accordance with the provisions of Clause 26.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the
Board of Directors of the Concessionaire
at its meeting held on the Nineteenth day
of May, 2010 hereunto affixed in the
presence of Mr Kamal K Jain, Director,
and Mr Pradeep Kumar Lohia, Director,
who have signed these presents in token
thereof.

In the presence of:

1.

2.

Schedules

SCHEDULE – A
(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Transmission System shall include the land, buildings, structures and Line ROW as described in Annex-I of this Schedule A.
- 1.2 An inventory of the Licensed Premises including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Licensed Premises and vest in the Authority.

Annex - I
(Schedule-A)

Site for the Transmission System

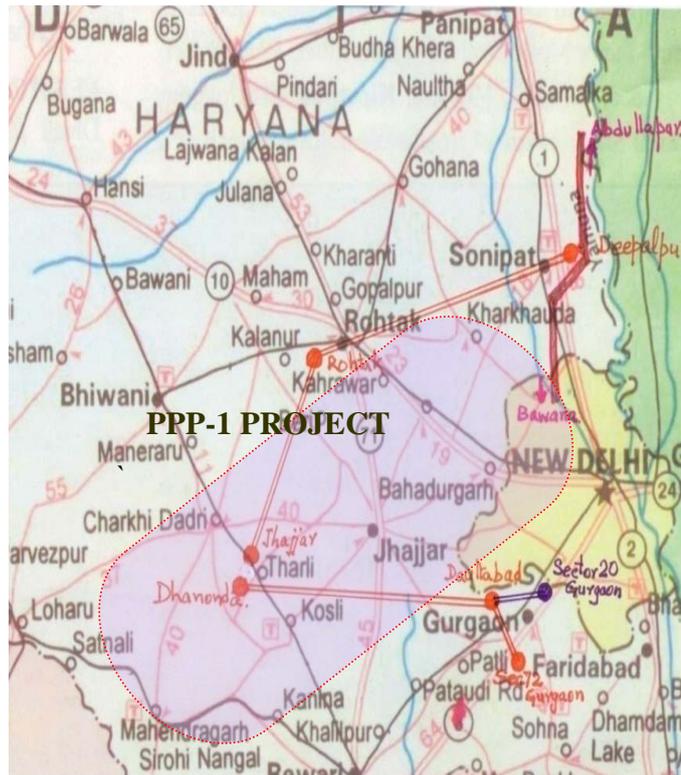
1.0 Brief Description of the Project

1.1 About the Project

Haryana Vidyut Prasaran Nigam Ltd., as the State Transmission Company (the “Authority”) acting on behalf of the Uttar Haryana Bijli Vitran Nigam Ltd. (the “UHBVNL”) and the Dakshin Bijli Vitran Nigam Ltd. (the “DHBVNL”) has decided to undertake development, operation and maintenance of the 400 kV / 220 kV / 132 kV HVPNL Transmission System Project (the “Project”) through Public Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”)

basis for the evacuation of electricity from the 2x660 MW Mahatma Gandhi thermal Power Plant at Jharli (Jhajjar) in Haryana. A pictorial jurisdiction of the project is shown in the picture alongside. Brief particulars of the Transmission System are as follows:

HVPNL 400 kV PPP-1 TRANSMISSION PROJECT



1.2 About the Transmission System

The project includes a 400 kV Transmission System comprising of about 35 Km 400 kV Double Circuit (D/C) Quad Moose ACSR conductor over head transmission line from Jharli (Jhajjar) to Kabulpur (Rohtak), 64 Km 400 kV Double Circuit (D/C) Quad Moose ACSR conductor over head transmission line from Kabulpur (Rohtak) to Dipalpur (Sonapat), 1.0 Km Single Circuit (S/C) Loop-In-Loop-Out (LILO) at Dipalpur substation of 400 kV Double Circuit Triple Snowbird ACSR conductor Abdallapur–Bawana line and 2X315 MVA, 400kV / 220kV + 2X100 MVA 220kV / 132kV Air Insulated Substations (AIS) each at Kabulpur & Dipalpur in the state of Haryana, India.

2.0 Site for the Transmission System

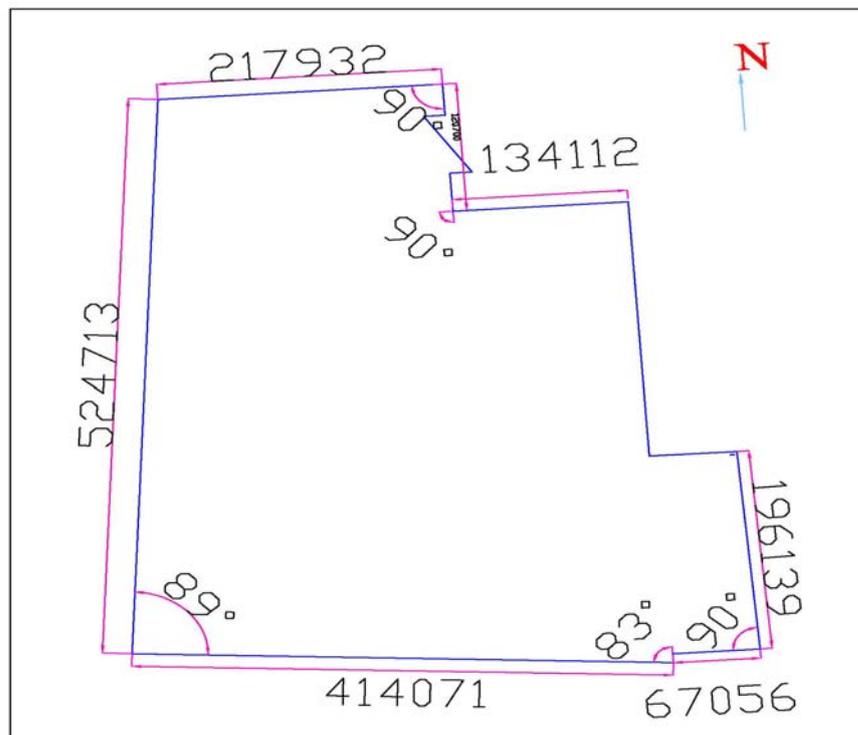
Transmission System covered under the project is located mainly in Jhajjar, Rohtak and Sonapat districts of Haryana (India). The details of the sites for the substations (the “Licensed Premises”) and route alignments of lines (the “Line ROW”) are as under:

2.1 Part A : Licensed Premises

2.1.1 400 kV Sub-station site at village Kabulpur (Rohtak) is undulated and sandy which would require levelling. The sub-station site at Kabulpur has a non-descript Samadhi. Land and ROW free from all encumbrances, required for the Substation has been acquired by the Authority and possession thereof taken over. About 2.0 Km long approach metalled road to the Substation shall be constructed from the nearest PWD Road. An initial section about 1.7 Km 4 karam (7.2 metre) wide of the proposed approach road is kacha path belongs to Haryana Revenue Department and the balance about 0.3 Km 7 karam (12.46 metre) towards Substation end has been acquired by the Authority. The ROW for constructing the metalled approach road has been acquired by the Authority. Land for the Substation measures 402 Kanal and 11 Marla (approx 50.32 acres) and is situated in revenue estate of Village Kabulpur, Distict Rohtak (Haryana). Khasra Nos. as per Revenue records and a typical layout plan of the Licensed Premises is given as follows:

Khasra Nos.: 54 / 25, 55 / 21 to 23, 82 / 1 to 3 & 6 to 25, 83 / 5, 6, 15, 16 & 25, 84 / 5, 6, 15, 85 / 1 to 17, and 86 / 1, 10, 11 & 20 / 1(56 Kitas):

Land Layout Plan of Kabulpur Sub Station
All dimensions are in mm (NTS)

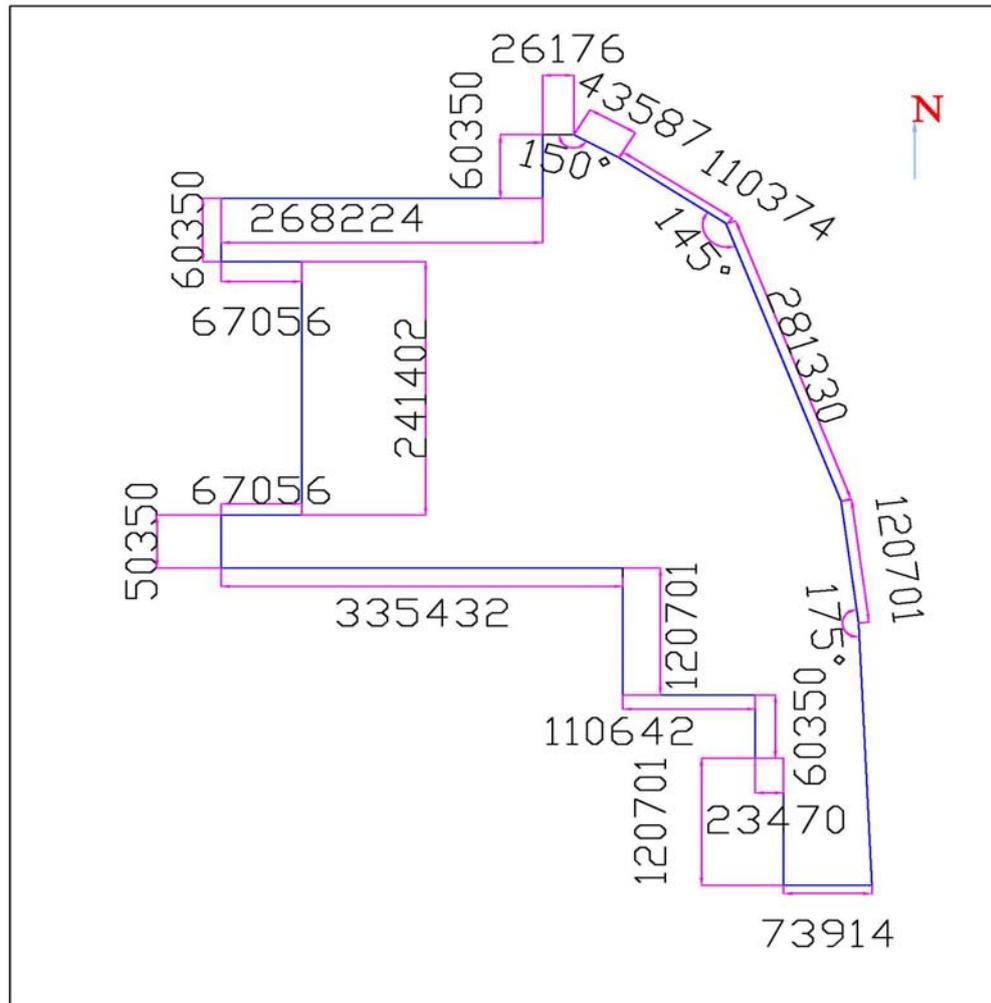


2.1.2 400 kV Sub-station site at village Dipalpur (Sonepat) is flat and plain requiring minimal earth filling. Land and ROW free from all encumbrances, required for the Substation has been acquired by the Authority and possession thereof taken over. About 1.7 Km long approach metalled road to the Substation shall be constructed from the nearest PWD Road on about 1.7 Km long, 6 karam (10.7 metre) wide kacha path belonging to Haryana Revenue Department and the village Panchayat. The ROW for constructing the metalled approach road has been acquired by the Authority.. Land for the Substation measures 381 Kanals and 01 Marla (approx 47.60 acres) and is situated in Revenue Estate of Village Mursadpur (Dipalpur), Distict Sonipat (Haryana). Khasra Nos. and a typical land layout plan of the Licensed Premises is given as follows:

Khasra Nos.: 17 / 2 to 9, 12 to 15, 17 to 19 & 21 to 25, 18 / 1, 2, 9 to 12 , & 18 to 22, 19 / 1 to 3, 8 to 10, 12 / 2, 13, 17, 18, 23 & 24, 14 / 16 & 21 to 25 & 13 / 2, 20 & 21 (53 Kitas)

Land Layout Plan of Dipalpur Sub-Station

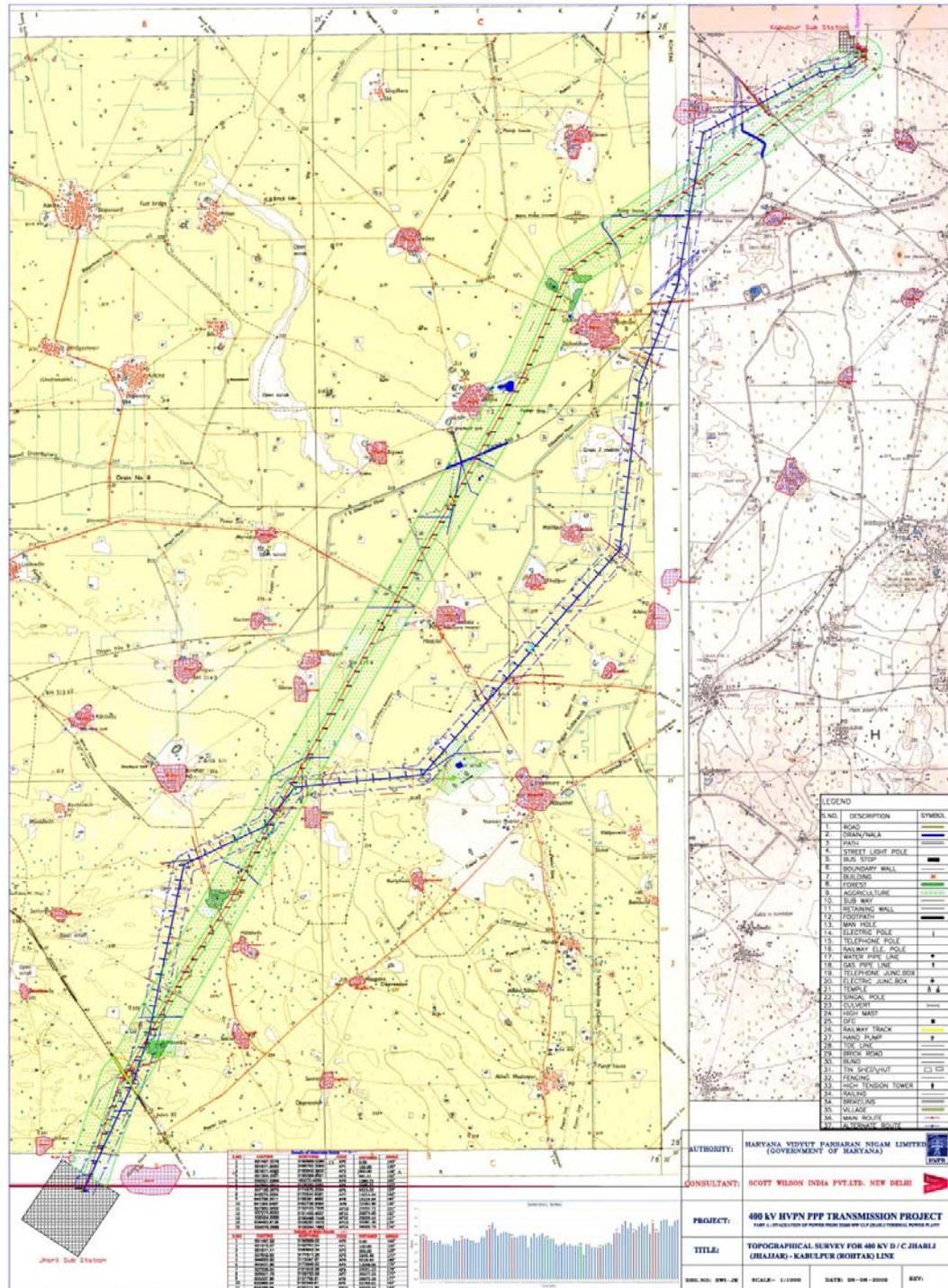
All dimensions are in mm (NTS)



2.2 Part B : Line ROWs

2.2.1 Alternative Route Alignments of 400 kV Kabulpur – Jharli Line

Preliminary Survey of the following two alternative route alignments of 400 kV Kabulpur–Jharli Transmission Line have been carried out by the Authority. Concessionaire shall carryout detailed route survey and designing.



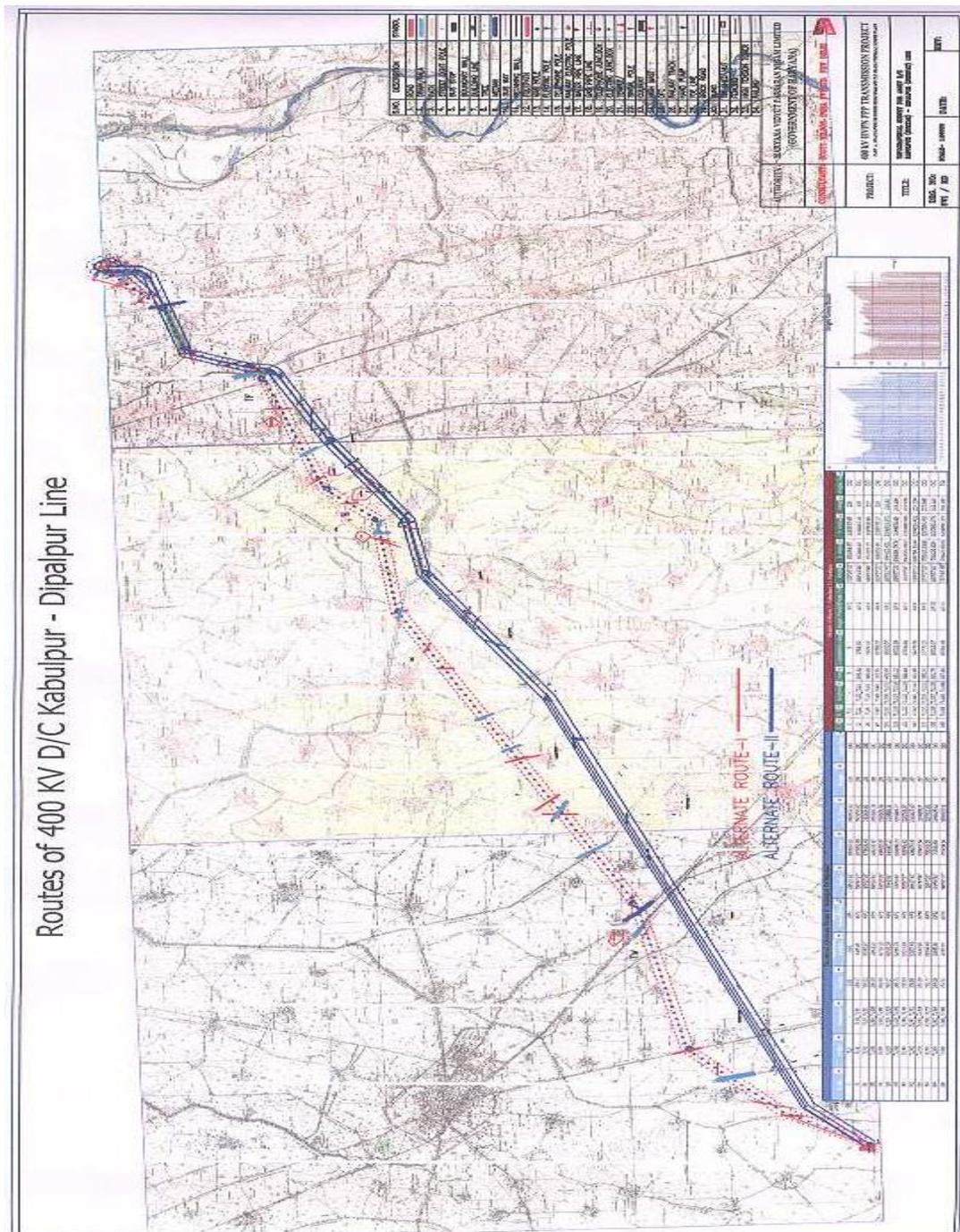
Note: The optimum of the two alternative tentative routes is marked in red colour with in green band.

Features on the Proposed 400 kV Line Route:

S.N.	Jharli to Kabulpur 400 kV Transmission Line	Remarks
1.	Villages along the Transmission Line	Jharli, Jhamri, Gadhniwali, Nimli, Birohar, Santor, Sarupgarh, Imtola, Safipur, Malikpur, Bidhian, Bakroh, Dhurana.
2.	Terrain	Plain
3.	Existing Landuse	Mainly Agricultural Land
4.	Type of Crops	Existing agricultural land is used for the cultivation of Wheat, Mustard, Grains, Vegetables, lentils, fodders, etc.
5.	NH Crossing /Nearby	Jhajjar to Mahendragarh Road
6.	Metal Road Crossing	Metal Road crossings near village Gadhniwali, Nimli, Imtola, Malikpur, Bakroh
7.	Railway Crossing	Rewari-Hisar-Bhatinda Section of Northern Railway Line
8.	Nearby River or Surface water/ Canal Crossing	Crossing of Maliawas Minor, Patuwas Distributory, Khachrauli Minor, Dubaldhan Minor, Main Drain no - 6.
9.	Tree/Crop and its extent of damage	Few numbers (about 400) of trees has been observed along the Jhajjar-Mhendragarh road, other local roads, distributories, and minors where the transmission line will be crossing. In addition, few numbers of trees are also observed on crop fields in the alignment of transmission line. The exact number of trees will be counted at the time of detailed survey. The permission for cutting of trees will be taken from Forest Department before start the construction.
10.	Forest involvement	No Forest land is involved.
11.	Concerned Forest Department for necessary approval	Divisional Forest Office (DFO), Jhajjar and Rohtak
12.	Historical/Cultural monuments	No Historical/Cultural monuments are in the area along the transmission line.

2.2.2 Alternative Route Alignments of 400 kV Kabulpur - Dipalpur Line

Preliminary Survey of the following two alternative route alignments of 400 kV Kabulpur–Dipalpur Transmission Line have been carried out by the Authority. Concessionaire shall carryout detailed route survey and designing.



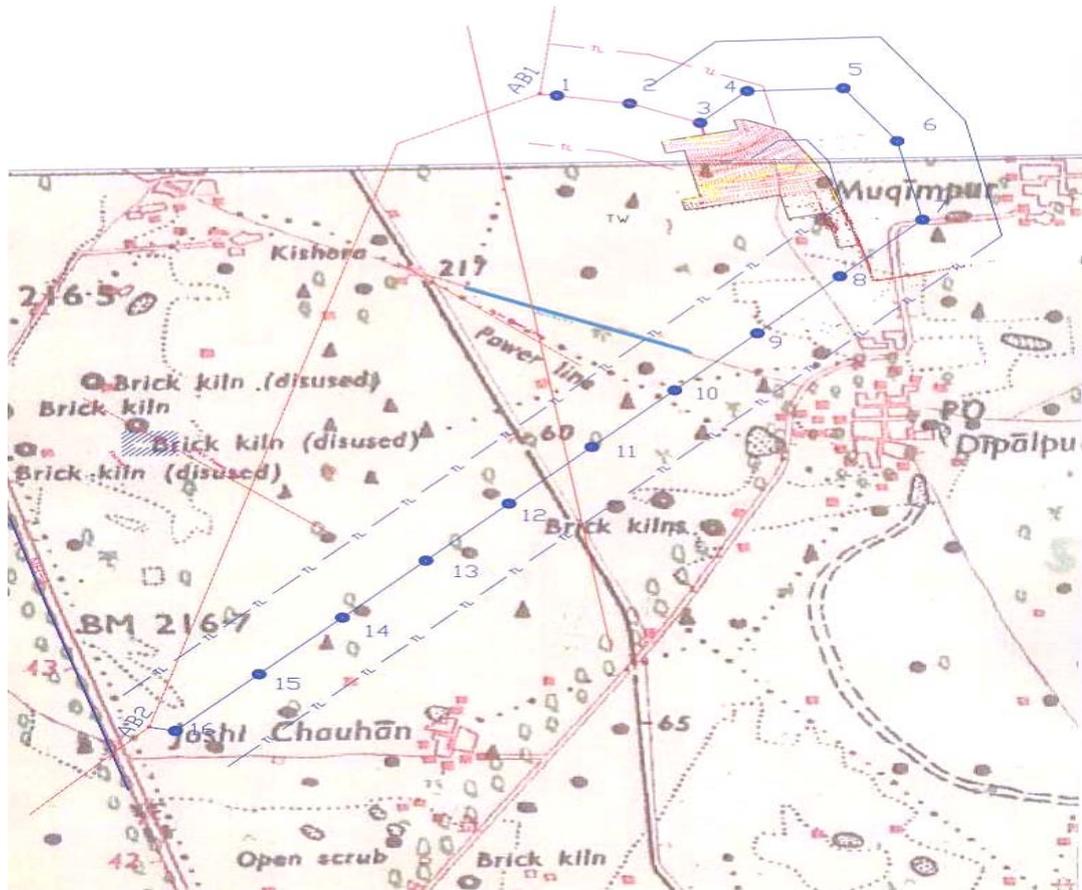
Note: The optimum of the two alternative tentative routes is marked in red colour.

Features on the Proposed 400 kV Line Route

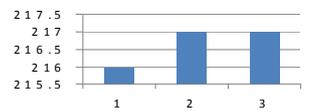
S.N.	Kabulpur to Dipalpur 400 kV Line	Remarks
1.	Villages along the Transmission Line	Ritauli, Kabulpur, Baland, Karauntha Kakarwala, Chullana, Gundhra Dataur, Samchana, Morkheri, Rohna, Chhanauli, Kharkhaunda, Thanakhurad, Jharaut, Kanwali, Fatehpur, Mohmammadpur, Nasirpur Bangar, Joshi Chauhan, Dipalpur.
2.	Terrain	Plain
3.	Existing Land use	Mainly Agricultural Land
4.	Type of Crops	Existing agricultural land is used for the cultivation of Wheat, Mustard, Grains, Vegetables, lentils, fodders, etc.
5.	National Highway / State Highway Crossings	1. Rohtak to Jhajjar Road 2. Rohtak to Sampla Road 3. Sonipat to Bahadurgarh Road 4. Sonipat to Bahalgarh Road 5. Delhi Ambala highway (NH-1)
6.	Railway Crossing	Northern Railway Line (Main Line) Delhi– Rohtak and Delhi –Ambala Section.
7.	Nearby River or Surface water/ Canal Crossing	Crossing of Bishan Minor, Jhajjar Sub branch, Suniri Minor, Ismaila Distributory, Dulehra Distributory, Gandhar Drain, Bhalaut Distributory, Pakasma Drain, Jasrana Drain, West Juan Drain, Sisana minor, Khanda drain, Rahana Minor, Diversion drain-8, Pai Distributory, Jataula Minor, Kanwali Minor, Fatehpur Drain, Delhi Branch (Westen Yamuna Canal), Drain No-6, Rajpur Distributory.
8.	Tree/Crop and its extent of damage	Few number of trees have been observed along the Rohtak to Jhajjar Road, Rohtak to Sampla Road, Sonipat to Bahadurgarh Road, Sonipat to Bahalgarh, Delhi-Ambala National Highway (NH-1) and other local roads, distributaries, and minors where the transmission line will be crossing. In addition, few numbers of trees are also observed on crop fields in the alignment of transmission line. The exact number of trees will be counted at the time of detailed survey. The permission for cutting of trees will be taken from Forest Department before start the construction.
9.	Concerned Forest Department for necessary approval	Divisional Forest Office (DFO), Sonipat and Rohtak
10.	Type of Common Flora & Fauna along the Transmission System	Common flora are Babul, Papri, Kikar, Shisham, Eucalyptus, Safeda, Siras, Neem, Amaltas, Shahtoot, Imli, Papular, Bad, Aam, Mahaneem, Pipal, Jamun. Common fauna are Siyar, Jangli Billi, Khargosh, Nevla, etc. Common avifauna are birds like Eagle, sparrow, Common ducks, Francolins, King vulture, Pigeons, Crows, Common geese, etc.
11.	Forest involvement	No Forest land is involved.

2.2.3 Alternative Route Alignments of S/C LILO at Dipalpur of 400 kV D/C Abdallapur-Bawana Line

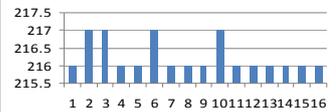
Preliminary Survey of the following two alternative route alignments of 400 kV S/C LILO at Dipalpur of 400 kV D/C Abdallapur-Bawana Transmission Line have been carried out by the Authority. Concessionaire shall carryout detailed route survey and designing.



Elevation Route I - Loop In Loop Out of S /C of 400 kV D/C Abdallapur Bawana



Elevation Route II - Loop In Loop Out of S/C of 400 kV D/C Abdallapur Bawana Line



AB1: Tower Location No 367 D of Abdallapur Bawana Line.
AB2: Tower Location No 378 D of Abdallapur Bawana Line.

Note: The optimum of the two alternative tentative routes is marked in red colour.

SCHEDULE – B
(See Clause 2.1)

DEVELOPMENT OF THE TRANSMISSION SYSTEM

1 Development of the Transmission System

Development of the Transmission System shall include construction of the Transmission System as described in this Schedule-B and in Schedule-C.

2 Transmission System

2.1 Transmission System shall include construction of the Transmission System as described in Annex-I of this Schedule-B and Annex-I of Schedule-C.

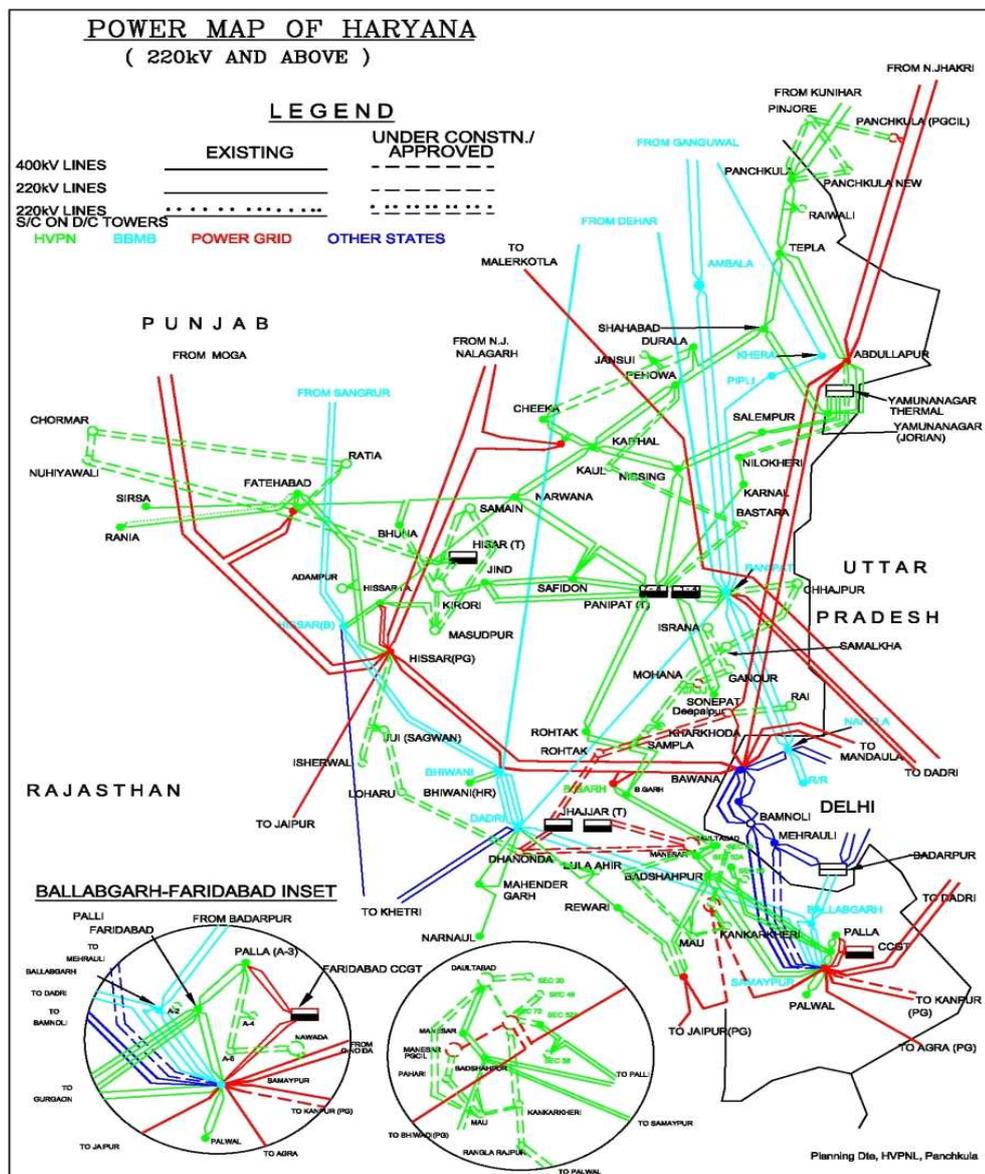
2.2 Transmission System shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.

Annex - I
(Schedule-B)

Description of System Capacity and Technical Requirements

1. System Capacity

- 1.1 The transmission system shall be about 100 Km in length and shall extend from Jharli (Jhajjar) to Kabulpur (Rohtak), Kabulpur to Dipalpur (Sonipat) and a Loop-In- Loop Out of one circuit of existing Abdallapur-Bawana Line at Dipalpur.
- 1.2 The Transmission System shall be constructed for a nominal voltage of 400 kV.
- 1.3 The Transmission System shall be designed for a frequency of 50 Hz.
- 1.4 The grid map of Haryana is given below:



1.5 The System Capacity shall be constructed overhead as briefly described below:

(i) Transmission line(s)

(A) 400 kV Double Circuit Jharli to Kabulpur Line

- (a) "MOOSE" ACSR conductor with maximum permissible DC resistance calculated at 20°C shall be 0.05552 Ohm/km;
- (b) number of conductors in each phase shall be four;
- (c) maximum operating conductor temperature shall be 75° C; and
- (d) 2700 MVA and {2430 MW at 0.9 (zero point nine) power factor}
- (e) Two earthwires – one of GSW minimum size 7/3.66 mm and other of OPGW size 24 / 2.34 mm

(B) 400 kV Double Circuit Kabulpur to Dipalpur Line

- (a) "MOOSE" ACSR conductor with maximum permissible DC resistance calculated at 20°C equal to 0.05552 Ohm/km;
- (b) number of conductors in each phase shall be four;
- (c) maximum operating conductor temperature shall be 75° C; and
- (d) 2700 MVA and {2430 MW at 0.9 (zero point nine) power factor}
- (e) Two earthwires – one of GSW minimum size 7/3.66 mm and other of OPGW size 24 / 2.34 mm

(C) 400 kV Loop-in-Loop-out (the “LILO”) at Dipalpur (Sonepat) of one circuit of Double Circuit Abdallapur – Bawana Line

- (a) "SNOWBIRD" ACSR conductor with maximum permissible DC resistance calculated at 20°C equal to 0.05516 Ohm/km;
- (b) number of conductors in each phase shall be three;
- (c) maximum operating conductor temperature shall be 75° C; and
- (d) 1250 MVA {1125 MW at 0.9 (zero point nine) power factor}
- (e) Earthwires to match the earthwire on existing Transmission Line

(ii) Sub-station(s)

(A) 400 kV Kabulpur (Rohtak)

- (a) Location of the Sub-station- village Kabulpur (District Rohtak);

- (b) type of Substation – Air Insulated Substation (AIS);
- (c) 2 X 315 MVA, 400 kV / 220 kV transformers with a 33 kV tertiary of 6.3 MVA active and On Load Tap Changer (OLTC) with $\pm 10\%$ range in steps of 1.25%. Plus 2 X 100 MVA transformers with On Load Tap Changer (OLTC) **with - 5% to +15%** range in steps of 1.25%;
- (d) 2 x 33 / 0.433 – 0.250 kV Station Auxiliary Transformer of 630 kVA or as per reviewed drawings / design with off-load tap changer range –5% to +10% in steps of 2.5 %;
- (e) two 400 kV bays for accommodating 400 kV D/C Jharli – Kabulpur line and two 400 kV bays for accommodating 400 kV D/C Kabulpur – Dipalpur line with complete equipments & space for additional two spare 400 kV bays.
- (f) two 400 kV bays, six 220 kV bays and six 132 kV bays with complete equipments including wave traps except telecommunication and teleprotection equipment for Transmission lines terminating at the Substation and to be constructed by the Authority. Rated Capacity of line Circuit Breakers and Disconnectors shall be 2000A for 400 kV, 2000A for 220kV and 1600A for 132kV level. Rated primary current of line CTs shall be 2000-1000-500 A for 400 kV, 1600 – 1200 – 800 Amps for 220 kV and 900-600-300 Amps for 132 kV level. Space for additional two spare 220 kV bays & 132 kV bays each is to be kept.
- (g) short circuit level at the Sub-station shall be 40 kA;
- (h) circuit breaker (CB) duty cycle “O-0.3 sec – CO – 3 min – CO”;
- (i) symmetrical breaking current for CB of 400 kV and 220 kV each shall be 40 kA and 31.5 kA for 132 kV;
- (j) busbar continuous current rating capacity shall be minimum 3200 A on 400 kV & 220 kV and 1600 A on 132 kV;
- (k) short time withstand current for 1 sec shall be 40 kA for 400 kV & 220 kV and 31.5 kA for 132 kV;
- (l) switchyard bus bar arrangement of the Sub-station on 400 kV side shall be one and a half breaker scheme, on 220 kV side double bus or double main and transfer bus with one bus coupler and on 132 kV side double bus scheme with one bus coupler. Single line diagram indicating the number of bays attached at Appendix Ia of Manual of Specification & Standards (Schedule D);
- (m) maximum permissible no-load loss, load-loss and auxiliary loss of transformer(s) in kW shall be as per table below:

S. No.	Description	No Load losses	Load losses	Auxiliary losses	Total Losses
i)	400/ 220 kV 315 MVA	86	482	16	584
ii)	220 / 132 kV 100 MVA	28	233	11	272

- (n) the protection system shall generally be in accordance with clause 2.12.2 of Manual of Specification & Standards (Annex-I of Schedule D).

- (o) the Substation automation system shall contain Supervisory Control and Data Acquisition (SCADA) system for local and remote from SLDC end.
- (p) meters shall be procured and Constructed by the Concessionaire as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006.

(B) 400 kV Dipalpur (Sonipat)

- (a) location of the Sub-station- Village Dipalpur (Mursadpur - District Sonipat);
- (b) type of Substation - Air Insulated Substation (AIS);
- (c) 2 X 315 MVA, 400 kV / 220 kV transformers with a 33 kV tertiary of 6.3 MVA active and On Load Tap Changer (OLTC) with ± 10 % range in steps of 1.25%. Plus 2 X 100 MVA transformers with On Load Tap Changer (OLTC) with - 5% to + 15% range in steps of 1.25%;
- (d) 2 x 33 / 0.433 – 0.250 kV Station Auxiliary Transformer of 630 kVA or as per reviewed drawings / design with off-load tap changer range –5% to +10% in steps of 2.5 %;
- (e) two 400 kV bays for accommodating 400 kV D/C Kabulpur – Dipalpur line and two 400 kV bays for accommodating of LILO of one circuit of 400 kV D/C Abdallpur – Bawana line with complete equipments & space for additional two spare 400 kV bays.
- (f) six 220 kV bays and six 132 kV bays with complete equipments including wave traps except telecommunication and tele protection equipment for transmission lines terminating at the substation and to be constructed by the Authority. Rated Capacity of line CBs and Disconnectors shall be 2000A for 220 kV and 1600A for 132 kV level. Rated primary current of line CTs shall be 1600 – 1200 – 800 Amps for 220 kV and 900-600-300 Amps for 132 kV level. Space for additional two spare 220 kV bays & 132 kV bays each is to be kept.
- (g) short circuit level at the Sub-station shall be 40 kA;
- (h) circuit breaker (CB) duty cycle “O-0.3 sec – CO – 3 min – CO”;
- (i) symmetrical breaking current for CB of 400 kV and 220 kV each shall be 40 kA and 31.5 kA for 132 kV;
- (j) busbar continuous current rating capacity shall be minimum 3200 A on 400 kV & 220 kV and 1600 A on 132 kV;
- (k) short time withstand current for 1 sec shall be 40 kA for 400 kV & 220 kV and 31.5 kA for 132 kV;
- (l) switchyard bus bar arrangement of the Sub-station on 400 kV side shall be one and a half breaker scheme, on 220 kV side double bus or double main

and transfer bus with one bus coupler and on 132 kV side double bus with one bus coupler scheme. Single line diagram indicating the number of bays attached at Appendix Ia of Manual of Specification & Standards (Schedule D);

- (m) maximum permissible no-load loss, load-loss and auxiliary loss of transformer(s) in kW shall be as per table below:

S.No.	Description	No Load losses	Load losses	Auxiliary losses	Total Losses
i)	400/ 220 kV 315 MVA	86	482	16	584
ii)	220 / 132 kV 100 MVA	28	233	11	272

- (n) the protection system shall meet minimum requirements specified in clause 2.12.2 of Manual of Specification & Standards (Annex-I of Schedule D).
- (o) the Substation automation system shall contain Supervisory Control and Data Acquisition (SCADA) system for local and remote from SLDC end; and
- (p) meters shall be procured and Constructed by the Concessionaire as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006.

2 Project Facilities

Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

3 Specifications and Standards

The Transmission System shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

SCHEDULE – C
(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

2 Project Facilities for Transmission System

Project Facilities forming part of the Transmission System and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.

Annex - I
(Schedule-C)

Project Facilities for Transmission System

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Transmission System. The Project Facilities shall include:

- (a) Access road to Licensed Premises;
- (b) Office space for the Authority / Independent Engineer at the Sub-stations;
- (c) Dedicated communication network linkage with the Authority;
- (d) Synchronising Equipment
- (e) Overhead travelling crane bay;
- (f) Residences for Sub-station emergency duty staff;
- (g) Inspection huts;
- (h) Medical Aid Post at each Sub-stations.

2 Description of Project Facilities

Each of the Project Facilities is briefly described below:

(a) Access road to Licensed Premises;

About 2.0 Km long approach road from the nearest metalled road to Kabulpur (Rohtak) substation and about 1.7 Km for Divalpur (Sonipat) substation shall be constructed.

(b) Office space for the Authority / Independent Engineer at Kabulpur and Divalpur Sub-stations;

Office space for the Authority's representative / Independent Engineer at each of the Sub-stations:

i) Air-conditioned and fully furnished office accommodation for exclusive use by the Authority's Representatives / Independent Engineer shall comprise of a minimum one 3.6 x 4.5 metres room with an attached annexe 2 x 3.6 metres and bath-cum-toilet located within the Concessionaire's office building complex.

ii) Office furniture shall comprise of minimum 1 good quality office table (1.5 x 2.4 metres), 6 (six) chairs, 1 (one) side rack, 1 (one) almirah, 1 (one) couch, 1 (one) centre table and other usual amenities in the annexe / toilet.

iii) A computer with internet and telephone with fax and intercom / external communication linkage for the Engineer's Site Office.

iv) Upkeep & maintenance of office space meant for use by the Authority's Representative / Independent Engineer shall be carried out by the Concessionaire.

(c) Dedicated communication network linkage with the Authority

The Concessionaire shall in addition to direct communication network linkage with SLDC and other grid authorities also maintain a direct and efficient communication network linkage with the Authority from the Substations control rooms and the Concessionaire's project head office..

(d) Synchronising facility

The Concessionaire shall provide equipment at Dipalpur and Kabulpur Substations to facilitate three phase synchronising on 400 kV and 220 kV.

(e) Overhead travelling crane bay

Suitable OHT (Over Head Travelling Crane) with appropriate tracks for handling and movement of heavy sub-station equipment shall be provided.

(f) Residential accommodation

Suitable family accommodation for Substation engineer and emergency duty staff shall be provided within the Substations with standard facilities.

(g) Inspection huts

Well furnished air-conditioned inspection huts with pantry facility, dining and living space for accommodating the Authority's representative / Independent Engineer and accompanying staff on inspection of the transmission system.

(h) Others (specified).

i) Display at substations / Control and prominent locations:

- Project Sign Boards at the substation and at other prominent locations,
- Display of Key Diagrams of Substation equipments & controls,
- Display of Civil Layout of Substation,
- Display of Line Route Alignment & Landmarks,
- Display of Tripping, Breakdowns, Shutdowns & Max. Demand,
- Display of Schedule of Maintenance,
- Display of Schedule-K,
- Complaint Register as stipulated in Article-46,
- Any other information as per instructions of the Independent Engineer.

ii) Landscaping, arboriculture & tree plantation in vacant spaces

iii) Parking space

iv) Illumination as in Schedule-D and street lights on external / internal roads

The Concessionaire shall provide & maintain at all times a good lighting & illumination system on substations both for normal and emergency situations as well as street lighting on the internal as well as the access

roads for ensuring illumination as specified in Manual of Specification & Standards (Schedule D).

- v) Water supply, sewage & drainage systems including rain water harvesting
- vi) Toilets & workers utilities (separate for ladies & gents).
- vii) Medical Aid Post with first aid facilities; e.g., stock of standard medicines, bandages, resuscitation equipment etc. and transport to evacuate seriously injured persons needing hospitalization.

SCHEDULE – D
(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Transmission System

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Transmission System.

Annex - I
(Schedule-D)

Specifications and Standards for the Transmission System

1 Manual of Specifications and Standards to apply

The Transmission System shall conform to the Manual of Specifications and Standards for the HVPNL 400 kV PPP-1 Transmission Project (Jhajjar Power) Transmission System issued by the Authority (An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.)

SCHEDULE –E
(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

- 1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:
- (a) Permission of the State Government for extraction of boulders from quarry;
 - (b) Permission of Pollution Control Board for installation of crushers;
 - (c) Licence for use of explosives;
 - (d) Permission of the State Government for drawing water from river/reservoir;
 - (e) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
 - (f) Clearance of Pollution Control Board for setting up Batching Plant;
 - (g) Clearance of Pollution Control board for installation of diesel generator sets;
 - (h) Fire safety clearance from fire authorities;
 - (i) Permission of State Government for cutting of trees; and
 - (j) Any other permits or clearances required under Applicable Laws.

SCHEDULE –F
(See Clause 9.1)

PERFORMANCE SECURITY

Haryana Vidyut Prasaran Nigam Limited
State Transmission Company
State of Haryana

WHEREAS:

- (A)(the “Concessionaire”) and the State Transmission Company (“Authority”) have entered into a Transmission Agreement dated(the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking the construction and operation of the HVPNL 400 kV PPP-1 Transmission System for evacuation of power from Mahatama Gandhi Thermal Power Plant Jharli (Jhajjar) in the State of Haryana on design, build, finance, operate and transfer (“DBFOT”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs 15.00 cr. (Rupees Fifteen crore) (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 the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority , upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority 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 Authority, under the hand of an Officer not below the rank of [], that the Concessionaire 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 Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire

is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire 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 Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority 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, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, 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 Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority 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 Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire 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 Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs. 382 (three hundred eighty two only) cr. for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the

particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

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

Signed and sealed this day of, 20..... at

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

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

NOTES:

(a) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(b) 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.

SCHEDULE –G
(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “Project Completion Schedule”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance alongwith necessary particulars thereof. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Real Estate development.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 30th (thirtieth) day from the Appointed Date (the “Project Milestone-I”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Transmission System and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 90th (ninetieth) day from the Appointed Date (the “Project Milestone-II”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Sub-stations and expended not less than 15% (fifteen per cent) of the Total Project Cost set forth in the Financial Package.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 150th (one hundred and fiftieth) day from the Appointed Date (the “Project Milestone-III”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of the Sub-stations and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package.

5. Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the 240th (two hundred fortieth) day from the Appointed Date (the “Project Milestone-IV”).

5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced construction of all the elements of the Transmission System, and completed construction of the civil works of the Sub-stations and expended not

less than 50% (fifty per cent) of the Total Project Cost set forth in the Financial Package.

6. Project Milestone-V

- 6.1 Project Milestone-V shall occur on the date falling on the 330th (three hundred thirtieth) day from the Appointed Date (the “Project Milestone-V”).
- 6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have completed construction of all transmission towers and expended not less than 75% (seventy five per cent) of the Total Project Cost, set forth in the Financial Package.

7 Scheduled Completion Date

- 7.1 The Scheduled Completion Date shall occur on the 420th (four hundred and twentieth) day from the Appointed Date.
- 7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Transmission System in accordance with this Agreement.

8 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE –H
(See Clause 12.2)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

- 2.1 If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.

Annex - I
(Schedule-H)

List of Drawings

A SUB-STATIONS

1. Contour plans for Licensed Premises and access roads
2. Civil layout – plans and sections
3. Cross section drawing(s) of roads, pavement(s) and parking spaces(s)
4. Structural and foundation design drawings for towers, gantries and structures
5. Equipment foundations and installation drawings
6. Architectural drawings; foundation and structural design; and drawings of buildings
7. General electrical layout
8. Single Line Diagram(s) (SLD)
9. Earth-mat design and drawings
10. Insulator string drawings
11. Hardware fittings and fixtures assembly drawings
12. General arrangements drawings of all equipments and auxiliaries
13. Schematic and wiring diagrams of power transformers, switchgears, control and protection equipments
14. Conceptual drawing of Sub-station automation system(s)
15. Street and yard light layout drawing(s)
16. Electrical inter-locking scheme for Sub-station(s)
17. Wiring diagram(s) and cable schedule(s)
18. Power cables layout

II TRANSMISSION LINES

1. Structural and foundation design drawings of towers and gantries
2. General outline and clearance diagrams of all types of towers and extensions
3. Line route alignment(s)
4. Sag and tension calculations and sag template(s)
5. Line plan and profile(s)
6. Towers schedules and strung line diagram(s)
7. Earthing drawings and tower footing resistance calculations
8. Drawings of insulator strings, other hardware fittings and fixtures, conductors, earthwires and accessories.
9. Cross section drawings of conductors and earth wires, including optic fibre ground wires

SCHEDULE –I
(See Clause 14.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of the Transmission System, notify the Independent Engineer and the Authority of its intent to subject the Transmission System to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Transmission System.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Transmission System to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 Without prejudice to the provisions of this Clause 2, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with Good Industry Practice, for determining the compliance of the Transmission System with Specifications and Standards. The Tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such Tests shall, to the extent possible, not exceed 10% (ten percent) of the tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. Such tests shall include the following tests on the Sub-stations and Transmission Lines:
- (a) Turn ratio, winding resistance, vector group, capacitance and tan delta measurement tests in accordance with IS: 2026/ IEC: 60076/ IEC: 60214 and transformer oil tests on the power transformers in accordance with IS: 1866;
- (b) Insulation resistance, including frequency response analysis and moisture measurement in winding and bushing insulation in accordance with CBI&P Manual on Maintenance of EHV Substation Equipment 2005;
- (c) Contact resistance, contact travel, tripping and closing time tests on the circuit breakers in accordance with IS: 13118/ IEC: 62271-100;
- (d) Polarity, secondary winding resistance and current ratio magnetisation characteristics (knee point), capacitance and tan delta measurement tests on current transformers in accordance with. IS: 2705/ IEC: 60044-1;

- (e) Voltage ratio capacitance and tan delta measurement tests on the capacitive voltage transformer in accordance with IS: 3156/ IEC: 60044-4;
- (f) Contact resistance measurement test, closing and opening time, mechanical and electrical interlocking on disconnectors and earth switches in accordance with IS: 9921/ IEC: 62271-102;
- (g) Surge counter test on the surge arrester in accordance with IS: 3070/ IEC: 60099;
- (h) Charging and discharging cycle test on the battery and battery charger in accordance with IS: 1651/ IEC: 60255/ IEC: 61850;
- (i) Secondary testing of protective relays /schemes on the control and relay panel in accordance with IS: 3842 and 3231;
- (j) Insulation and continuity Tests on control and power cables in accordance with IS: 7098; and
- (k) Other tests specified in the Manual on Commissioning Procedure for Transmission Lines (Central Board of Irrigation and Power, Publication no. 292).

2.2 Visual and physical Test

The Independent Engineer shall conduct a visual and physical check of the Transmission System, in accordance with this paragraph 2.2, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Structural Test for transmission towers and Sub-station structures:

2.3.1 All transmission towers and Sub-station structures shall be subjected to non-destructive testing of completed structures or part thereof, to be conducted or cause to be conducted by the Concessionaire in accordance with Good Industry Practice. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the additional tests if it has a reasonable doubt about the adequacy of the strength of such structure for any of the following reasons:

- (a) Results of compressive strength on concrete test cubes falling below the specified strength;
- (b) premature removal of formwork;
- (c) inadequate curing of concrete;
- (d) over loading during the construction of the structure or part thereof;
- (e) presence of honey - combed or damaged concrete that may affect the stability of the structure to carry the design load;

- (f) uneven settlement of foundations beyond tolerances in levels of stubs exceeding the criteria provided in Annexure – C of IS: 5613 (Part-3/Section-2); or
- (g) any other reason which may result in the structure or any part thereof being of less than the expected strength.

2.3.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out at his cost, prototype testing of one full standard tower of each type (DA, DB, DC and DD) with 6 meter extension up to destruction as per IS:802 (Part III) in CPRI or another approved test bed. The Concessionaire may at his discretion also get towers with any other extension (over 6 meter) tested similarly or alternatively prove their design through supporting calculations.

2.4 Tests for equipment:

Independent Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of control, protection and other equipment, signalling, telecommunication and metering equipment with the Specification and Standards and Safety Requirements. Without prejudice to the generality of this Clause 2.4, such Tests shall include:

- (i) Performance rating;
- (ii) any other Test(s) as may be prescribed under Applicable Laws; and
- (iii) any Tests prescribed by the equipment manufacturer.

For the avoidance of doubt, the Parties expressly agree that in respect of type tests which are conducted for any equipment on a generic basis and not specifically for the Project, and factory acceptance tests, the cost thereof shall not be borne by the Authority.

2.5 Trial run of System Capacity:

A trial run of the System Capacity shall be undertaken for a continuous period of 72 (seventy-two) hours for demonstrating the compliance of the System Capacity with the provisions of this Agreement, including the design capacity of each circuit/facility. The trial run shall be conducted or caused to be conducted by the Independent Engineer in consultation with the Authority, the SLDC and the RLDC, as the case may be. In the event that testing of any circuit/facility cannot be carried out up to the design capacity, for any reason not attributable to the Concessionaire, the Concessionaire shall provide adequate data and justification of its design capacity such as design data, calculations, extrapolation and simulation, to enable the Independent Engineer to determine the compliance thereof with the provisions of this Agreement. For the avoidance of doubt, if any tripping occurs on account of reasons attributable to the Concessionaire, the Independent Engineer may require the Concessionaire to repeat the trial run at the risk and cost of the Concessionaire. The trial run shall include energisation and power-flow in the System Capacity; provided, however, that if the energisation and/or power-flow cannot be undertaken for reasons attributable to the Authority,

the System Capacity shall be deemed to be commissioned and the Independent Engineer shall forthwith issue the Completion Certificate or the Provisional Certificate, as the case may be.

2.6 Environmental audit:

The Independent Engineer shall carry out a check to determine conformity of the Transmission System with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review:

Safety audit of the Transmission System shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Transmission System with the provisions of this Agreement.

2.8 Loss Test on Transformers:

The Concessionaire shall carry out, or cause to be carried out, at its own cost and expense, and in accordance with IS: 2026, loss test on each power transformer forming part of the Transmission System to demonstrate that the power transformer(s) comply in all respects with the Specifications and Standards. The Concessionaire shall provide to the Independent Engineer, a copy of the Concessionaire's report on each such test and action, if any, that it proposes to take for compliance with Specifications and Standards. For the avoidance of doubt, the Concessionaire shall, with at least 4(four) week's notice to the Authority, convey the date and schedule of the tests that shall be conducted on the power transformer(s) at the manufacturer's plant and the Authority shall have the right, but not the obligation, to nominate its representative to witness the tests.

3. Verification and certification of type tests

The Independent Engineer shall check and validate the reports of the type tests in respect of all equipments and materials forming part of the Transmission System to confirm that such equipment or material is in accordance with Specifications and Standards. For the avoidance of doubt, the Concessionaire shall provide reports of type tests, not being more than 7 (seven) years old, for and in respect to the type tests conducted on equipment or material of identical design and specification in an accredited laboratory based on ISO/IEC Guide 25/17025 or EN 45001. Such report(s) shall be accompanied by a certificate from the Concessionaire stating that the design and performance of the relevant equipments or materials are in conformity with Specifications and Standards.

4. Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

5. Tests for Safety Certification

Tests for determining the conformity of the Transmission System with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

6. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

7. Cost of repeated Tests

In the event any Test is required to be repeated by the Independent Engineer for reasons not attributable to the Concessionaire, the cost of such Test shall be borne by the Authority. For the avoidance of doubt, any non-availability of the System Capacity arising due to the repetition of any Test shall be deemed to be Availability.

SCHEDULE –J
(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Transmission Agreement dated (the “Agreement”), for the Transmission System to transfer power from *** to *** in the State of *** on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Transmission System with the provisions of the Agreement, and I am satisfied that the Transmission System can be safely and reliably placed in commercial service of the Authority and the users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Transmission System have been completed, and the Transmission System is ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Transmission Agreement dated (the “Agreement”), for the Transmission System for evacuation and transmission of electricity from *** to *** in the State of on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Transmission System with the provisions of the Agreement.

- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and

manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Transmission System, pending completion thereof.

- 3 In view of the foregoing, I am satisfied that the Transmission System can be safely and reliably placed in commercial service of the Authority and the users thereof, and in terms of the Agreement, the Transmission System is hereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
Concessionaire by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:

(Signature)
(Name and Designation)
(Address)

(Signature)
(Name and Designation)
(Address)

SCHEDULE – K
(See Clause 17.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Transmission System in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the “Maintenance Requirements”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.9 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - K within the time limit set forth therein.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Transmission System poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Periodic Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic visual inspection of the Transmission System in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Transmission System conforms to the Maintenance Requirements on the Transfer Date.

8 Display of Schedule - K

The Concessionaire shall display a copy of this Schedule-K at every Sub-station along with the Complaint Register stipulated in Article 46.

Annex - I
(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.

S. No.	Nature of defect or deficiency	Time limit for repair/ rectification
I	TRANSMISSION LINES	
	(a) Foundation, Chimney and Line ROW	
(i)	Damage to revetment / retaining walls	30 days
(ii)	Crack in chimney	15 days
(iii)	Land slide / sinking of foundation:	15 days
(iv)	Tree clearance	6 hours
	(b) Towers	
(i)	Tower collapse	15 days
(ii)	Missing / damaged tower members	3 days
(iii)	Tightening of bolts and nuts	1 day
	(c) Insulators	
(i)	Broken / Damaged / Punctured insulators:	
	(1) Suspension strings	6 hours
	(2) Tension strings	12 hours
	(d) Stock Bridge Dampers	
(i)	Spacer – dampers / spacers displacement	6 hours
	(e) Conductors, Earthwires and Hardware	
(i)	Damage to conductors/ Earthwires	6 hours for temporary restoration; 12 hours for permanent restoration
(ii)	Hot spots	6 hours
(iii)	Damaged corona rings / arcing horns	6 hours
(iv)	Jumper damage / failure	6 hours
(v)	Damage/ failure of Hardware fittings and fixtures:	
	(1) Suspension type	6 hours
	(2) Tension type	12 hours
	(f) Earthing System	
(i)	Damage to tower earthing	24 hours

(ii)	Damaged / missing copper bonds	6 hours
(g)	Cross Arms	
(i)	Replacement/failure on suspension tower	24 hours
(ii)	Replacement/failure on tension tower	3 days
II	SUBSTATIONS:	
(i)	Damaged / burnt jumper	6 hours
(ii)	Hot spots	6 hours
(iii)	Malfunctioning of power transformer:	
	(1) Low oil level and leakages from body and radiators	6 hours
	(2) Oil quality deterioration	30 days
	(3) External defects in transformer mountings and its accessories	24 hours
	(4) Malfunctioning of power transformers due to internal defects	30 days
(iv)	Defective circuit breaker mechanism/interrupting chamber	12 hours
(v)	Leakage of SF-6 gas from circuit breaker	12 hours
(vi)	Malfunctioning of Compressor	6 hours
(vii)	Malfunctioning of fire fighting system / equipments	4 hours
(viii)	Malfunctioning of current transformers / capacitive voltage transformer / wave traps / surge arresters	12 hours
(ix)	Damaged trip or closing coils	6 hours
(x)	Damaged isolator / Earth switch blade / contact	6 hours
(xi)	Damaged power / control cable	3 hours
(xii)	Malfunctioning of energy meter	12 hours
(xiii)	Malfunctioning of protection systems	6 hours
(xiv)	Malfunctioning of instruments and controls	3 hours
(xv)	Any defect or deficiency in switchyard illumination	3 hours
(xvi)	Malfunctioning of AC/DC distribution board	6 hours
(xvii)	Malfunctioning of battery cell	3 days
(xviii)	Damaged battery connecting strip / lead	3 hours
(xix)	Any defect or deficiency in structures or equipment earthing	6 hours
(xx)	Broken / damaged / punctured insulators:	
(1)	Suspension type strings	6 hours

(2)	Tension type strings	12 hours
(xxi)	Malfunctioning of cooling oil pump / fans	24 hours
(xxii)	Malfunctioning of winding temperature indicator/ Oil temperature indicator	6 hours
(xxiii)	Malfunctioning of diesel generator	24 hours
(xxiv)	Malfunctioning of air conditioning system	6 hours
(xxv)	Damaged trench / trench cover	7 days
(xxvi)	Access roads / internal roads and paths:	
	(1) Breach or blockade	24 hours for temporary restoration; 15 days for permanent restoration
	(2) Roughness value exceeding 3,000 mm in a stretch of 1 km (as measured by a standardised roughometer / bump integrator)	90 days
	(3) Pot holes	7 days
	(4) Rutting exceeding 10 mm in more than 2 % of road surface in a stretch of 1 km (measured with 3 m straight edge)	60 days
	(5) Bleeding / skidding	15days
	(6) Debris or deposits	12 hours
(xxvii)	Buildings, boundary wall, fencing, gate and other civil works:	
	(1) Water seepage	15 days
	(2) Sewer blockage	24 hours
	(3) Any defect or deficiency in water supply system	12 hours
	(4) Any defect or deficiency in boundary wall and fencing	7 days
(xxvii)	Transmission losses of the transformer exceeding the maximum permissible loss specified in Schedule-B	90 days

SCHEDULE –L
(See Clause 18.1.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents at the Project, irrespective of the person(s) at fault.
- 1.2 Users of the Transmission System include staff of the Concessionaire and its contractors working on the Project.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule - L.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety issued by the Central Electricity Authority (No. CEI/1/59/2007);
- (c) provisions of this Agreement; and
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

For carrying out safety audit of the Transmission System under and in accordance with this Schedule-L, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “Safety Consultant”). The Safety Consultant shall employ a team comprising, without limitation, one transmission system safety expert and one transmission expert to undertake safety audit of the Transmission System.

4 Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of users (the “Safety Drawings”). Such design details shall include the design of the Sub-stations, transmission towers and transmission lines along with other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.
- 4.3 The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Transmission System. The safety audit shall be completed in a period of three months and a report thereof (the “Safety Report”) shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Transmission System, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.
- 4.5 Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority , and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 Safety measures during Construction Period

- 5.1 A Safety Consultant shall be appointed by the Authority, no later than 6 (six) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.

- 5.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the Transmission System to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 3 (three) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Transmission System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.
- 5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and other users of the Site in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

- 6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for the Transmission System and any persons who may be affected by it, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 6.2 The Concessionaire shall establish a Transmission Safety Management Unit (the "TSMU") to be functional on and after COD, and designate one of its officers to be in-charge of the TSMU. Such officer shall have specialist knowledge and training in transmission system safety by having attended a course conducted by a reputed organisation on the subject.
- 6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Transmission System. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 6.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-L for averting or minimising such accidents in future.
- 6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Transmission System. The Safety Consultant shall complete the safety audit within a period of 1(one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Transmission System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

7 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met out of the Safety Fund.

Safety Guidelines

1 System integrity

In the design of the Transmission System, particular care shall be taken to minimise the likely incidence of failure.

2 Restoration of service

The Transmission System shall be designed such that in the event a fault occurs, the transmission service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

3 Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Transmission System and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

4 Safety equipment

The following equipment shall be provided at every Sub-station:

- (a) Fire extinguishers and fire alarms at the appropriate locations;
- (b) two stretchers and two standard first aid boxes; and
- (c) such other equipment as may be required in conformity with Good Industry Practice.

5 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD.

6 Fire safety

- 6.1 The Concessionaire shall adopt and conform to Good Industry Practice for safety of transmission/electrical systems.

- 6.2 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course.
- 6.3 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause 6.3, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

7. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to COD, evolve and adopt a Surveillance and Safety Manual, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Transmission System, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Manual to the Authority and the Independent Engineer no later than 30 (thirty) days prior to COD.

8. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practise, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Transmission System and all persons affected by it.

SCHEDULE –M
(See Clause 23.1)

SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-N and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “Panel of Firms”) and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-M shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the

provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, including the construction of System Augmentation, shall be borne equally by the Authority and the Concessionaire.

3 Constitution of fresh panel

No later than three years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-M; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.

SCHEDULE-N
(See Clause 23.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the Transmission Agreement dated (the “Agreement”), which has been entered into between the Authority and (the “Concessionaire”) for the Transmission System as defined therein, in the State of Haryana on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Transmission System, and shall apply, *mutatis mutandis*, to System Augmentation thereof.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) review, inspection and testing of Transmission System as set forth in Paragraph 5;
 - (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 6;

- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (ix) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
 - (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and other surveys conducted as part of the Feasibility Report and any further revision thereof. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 The Independent Engineer shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Transmission

System sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

- 4.6 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Transmission System, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Transmission System or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Transmission System more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Transmission System is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons in the zone of construction, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is

reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Transmission System, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Transmission System. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Transmission System more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Transmission System is in conformity with the

Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any section of the Transmission System for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in transmission service and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.9.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Transmission System, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

7 Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Transmission System for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Transmission System is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Transmission System once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found

by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8 Determination of costs and time

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said

document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

SCHEDULE – O
(See Clause 27.2.1)

LETTER OF CREDIT

DATE:

TO:Limited (the “**Concessionaire**”)

FROM: (Specify the name and address of the bank issuing the Letter of Credit)¹
(the “**Bank**”)

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

1. On the instructions of the Authority, we hereby establish this Letter of Credit in favour of the Concessionaire in the maximum aggregate amount of Rs. *** (Rupees ***) (the “**Monthly Payment**”) payable once every month upon notice received from the Authority to this effect.
2. The Letter of Credit shall come into force with immediate effect and shall be valid and effective upto the 31st (thirty first) day of March, 20. (indicate the year) falling after the year in which the Letter of Credit is issued) (the “**Expiry Date**”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Concession Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Concessionaire for the payment obligations of the Authority under the transmission agreement dated entered into between the Authority and the Concessionaire (the “**Transmission Agreement**”) for a *** kV transmission system with a capacity to evacuate power corresponding to *** MW from *** to *** in the State of Haryana on design, build, finance, operate and transfer basis.
4. Any reference to the Transmission Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Transmission Agreement or agreement into the terms and conditions of this Letter of Credit.

¹ As provided in Article 27 of the Transmission Agreement, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement.

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

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

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

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

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

Signed and sealed this day 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.

SCHEDULE – P
(See Clause 27.2.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered./ office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (name and particulars of the Default Escrow Bank), through its branch, and having its registered office at (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The State Transmission Company of Haryana represented by the Chief Engineer (Planning), HVPNL and having its principal offices at Panchkula (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Authority has entered into the Transmission Agreement dated with the Concessionaire (the “**Transmission Agreement**”) for a ***kV Transmission System to transfer power from *** to *** in the State of Haryana on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Authority’s payment obligations to the Concessionaire under and in accordance with the Transmission Agreement, the Authority is required to establish a default escrow account, *inter alia*, on the terms and conditions stated therein (the “**Default Escrow Account**”).

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

“**Transmission Agreement**” shall have the meaning set forth in Recital A of this Agreement;

1.2 Interpretation

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

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

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

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

- 2.1.1 The Authority hereby appoints the Default Escrow Bank to act as trustee for the Concessionaire and the Authority in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Authority hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Concessionaire and the Authority, and applied in accordance with the terms of this Agreement. No person other than the Concessionaire and the Authority shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Authority pursuant to the provisions of this Agreement and the Transmission Agreement. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Authority with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessionaire and the Authority, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Authority shall open and establish the Default Escrow Account with the (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.
- 2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Default Escrow Bank and the Authority shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Authority Account

The Default Escrow Bank and the Authority acknowledge that at least 40% (forty per cent) of the Authority's total monthly Revenues are being deposited in the Authority's existing account at the Default Escrow Bank (the "**Authority Account**"), and the Authority undertakes to maintain the Authority Account and continue to deposit therein at least 40% (forty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

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

2.6 Rights of the parties

The rights of the Concessionaire and the Authority in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and the Concessionaire and the Authority shall have no other rights against or to the monies in the Default Escrow Account.

2.7 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Authority expressly agrees that it shall, on or before the 60th (sixtieth) day from Commencement Date, but in any case prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Concessionaire on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

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

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Authority and the Concessionaire, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of an Authority Escrow Default and until delivery of notice that the Authority Escrow Default has been cured and is no longer continuing, the Default Escrow Bank shall provide such statement of accounts to the Authority and the Concessionaire on a daily basis.

3.4 Protection of Concessionaire's interest

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

3.5 Monies to be held in trust

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

3.6 Communications and notices

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

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

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

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

4 OBLIGATIONS OF THE AUTHORITY

4.1 General

4.1.1 The Authority covenants with the Concessionaire and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Transmission Agreement and this Agreement.

4.1.2 The Authority hereby agrees and undertakes that until the termination of this Agreement, no less than 40% (forty per cent) of its total monthly Revenue shall continue to be deposited into the Authority Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

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

4.2 Creation of Charge

4.2.1 The Authority hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Concessionaire over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Authority further

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

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

4.3 Changes in revenue collection

No change shall be made or permitted by the Authority in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Authority Account such that its level falls below 40% (forty per cent) of the total monthly Revenues of the Authority from any and all sources.

5. OPERATION AND MANAGEMENT OF THE DEFAULT ESCROW ACCOUNT

5.1 General

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

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Authority or the Concessionaire may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Authority

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

5.3 Irrevocable instructions

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

5.4 Withdrawals during Operation Period

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

5.5 Drawal against Letter of Credit

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

5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

- 5.6.1 Upon Termination of the Transmission Agreement, if the Authority fails to make the Termination Payment to the Concessionaire within a period of 30 (thirty) days from the date of demand by the Concessionaire under and in accordance with the provisions of the Transmission Agreement, the Concessionaire may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.
- 5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Concessionaire under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Transmission Agreement.
- 5.6.3 The Authority expressly acknowledges and agrees that upon Termination of the Transmission Agreement, it shall continue to deposit Revenues equal to 40% (forty per cent) of its total monthly Revenues into the Authority Account in accordance with Clauses 2.5.1 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Authority agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Concessionaire or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Authority

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

- (a) the Authority is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Authority, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Authority, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the ability of the Authority to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;

- (d) the execution, delivery and performance of this Agreement by the Authority have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - (ii) the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Authority, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Authority Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Authority routed through the Default, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;
- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (i) the particulars relating to the Authority's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 40% (forty per cent) of the Authority's total monthly Revenues are deposited in the Authority Account every month and shall continue to be deposited in the Authority Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

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

- (a) the Default Escrow Bank is a scheduled commercial bank and duly constituted under the Act, having its head office at and its branch among others, at and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or
 - (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Authority routed through the Default Escrow Account in favour of any other person other than the Concessionaire, save and except those created in favour of the Authority's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Default Escrow Bank and the Authority that:

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

- (c) the execution, delivery and performance of this Agreement by the Concessionaire has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Concessionaire before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Concessionaire to perform its duties and obligations under this Agreement.

7. AUTHORITY'S COVENANTS

7.1 The Authority covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;
- (b) it shall procure all amendments, approvals, consents or waivers as may be required from the Authority's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;
- (c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Authority routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation , in favour of the Concessionaire, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation .
- (d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:
 - (i) the execution, delivery, performance and observance by the Authority of this Agreement;

- (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
- (iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;
- (e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Agreement and the Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (g) it shall inform the Concessionaire of any receipt of notice, claim, legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 AUTHORITY ESCROW DEFAULT

8.1 Authority Escrow Default

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

- (a) the Authority commits breach of this Agreement by failing to deposit its Revenues equal to 40% (forty per cent) of its total monthly Revenues in any month into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof;
- (b) the Authority causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;
- (c) the Authority commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (d) the Authority fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (e) any representation or warranty made by the Authority in this Agreement shall be or shall have been incorrect in any material respect;
- (f) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the

Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;

- (g) the Concessionaire is unable to draw on the Letter of Credit pursuant to the failure of the Authority to establish the Letter of Credit in accordance with the Transmission Agreement; and
- (h) the Authority commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

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

9.2 Termination of the Agreement

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

9.3 Resignation by the Default Escrow Bank

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

9.4 Procedure for substitution

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

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

9.5 Default Escrow Bank to continue

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

9.6 Closure of Default Escrow Account

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

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

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

supplementary default escrow agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

11.1.1 The Authority will indemnify, defend and hold the Concessionaire and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

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

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

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference

to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be *** and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

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

13.2 Waiver of sovereign immunity

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

13.3 Priority of agreements

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

13.4 Alteration of terms

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

13.5 Waiver

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

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

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

13.6 No third party beneficiaries

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

13.7 Survival

13.7.1 Termination of this Agreement:

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

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

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court or tribunal 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 dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

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

13.10 Continuation of Agreement

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

13.11 Notices

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

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Authority and the Concessionaire shall deliver to each other

and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Authority and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their respective new authorised officers.

13.13 Language

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

13.14 Authorised representatives

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

13.15 Original Document

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

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

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

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

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

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

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

In the presence of:

1.

2.

^s To be affixed in accordance with the articles of association of the Concessionaire.

Annex- I
(Schedule-P)

Authority's Lenders

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

SCHEDULE – Q
(See Clause 27.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the day of 20.....

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The State Transmission Company of Haryana represented by Chief Engineer (Planning) HVPNL and having its principal offices at Panchkula (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Authority has entered into the Transmission Agreement dated with the Concessionaire (the “**Transmission Agreement**”) for a Transmission System as defined therein, in the State of Haryana on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Authority’s payment obligations to the Concessionaire under and in accordance with the Transmission Agreement, the Authority is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.
- (C) To further secure the Secured Obligations, the Authority has agreed to grant a charge and security interest in favour of the Concessionaire on the Authority’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

“**Transmission Agreement**” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

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

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

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

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Concessionaire having entered into the Transmission Agreement and agreeing to make available to the Authority the System Capacity, subject to the terms and conditions set out in the Transmission Agreement, the Authority hereby covenants with the Concessionaire that it shall pay to the Concessionaire all the Secured Obligations in the manner set out in the Transmission Agreement.

2.2 Creation of Charge

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

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

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

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

- 2.2.3 At any time after an Authority Escrow Default occurs and is continuing, the Concessionaire shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Transmission Agreement.

- 2.2.4 Following the occurrence of an Authority Escrow Default, the Concessionaire shall not, save and except as may be required under the Transmission Agreement, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:

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

2.3 Release of Charge

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

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

- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
- (b) re-assign, retransfer or re-convey to the Authority, or as it may direct, the Hypothecated Interest; and
- (c) execute all such documents and do all such other acts as may be required by the Authority in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

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

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Authority

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

- (a) the Authority is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Concessionaire;
- (d) based on available records, the Revenues are believed by the Authority to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Authority and the Authority has full right and interest in the Revenues;
- (e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the ability of the Authority to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;
- (f) the execution, delivery and performance of this Deed by the Authority have been duly authorised by all requisite actions and will not constitute a violation of:

- (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - (ii) the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Authority routed through the Default Escrow Account after the date hereof, except as permitted under this Deed;
- (h) as of the date hereof and until the expiry of this Deed, the Authority Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Authority routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and
- (i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Authority that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;
- (b) this Deed constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Deed; and
- (c) the execution, delivery and performance of this Deed by the Concessionaire has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. AUTHORITY'S COVENANTS

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

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Concessionaire on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;
- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Concessionaire to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Authority's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Authority routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Concessionaire, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:
 - (i) the execution, delivery, performance and observance by the Authority of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Concessionaire of any receipt of notice, claim, legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;

- (i) deposit or cause to be deposited in the Authority Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of an Authority Escrow Default, deliver to the Concessionaire (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

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

7 INDEMNITY

7.1 General indemnity

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

7.2 Notice and contest of claims

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

8. CONTINUING SECURITY

- 8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:
- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
 - (b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Concessionaire for all or any part of the Secured Obligations.
- 8.2 The charge granted hereby and the rights, powers and remedies conferred on the Concessionaire by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:
- (a) any time or other indulgence given or agreed to be given by the Concessionaire to the Authority or to any other party providing Security for the Secured Obligations;
 - (b) any amendment to the Transmission Agreement or the Default Escrow Agreement not agreed to by the Concessionaire;
 - (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Transmission Agreement or the Default Escrow Agreement or any documents connected therewith;
 - (d) any other act, event or omission which but for this provision would impair or discharge the Authority's liability hereunder; and
 - (e) any change in the structure or organisation of the Authority as a result of a Change in Law, insolvency of the Authority or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

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

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at *** shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

10.3 Priority of agreements

In the event of any conflict between the Transmission Agreement and this Agreement, the provisions contained in this Deed shall prevail over the Transmission Agreement.

10.4 Alteration of terms

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

10.5 Waiver

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

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

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

10.6 No third party beneficiaries

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

10.7 Survival

10.7.1 Termination of this Deed:

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

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

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared by any court or tribunal 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 dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

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

10.10 Continuation of Deed

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

10.11 Notices

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

10.12 Specimen signatures

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

10.13 Language

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

10.14 Authorised representatives

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

10.15 Original Document

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

10.16 Effectiveness

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)

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

In the presence of:

- 1.
- 2.

^s To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE –R
(See Clause 28.3)

REVENUE STATEMENT FOR ADDITIONAL CAPACITY

Transmission System:

Month:

Date (i)	For corresponding month of previous year		For preceding month		For the month reported upon		
	No. of units	Transmission tariff realised (in '000 Rs.)	No. of units	Transmission tariff realised (in '000 Rs.)	Transmission tariff per unit (in Rs.)	No. of units	Transmission Tariff Due (in '000 Rs.)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
Total							

Other revenues from Additional Capacity are stated below:

Total Revenue Share:

Remarks, if any:

SCHEDULE –S
(See Clause 29.9)

REVENUE STATEMENT FOR OTHER BUSINESS

Transmission System:

Month:

Date (i)	For corresponding month of previous year		For preceding month		For the month reported upon		
	No. of units	Revenues (in '000 Rs.)	No. of Units	Revenues (in '000 Rs)	Rate/ Unit tariff (in Rs)	No. of units	Revenues Due (in '000 Rs.)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
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20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
Total							

Total Revenue Share:

Remarks, if any:

Note: For every source of revenue from which the monthly revenues exceed Rs. 10 lakh, a separate statement substantially in the above format shall be submitted. The residual sources shall be combined and submitted in a separate statement.

SCHEDULE –T
(See Clause 31.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of
20.....

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The State Transmission Company of Haryana represented by Chief Engineer (Planning) HVPNL having its principal offices at ***** (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (B) (A) The Authority has entered into a Transmission Agreement dated with the Concessionaire (the “Transmission Agreement”) for a Transmission System as defined therein, in the State of Haryana on design, build, finance, operate and transfer basis (“**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Transmission Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Transmission Agreement**” means the Transmission Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Transmission Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Transmission Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Transmission Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the

Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority ;
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all payments by the Authority, including Unitary Charge;

- (d) any revenues, deposits or capital receipts, as the case may be, from the Transmission Tariff and Other Business;
- (e) any other revenues, deposits or capital receipts, as the case may be, from or in respect of the Transmission System; and
- (f) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) Revenue Shortfall Loan;
- (c) all revenues from Unitary Charge and revenues, deposits and capital receipts from Transmission Tariff and Other Business collected by the Authority in exercise of its rights under the Transmission Agreement; and
- (d) Termination Payments:

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Revenue Share due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Transmission System, Real Estate Development and Other Business;
- (b) all payments relating to construction of the Transmission System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority , provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Transmission Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Revenue Share due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Transmission Agreement;
- (h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Transmission Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Transmission System, Real Estate Development and Other Business;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Revenue Share;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Transmission Agreement, repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Transmission Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Transmission Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Transmission System, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Transmission Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

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

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

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the

Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Transmission Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Transmission Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any

of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Transmission Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Transmission Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

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

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be *** and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 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 dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

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

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

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

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

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

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

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

In the presence of:

1.

2.

^s To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE –U
(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-U.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority ; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

SCHEDULE –V
(See Clause 38.4)

VESTING CERTIFICATE

- 1 The State Transmission Company of Haryana represented by Chief Engineer (Planning) HVPNL (the “**Authority**”) refers to the Transmission Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for a Transmission System as defined in the Agreement, in the State of Haryana on design, build, finance, operate and transfer (“**DBFOT**”) basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Transmission System shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Concessionaire by:

Authority OF ***** by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE –W
(See Clause 40.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The State Transmission Company of Haryana represented by Chief Engineer (Planning), HVPNL and having its principal offices at Panchkula (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 [..... Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Transmission Agreement dated with the Concessionaire (the “**Transmission Agreement**”) for a Transmission System as defined therein, in the State of Haryana on design, build, finance, operate and transfer basis (“**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Transmission Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Transmission Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Transmission Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Transmission Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Transmission Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Transmission Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Transmission System as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Transmission System in accordance with the provisions of Article 36 of the Transmission Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Transmission Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Transmission Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Transmission Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Transmission System including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Transmission Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Transmission System in accordance with the provisions of the Transmission Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Transmission Agreement.

5 TERMINATION OF TRANSMISSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Transmission Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Transmission Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Transmission Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Transmission Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Transmission Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Transmission Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be *** and the language of arbitration shall be English.

8.2 Adjudication by the Commission

- 8.2.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 8.1, be submitted for adjudication by the Commission in accordance with the Applicable Law.

For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication

has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

- 8.2.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 8.1 shall be followed to the extent applicable.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Panchkula (Haryana) shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 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 dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

- 1.
- 2.

^s To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE -X
(See Clause 5.4.1)

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SCHEDULE –Y
(See Clause 5.1.4)

Procedure for Calculation of Transmission System Availability Factor for a Month

1. Transmission system availability factor for a calendar month (TAFM) shall be calculated by the Concessionaire, and verified by the concerned SLDC. For the avoidance of doubt, it is clarified that TAFM shall mean the Availability of System Capacity for a calendar month.
2. TAFM, in percent, shall be equal to (100 – 100 x NAFM), where NAFM is the Non-Availability factor in per unit for the month, for the transmission system / sub-system. For the avoidance of doubt, it is clarified that NAFM shall mean the Non Availability of System Capacity for a calendar month.
3. NAFM for A.C. systems / sub-systems shall be calculated as follows:

$$\text{NAFM} = \frac{\sum_{l=1}^L (\text{OH}_{l1} \times \text{Cktkm}_{l1} \times \text{NSC}_{l1} \times V_l) + \sum_{t=1}^T (\text{OH}_{t1} \times \text{MVA}_{t1} \times 2.5) + \sum_{r=1}^R (\text{OH}_{r1} \times \text{MVAR}_{r1} \times 4)}{\text{THM} \times [\sum_{l=1}^L (\text{Cktkm}_{l1} \times \text{NSC}_{l1} \times V_l) + \sum_{t=1}^T (\text{MVA}_{t1} \times 2.5) + \sum_{r=1}^R (\text{MVAR}_{r1} \times 4)]}$$

Where:

- l identifies a transmission line circuit
- t identifies a transformer / ICT
- r identifies a bus reactor, switchable line reactor or SVC

- V= 1.0, for a 400kV line
- 0.75, for a 220kV line
- 0.4, for a 132kV or 110kV or 66kV line
- 2.0, for a 765kV line

- L = total number of line circuits
- T = total number of transformers and ICTs
- R = total number of bus reactors, switchable line reactors and SVCs
- OH = hours of Non-availability in the month if any, as per clause *****.
- Cktkm = length of a transmission line circuit in km
- NSC = number of sub-conductors per phase
- MVA = MVA rating of a transformer / ICT
- MVAR = MVAR rating of a bus reactor, switchable line reactor or an SVC (in which case it would be the sum of inductive and capacitive capabilities).

THM = total hours in the month.

4. NAFM for each HVDC system shall be calculated separately, as follows:

$$\text{NAFM} = [\Sigma (\text{TCR} \times \text{hours})] \div [\text{THM} \times \text{RC}]$$

Where:

TCR = transmission capability reduction of the system in MW

RC = rated capacity of the system in MW.

For the above purpose, the HVDC terminals and directly associated EHV / HVDC lines of an HVDC system shall be taken as one integrated system.

5. Outage time of transmission elements for the following contingencies shall be excluded from the total time of the element under the period of consideration.

Outage of elements due to Force Majeure events beyond the control of the Concessionaire. However, onus of satisfying the SLDC that the element outage was due to aforesaid events and not due to design failure shall rest with the Concessionaire. A reasonable restoration time for the element shall be considered by SLDC and any additional time taken by the Concessionaire for restoration of the element beyond the reasonable time shall be treated as outage time attributable to the Concessionaire. SLDC may consult the Concessionaire or the Authority or any expert for estimation of reasonable restoration time. Circuits restored through ERS (Emergency Restoration System (ERS)) shall be considered as available.