

North Delhi Power Limited, Delhi

[SELLER]

DATED [•], 200_

**POWER PURCHASE AGREEMENT BY NORTH DELHI POWER LIMITED FOR DELHI FOR AND
ON BEHALF OF ITS OWN AND ON BEHALF OF BSES RAJDHANI POWER LIMITED AND BSES
YAMUNA POWER LIMITED.**

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POWER PURCHASE AGREEMENT

This **POWER PURCHASE AGREEMENT** is made on this [date], 2006 at New Delhi by and between

[_____], a company incorporated and existing under the Companies Act, 1956, with its registered office at [please insert the address] (hereinafter referred to as “**Buyer**” which expression shall unless repugnant to or inconsistent with the context, mean and include successors and permitted assigns) of the FIRST PART;

AND

[**Seller’s Name**] a company incorporated and existing under the Companies Act, 1956, with its registered office at [please insert the address] (hereinafter referred to as “**Seller**” which expression shall unless repugnant to or inconsistent with the context, mean and include successors and permitted assigns) of the SECOND PART.

(Each of the parties of is individually referred to as a “**Party**” and collectively to as the “**Parties**”)

WHEREAS

- A. To meet their respective mid-term and short-term power requirements, Delhi Discoms viz. BSES Rajdhani Private Limited, BSES Yamuna Private Limited and North Delhi Power Limited (collectively referred to as “**Buyer**”) have authorised North Delhi Power Limited to act as the nodal agency to procure power from various sources for and on their behalf so as to enable them meet their short term and medium term power requirements.
- B. In furtherance thereof, the Buyer on [•], 2006 issued a tender inviting proposals for supply of power to meet the mid-term and short-term power requirements of the Discoms. A copy of the tender is placed hereto and marked as **Schedule A**.
- C. In response to the tender, the Seller submitted its bid with the Buyer on [•], 2006. The Buyer vide its letter of intent dated [•], 2006 awarded the Seller the non-exclusive right to offer for sale the Contracted Power to the Buyer at the Delivery Point. A copy of the letter of intent dated [•], 2006 is placed and marked as **Schedule B**.
- D. The Buyer has agreed to procure and Seller has agreed to offer for sale the Contracted Power on terms set out in this Agreement and for such purposes the Buyer and the Seller have entered into this Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Purchase Agreement (**the “PPA” or the “Agreement”**) and other consideration, the receipt, sufficiency and adequacy 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

When used herein and in all of the Schedules hereto including, without limitation, any other document related to this Agreement, the defined terms set forth in this Article 1 shall have the meanings specified herein or under the Electricity Act, 2003, unless repugnant to the context:

Agreement means this Power Purchase Agreement, including all Schedules attached to this Agreement;

“Agreed Form” means, in relation to any document, the form of the said document most recently agreed to by the Parties and initialled by them for identification;

“Applicable Law” means the Electricity Act, 2003 and other statutes, delegated legislation (rules, regulations, bye-laws), notifications, binding orders of Governmental Agency, as and to the extent applicable to the Parties and the substratum of this Agreement;

“Appropriate Commission” shall mean the Central Electricity Regulatory Commission or the Delhi Electricity Regulatory Commission having jurisdiction over the Parties in relation to this Agreement;

“Bank” means a reference to a Scheduled Bank as notified by the Reserve Bank of India;

“Business Day” means any day (other than Saturday and Sunday) on which commercial banks are open for business in the National Capital Territory of Delhi;

“Buyer Event of Default” shall have the meaning ascribed thereto in Article [•] of this Agreement;

“Buyer Standby Letter of Credit” shall have the meaning ascribed thereto in Article 7.5 of this Agreement;

“Change in Law” means any change in Applicable Law, including the enactment, amendment, modification, revocation or interpretation thereof from that prevailing on the date of submission of the bid by the Seller.

“Check Meters” shall have the meaning ascribed thereto in Article 6.1 of this Agreement;

“Contracted Power” means the quantum of power, which the Buyer agrees to purchase during the Term at the Delivery Point, and as more particularly described in **Schedule C** of this Agreement;

“Daily Despatch Schedule” means the daily schedule for the following day containing the details of Declared Capacity and the Despatched Power for the relevant day for each Settlement Period of a day notified by the RLDC to the Seller

“Declared Capacity” means the quantum of power declared by the Seller in its Daily Generation Schedule or Revised Generation Schedule to be available for sale at the Delivery Point

“Delivered Power” means the quantum of Despatched Power actually made available by the Seller in any Settlement Period at the Delivery Point;

“Delivery Date” shall have the meaning ascribed thereto in Article 3.3 of this Agreement;

“Delivery Point” means the sub-station of the Buyer at [•];

“Despatched Power” means the quantum of power specified by the RLDC in the Implemented Schedule or a revised Despatch Schedule issued by RLDC. The power specified by the RLDC shall be reduced by the transmission losses that may arise till the Delivery Point;

“Dispute” means any dispute or difference of any kind between the Buyer and the Seller in connection with or arising out of this Agreement;

“Due Date” shall have the meaning ascribed thereto in Article 7.3.1 of this Agreement;

Effective Date shall have the meaning ascribed thereto in Article 3.1 of this Agreement;

“Electricity Act” means the Electricity Act, 2003, as amended from time to time;

“Electricity Rules” means the rules and regulations made under and in force pursuant to the Electricity Act, as they may be amended from time to time;

“Force Majeure Event” shall have the meaning ascribed to it in Article 8.1 of this Agreement;

Governmental Agency means the Government of India, the State Government(s), the Central Electricity Authority, the Central Electricity Regulatory Commission, the State Electricity Regulatory Commission(s) and any other authority having jurisdiction over the Parties in relation to this Agreement;

“Generating Unit” means the power station from which the Contracted Power is being supplied to the Buyer;

“Indian Electricity Grid Code” or “IEGC” means the Grid Code specified by the CERC under Section 79 of the Electricity Act, 2003

“Instructed Capacity” means the quantum of Despatched Power to be delivered by the Seller to the Buyer, at the Delivery Point;

“Invoice” means either a Monthly/Fortnightly/Weekly Tariff Invoice or a Supplementary Invoice;

“Main Meter” shall have the meaning ascribed thereto in Article 6.1;

“Metering System” shall mean the Main Meter and the Check Meter;

“Month” means calendar month, unless the context otherwise requires in this Agreement.

“**Monthly/fortnightly/weekly Invoice**” shall have the meaning ascribed thereto in Article 7.2 of this Agreement;

“**Monthly/fortnightly/weekly Payment**” shall have the meaning ascribed thereto in Schedule G of this Agreement;

“**Performance Bank Guarantee**” means the unconditional and unequivocal performance bank guarantee furnished in favour of the Buyer for a sum equivalent to 10% of 15 days estimated billing for Short term and for Medium term the same shall be equal to one month of estimated billing. and which shall stand release upon expiry of the Term of this Agreement.

“**Point of Interconnection**” in case of interstate Supply of Contracted Power means the Central Transmission Utility bus in the [•] region and in case of intrastate Supply of Contracted Power means the State Transmission Utility bus.

“**Regional Energy Account**” means the periodic energy account including amendments thereof, if any, prepared by the [•] showing the exchange of energy amongst the various constituents].

“**Seller Event of Default**” shall have the meaning ascribed thereto in Article 12 of this Agreement;

“**Settlement Period**” means the time block for issue of daily generation, drawl and despatch schedules as may be defined by IEGC (presently a fifteen minutes block)

“**Scheduled Bank**” means a bank incorporated in India and recognised as a scheduled bank by the Reserve Bank of India;

“**Shortfall Capacity**” means the difference between the Instructed Capacity and ¹ and the Delivered Power ;

“**Supply of power/Supply of Instructed Capacity**” means the supply of the instructed Capacity by the Seller to the Buyer in accordance with the provisions of this Agreement;

“**Transmission Facilities**” means the transmission facilities used by the Seller for Supply of power;

“**Tariff**” means the charges offered by Seller and accepted by Buyer, as indicated in **Schedule D** of this Agreement;

“**Term**” shall mean the total tenure of this Agreement, which is set out at **Schedule F** of this Agreement;

“**Variable Charge**” shall have the meaning ascribed thereto in **Schedule G** of this Agreement;

1.2 Interpretation

Any reference in this Agreement to:

- (a) an “Schedule” shall, subject to any contrary indication, be construed as a reference to an Schedule to this Agreement;

- (b) a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks are generally open for business in New Delhi;
- (c) the schedule and dispatch procedure shall be the procedure prescribed by the CERC, IEGC and Delhi Grid Code and RLDC/SLDC norms.

1.3 Save where the contrary is indicated, any reference in this Agreement to:

- (a) any words importing the singular shall also include the plural and vice versa;
- (b) a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- (c) this Agreement itself, or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- (d) any section, provision, or schedules of a statute or enactment shall be construed as a reference to such statute as it may have been, or may from time to time be, amended or re-enacted;
- (e) a time of day shall be construed as a reference in Indian Standard Time; and
- (f) the words ‘include’ and ‘including’ are to be construed without limitation.
- (g) in the event of any inconsistency between the terms and conditions of this Agreement and the Schedules, the terms and conditions as set out in this Agreement will prevail.

1.4 Table of Contents and Headings

The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

1.5 Interest

All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred sixty five (365) days unless specifically and expressly stated otherwise.

1.6 Discretion

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in its absolute discretion and the exercise of that discretion shall not be challengeable on grounds that the Party did not exercise its discretion fairly or reasonably.

ARTICLE 2

SCOPE OF THE AGREEMENT

- 2.1 Purchase and sale of Contracted Power
- 2.1.1 Subject to the terms and conditions as contained in this Agreement, the Seller shall offer for sale to the Buyer the Contracted Power and shall deliver at the Delivery Point the Instructed Capacity in accordance with the provisions of this Agreement.
- 2.1.2 The Buyer shall inform the Seller in writing by the 1st of each Month the Contracted Power for any Month and the Seller shall deliver the Instructed Capacity for that Month in accordance with the provisions of this Agreement.
- 2.1.3 The title and risk in respect of the Contracted Power shall pass on to the Buyer at the Delivery Point.
- 2.2 The Parties hereto acknowledge and agree that premised on the following understanding, the Parties are entering into this Agreement:
- (a) to meet the mid-term and short-term power requirements, the Discoms have authorised the Buyer to act as the nodal agency to procure power from various sources for and on their behalf.
 - (b) the seller should comply with the prevalent regulations and display ample diligence to secure the transmission capacity under open access. Open access once obtained, shall not be altered by the seller without the consent of the buyer.
 - (c) the Discoms are dependant on the supply of the Contracted Power by the Seller to meet their mid-term and short-term term power requirement and any default by the Seller in the Supply of the Contracted Power shall result in huge loss and damage to the Discoms.

ARTICLE 3

EFFECTIVENESS AND TERM

3.1 Effective Date

This Agreement shall commence from the date it is executed and delivered by the Parties.

3.2 Term

Unless terminated pursuant to Article 8.5 or pursuant to Article 12 below, the Agreement shall continue to be force for the Term from the Effective Date and such Term shall stand extended in the event of a Force Majeure, -as mutually agreed.

3.3 Delivery Date

Within [•] days from the Effective Date, the Seller shall cause Supply of the Contracted Power to the Buyer at the Delivery Point in accordance with provisions of this Agreement and the Applicable Law, failing which, the Buyer shall have the right to terminate the Agreement in accordance with Article 12 below.

3.4 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement including, but not limited to, those assumed under Article 4, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication.

ARTICLE 4

OBLIGATION OF THE PARTIES

4.1 Seller's Obligation

During the Term, the Seller shall discharge the following obligations:

- (a) obtain at its own cost and expense the short-term open access from the Northern Region Load Dispatch Centre/Appropriate Commission for offering for sale the Contracted Power at the Delivery Point.
- (b) file all necessary applications and documents with the Appropriate Commission/Northern Region Loan Despatch Center in a time bound manner;
- (c) take suitable steps in a time bound manner to ensure that the short-term open access is valid during the Term;
- (d) provide the Buyer with a copy of all applications and documents as may have been filed or required to be filed with the Northern Region Load Despatch Centre/Appropriate Commission and the Governmental Agency for the purposes of this Agreement;
- (e) comply with all the technical requirements as prescribed by the Central Electricity Authority, Governmental Agency and the Appropriate Commission;
- (f) obtain and keep valid all necessary clearances/permits for supply of the Contracted Power and to comply with the provisions of the Applicable Law; and
- (g) offer for sale at the Delivery Point to the Buyer the Despatched Power in a safe and reliable manner and in accordance with the parameters and specifications set out in **Schedule C**.

4.2 Buyers' obligation

During the Term, the Buyer shall discharge the following obligations:

- (a) obtain approval of the Appropriate Commission for entering into this Agreement;
- (b) comply with the provisions of the Applicable Law;
- (c) subject to the provisions of this Agreement, pay the Monthly/fortnightly/weekly Payment to the Seller for Supply of the Instructed Capacity at the Delivery Point; as per REA from the seller's regional load dispatch/Regional Power Committee.
- (d) Assist the Seller in procuring consents, permits and approvals and as may be required for the purposes of this Agreement under the Applicable Law;

4.3 Open Access by Buyer

4.3.1 Notwithstanding the provisions of Article 4.1 hereof, the Buyer has the unconditional right but not the obligation:

- (a) to apply to the Northern Region Load Dispatch Centre/Appropriate Commission for obtaining short term open access for delivery of the Contracted Power at the Delivery Point in the following events:

- (i) the Seller fails or neglects to file with the Northern Region Load Dispatch Centre/Appropriate Commission the application for short-term open access;
 - (ii) the Northern Region Load Dispatch Centre/Appropriate Commission refuses and rejects the Seller's application praying for short-term open access ; or
 - (iii) the Northern Region Load Dispatch Centre/Appropriate Commission refuses to admit (for any reason whatsoever) and rejects the application for short-term open access as preferred by the Seller.
- (b) to recover all or any expenses incurred for obtaining and keeping valid the short term open access from the Monthly/fortnightly/weekly Invoice.
- 4.3.2 For the purposes of procuring short-term open access, the Seller shall render to the Buyer such assistance as maybe required which shall include but not be limited to providing necessary authorizations in favour of the Buyer and providing such documents as may be required for purposes of procuring short-term open access.

4.4 Obligation to Supply the Contracted Power

Notwithstanding any scheduled outage or unscheduled outage from the Generating Unit and/or the Transmission System, the Seller shall offer for sale the Contracted Power to the Buyer at the Delivery Point.

4.5 Transmission losses

The Seller acknowledges and agrees that all or any transmission losses in relation to the Supply of the Instructed Capacity up to the Delivery Point shall be charged to their account. Any revision in the notified transmission losses up to the delivery point shall be borne by the Seller.

Transmission losses, beyond the delivery point, shall be included under transmission charges which would be borne by the procurer. Additionally, any revision in the notified transmission losses by the concerned regulatory authority beyond the delivery point shall also be borne by the procurer.

4.6 Right of First Refusal

4.6.1 In consideration of Buyer's unequivocal obligation to pay the Monthly/fortnightly/weekly Payment during the Term of the Agreement, the Seller agrees that the Buyer shall have the first right to refuse (either in full or in part) the Delivered Power. ("Rejected Power")

4.6.2 In the event of a rejection by the Buyer pursuant to Clause 4.6.1 hereof, the Seller shall have the right to sell the Rejected Power to any third party subject to the condition that if the Rejected Power is sold for a price higher than the Variable Charges payable by the Buyer for such Rejected Power under this Agreement, the amount recovered by the Seller in excess of the Variable Charges payable by the Seller to the Buyer in respect of the Rejected Power shall be shared in equal proportion between the Parties.

4.6.3 For the purposes of Article 4.6.2 above, the Buyer shall have the right to inspect and take copies of the accounts and relevant documents of the Seller. The Seller agrees and represents that it shall not obstruct or prevent (either directly or indirectly) the Buyer from inspecting and taking copies of the accounts and the relevant documents of the Seller.

ARTICLE 5

LIQUIDATED DAMAGES

- 5.1 Payment of Liquidated Damages for failure to supply the Instructed Capacity. The following clauses shall be applicable for medium term only:
- 5.1.1 In the event the Seller fails to Supply the Instructed Capacity, the Buyer as a fair and reasonable compensation for losses that it may incur, has the right to charge amounts as per the provisions of the Schedule G.
 - 5.1.2 Without prejudice to the foregoing, the Parties hereto agree that the Buyer shall have the additional right to recover the money payable pursuant to Clause 5.1.2 hereof by invoking the Performance Bank Guarantee. The Buyer shall have the right to invoke the Performance Bank Guarantee in the event the amount to be paid by the Buyer in the subsequent Monthly/fortnightly/weekly Invoice is less than amount of money to be recovered pursuant to Clause 5.1.1 hereof.
 - 5.1.3 Notwithstanding the provisions of Article 5.1.1 hereof, the Buyer has the right to terminate the Agreement in accordance with the provisions of Article 12 below, in the event the Seller, consistently for a period of one month supplies less than 80% of the Contracted Power for a total period of 1 (one) Month in any succeeding 6 (six) Months period. Similarly, the seller may also exercise similar rights if the Buyer consistently draws less than 80% of the contracted capacity for a period of one month.

However, for short term agreement following clause shall be applicable:

- 5.1.4 Both the parties would ensure that actual scheduling does not deviate by more than 20% of the contracted power as per the approved open access on monthly basis.
 - b) In case deviation from BUYER side is more than 20% of contracted energy for which open access has been allocated on monthly basis, BUYER shall pay compensation @100 Paise per KWh for the quantum of shortfall in excess of permitted deviation of 20% while continuing to pay open access charges as per the contract.
 - c) In case deviation from SELLER side is more than 20% of contracted energy for which open access has been allocated on monthly basis, SELLER shall pay compensation to BUYER @105 Paise per KWh for the quantum of shortfall in excess of permitted deviation of 20% in the energy supplied and pay for the open access charges to the extent not availed by the Buyer.
- 5.2 Invocation of Performance Bank Guarantee in the event of delay in supply of the Contracted Power or Instructed Capacity

Notwithstanding the provisions of Article 5.1 hereof, the Parties hereto agree that in the event of delay in Supply of the Instructed Capacity by the Seller by [] period, the Buyer shall have the unconditional and unequivocal right to encash the Performance Bank Guarantee.

However, for medium term supply only, any deviation in the schedule for commencement of supply specifically for Greenfield projects to be commissioned post January 2007, shall be dealt with as per the approval of the DERC.

5.3 Performance Bank Guarantee

- 5.3.1 In the event of encashment of the Performance Bank Guarantee by the Buyer under terms of this Agreement, the Seller shall furnish a fresh Performance Bank Guarantee within 4 (four) business days of such encashment.
- 5.3.2 Without prejudice to the provisions as contained in Article 5 hereof, the Buyer shall have the unconditional and unequivocal right to encash the Performance Bank Guarantee in the event the Seller fails to discharge its obligations under this Agreement.

ARTICLE 6

METERING

The clauses 6.1, 6.2 and 6.3 shall be applicable for Medium term Power Supply only.

6.1 Installation of Meters

6.1.1 The Seller shall at its own cost and expense install, maintain, replace, test and calibrate a meter at the Point of Interconnection (**"Main Meter"**).

6.1.2 The Buyer at its own cost and expense may install, maintain, replace, test and calibrate another meter at the Point of Interconnection (**"Check Meter"**).

6.1.3 The Metering System shall be provided so as to permit accounting for actual draw of power by the Buyer at the Delivery Point as specified in the IEGC /Delhi Grid Code.

6.2 Meter Reading

6.2.1 The meter readings of the Main Meter shall be used for computing the power received by the Buyer at the Delivery Point.

Provided that if the meter reading of the Main Meter differs from the meter reading of the Check Meter or with the Regional Energy Accounts by ± 0.2 , the meter readings of the Check Meters or Regional Energy Accounts, (whichever the Buyer elects) shall be used for (a) computing the power received by the Buyer at the Delivery Point; and (b) for preparing the Monthly/fortnightly/weekly Invoice.

6.2.2 Representatives of the Seller shall conduct visual readings of the Main Meter and the Check Meter at 12 noon on the first day of each month.

6.3 Testing of Meters

6.3.1 Each meter comprising the Metering System shall be sealed by the concerned Party and shall not be tested or calibrated except in the presence of representatives of the Parties.

6.3.2 The Main Meter and the Check Meter shall be tested for errors at government test laboratories in the event the reading of the Main Meter differs from the meter reading of the Check Meter or from the Regional Energy Accounts by ± 0.2 .

6.4 Energy Accounting for Short term supply:

6.4.1 The Energy accounting for short term supply shall be on the basis of day to day implemented schedules of concerned RLDC subject to final adjustment as per monthly Regional Energy Accounts of NREB.

ARTICLE 7

PAYMENT AND INVOICING

7.1 Calculations and Payment

Subject to Supply of the Instructed Capacity at the Delivery Point in accordance with the provisions of this Agreement, the Buyer shall pay the Seller the Monthly/fortnightly/weekly Payment as determined in accordance with **Schedule G**.

By way of an explanation it is clarified that the Seller shall invoice the Buyer based on the actual drawn units of power. For supplies in the medium term (>1 year), any incremental supply beyond the normative availability of 80% shall qualify for incentive payment as per the prevailing Terms and Conditions of tariff notified by CERC.

7.2 Delivery of Invoices

7.2.1 The Seller shall by the [5th] day of each Month issue to the Buyer:

- (a) an invoice in the Agreed Form (**the “Monthly/fortnightly/weekly Invoice”**) setting out the computation of the Monthly/fortnightly/weekly Payment for that month in accordance with the Agreement and as payable by the Buyer; and
- (b) an invoice in the Agreed Form (**the “Supplementary Invoice”**) setting out the computation of any amount other than a Monthly/fortnightly/weekly Payment that may be payable by the Buyer to the Seller in respect of the immediately preceding month pursuant to this Agreement.

7.2.2 Each Supplementary Invoice shall include reasonably detailed calculations of the amounts payable under it, together with such further supporting documentation and information as the Buyer may request.

7.3 Due Date of payment of Invoices and rebate

7.3.1 Subject to Article 7.4 below, the Buyer shall by the 15 (fifteenth) day of each Month (**“Due Date”**) cause payment of the amount specified in the Monthly/fortnightly/weekly Invoice and the Supplementary Invoice. If the payment is made within 7 working days from the receipt of Monthly/fortnightly/weekly Invoice, the Buyer shall have right to deduct 2% of Capacity Charge and Variable Charge as rebate for prompt payment and pay the balance amount.

7.3.2 The Seller acknowledges and agrees that all payments to be made by the Buyer is net of all prevailing taxes, cess, charges, etc. payable in relation to this Agreement.

7.3.3 The Buyer shall issue to the Seller the tax deduction certificate(s) within the time limit prescribed under the Applicable Law.

7.3.4 Subject to Article 7.4 below, in the event the Seller does not receive the complete amount of the Monthly/fortnightly/weekly Payment by the Due Date the Seller shall be entitled to draw down on the Buyer Standby Letter of Credit established under Article 7.5 below.

7.4 Disputed Invoices

7.4.1 If the Buyer does not question or dispute an Invoice within 120 (one hundred and twenty) days for medium term and 30(Thirty Days) for Short term, of receiving it, the

Monthly/fortnightly/weekly Invoice and the Supplementary Invoice (**collectively referred to as "Invoices"**) shall be considered correct and complete and conclusive between the Parties except in the case where that Party could not reasonably have identified any error in the Invoices taking into account the information then available to it during the above mentioned period for medium term and short term..

- 7.4.2 If the Buyer disputes any item or part of an item set out in any Invoice then Buyer shall serve a notice ("**Invoice Dispute Notice**") on the Seller setting out the item or part of an item set out in such Invoice which is in Dispute together with its estimate of what such item or part of an item should be.
- 7.4.3 In the event the Buyer issues an Invoice Dispute Notice in accordance with Article 7.4.2 hereof, the Buyer shall be obligated to pay only for the remainder of the items set out in the relevant Invoice in relation to which there is no Dispute.
- 7.4.4 If the Seller agrees with the Invoice Dispute Notice to which it relates, it shall adjust the Invoice and send such adjusted invoice to the Buyer (if the said Buyer has not paid) or refund the applicable amount within 5 (five) days (if the said Buyer has made the payment).
- 7.4.5 In the event that the Parties do not, within 14 (fourteen) days of the delivery of a Invoice Dispute Notice, resolve any Dispute arising under Article 7.4.2, either Party involved in the Invoice Dispute Notice may refer the matter to be determined in accordance with Article [14.2].

Upon resolution of any Dispute arising under Article [7.4.2 hereof], the amount (if any) due to the prevailing Party shall be paid within 20 (twenty) days together with interest accrued from the Due Date of the Invoice until the date of final payment at the rate as per DERC regulation in vogue and if there is no regulation of DERC then CERC regulation in vogue shall apply.

7.5 Establishment of Buyer Letter of Credit

- 7.5.1 Within [•] days before the commencement of Supply of the Instructed Capacity, the Buyer shall at its own cost and expense provide the Seller with a rupee denominated irrevocable revolving Letter of Credit issued in favour of the Seller by a Scheduled Bank and such Letter of Credit to be in a form and substance as set out in **Schedule E (the "Buyer Letter of Credit")**.
- 7.5.2 The Buyer Letter of Credit shall be provided on the basis that:
- (a) the Seller may draw upon the Buyer Letter of Credit only in the event the Buyer neglects to pay the undisputed amount specified in the Monthly/fortnightly/weekly Invoice.
 - (b) the Seller may encash the Buyer Letter of Credit by presenting to the issuing Bank a copy of the unpaid Monthly/fortnightly/weekly Invoice that has been delivered to the Buyer.
 - (c) the Buyer Letter of Credit shall be fully revolving so that it will be renewed for its full value upon each call made on the Letter of Credit; and
 - (d) the Buyer Letter of Credit shall be for a term of not less than 12 (twelve) months or for the period of supply, whichever is lower.

7.5.3 For short term The Buyer shall open a standby LC for short-term supply agreement and shall be equivalent to 21 days' of estimated billing amount.

For medium term agreement (monthly billing basis) the said LC shall be equivalent to 105% of estimated average monthly billing.

It is further clarified that the LC shall be opened after the bid process is over and shall be provided to the successful bidder(s) – at least two weeks before the date of commencement of supply by the Seller. The Buyer Letter of Credit shall be for a period of [1] (one year) from the Effective Date or for the Term, whichever is lower.

7.6 **Payment Security Mechanism**

Notwithstanding anything contained in this Agreement, the Seller acknowledges and accepts that it has the right to invoke the Buyer Letter of Credit only in the event the Buyer neglects to pay the undisputed amount of the Monthly Invoice by the Due Date.

A Default escrow account may also be considered for Medium term sale of power only.

ARTICLE 8

FORCE MAJEURE

8.1 Force Majeure Events Defined

A "Force Majeure Event" means the occurrence of any of the following events:

- (a) any of the events or circumstances, or combination of events and circumstances such as act of god, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism; or
- (b) the Northern Region Load Dispatch Centre/Appropriate Commission rejects the application for short-term open access preferred by the Seller on merits.
- (c) Any transmission constraint leading to Non/Part availability of transmission corridor. The contracted power will be treated as deemed reduced for the period of transmission constraint. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.

8.2 Available Relief for a Force Majeure Event.

Subject to Article 8.3.1 below, neither Party shall be liable for failure to perform and shall be excused from the performance of its obligations upon the occurrence of a Force Majeure Event.

8.3 Duty to Report

8.3.1 No Party may claim relief for a Force Majeure Event unless it has notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable and in any event within 7 (seven) days after the affected Party knew, or ought reasonably to have known, of its occurrence.

8.3.2 Any notice pursuant to Article 8.3.1 shall include full particulars of:

- (a) the nature of each Force Majeure Event which is the subject of any claim for relief under this Agreement;
- (b) the effect which such Force Majeure Event is having 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, to alleviate the impact of those Force Majeure Events;
- (d) a copy of all documents and applications filed with the Northern Region Load Despatch Centre / Appropriate Commission in relation to the procurement of short-term open access; and
- (e) any other information relevant to the affected Party's claim.

8.4 Duty to Mitigate

For so long as a Force Majeure Event which is the subject of any claim under this Agreement is continuing, the affected Party shall use its best endeavours to alleviate its effects on the affected Party's performance of its obligations under this Agreement.

8.5 Consequences of Force Majeure Event

The Parties agree that in the event the Force Majeure Event continues for a period of 45 (forty five) consecutive days, either Party shall have the right to terminate this Agreement by giving the other Party 15 (fifteen) Business Days prior written notice of its intention to terminate.

8.6 Sale to a third party during occurrence of a Force Majeure Event

The Parties hereto agree that during the continuance of a Force Majeure Event the Seller has the right to cause sale of the Contracted Power to any third party.

Provided that the Seller shall not sell the Contracted Power to any third party at a price higher than the price payable to the Buyer for such Contracted Power.

ARTICLE 9

CHANGE IN LAW

9.1 Change in Law

- 9.1.1 The Parties hereto agree that only sales tax, service tax and other like taxes or levies shall be adjusted in the Monthly/fortnightly/weekly Invoice by reason of change in rate of the prevailing rate of the taxes or upon levy of new taxes in relation to the sale of the Instructed Capacity.
- 9.1.2 Subject to Article 9.1.1 hereof, the Parties hereto agree that any consequence as a result of Change in Law shall be adjusted subject to the approval of the Appropriate Commission.

ARTICLE 10

REPRESENTATION AND WARRANTIES

10.1 Representation and Warranties of the Parties

Each of the Parties represents and warrant as follows:

- (a) it has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- (b) this Agreement is enforceable against it;
- (c) the consummation of the transactions contemplated by this Agreement will not violate any provision or nor constitute a default under this Agreement.
- (d) no insolvency proceedings have been instituted, not threatened or pending by or against them;

10.2 Event of Default: In the event that any representations and warranties offered by a Party (**"Defaulting Party"**) in Article 10.1 above are not true, then the other Party (**"Non-Defaulting Party"**) shall have the right to terminate this Agreement by giving Defaulting Party 30 (thirty) days notice period.

ARTICLE 11

LIABILITY AND INDEMNIFICATION

11.1 Indemnification by the Seller

The Seller agrees to indemnify and hold harmless the Buyers against any loss or damage and all related expenses (including without limitation reasonable legal fees) suffered by the Buyer resulting from any negligent act or omission of the Seller.

Provided that such indemnity shall not extend to any loss or damage caused by any act or omission of the Buyer or the failure of the Buyer to take reasonable steps to mitigate that loss, damage, death or injury.

11.2 Assertion of Claims

The Buyer shall notify the other Seller promptly of its entitlement, and intention, to make any claim for indemnification pursuant to this Article 11.

11.3 Defence of claims

11.3.1 The Buyer 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 person in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Article 11 and the reasonable cost and expenses incurred by it shall be subject to the indemnification obligation as provided under this Article 11.

Provided that if Seller acknowledges in writing its obligation to indemnify Buyer in respect of loss to the full extent provided by this Article 11, the Seller 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 counsel of its choice if it gives prompt notice of its intention to do so to the Buyer and reimburses the Buyer of the reasonable cost and expenses incurred by it.

11.3.2 The Buyer shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Seller (which consent shall not be unreasonably withheld or delayed).

11.4 Consequential and Indirect Losses

Except as required by this Article 11, no Party shall be liable to the other Party or Parties in contract, tort, or without limitation, in any applicable law for the time being in force or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages and no Party shall have any liability to the others except pursuant to, or for breach of, this Agreement:

Provided that, this provision is not intended to constitute a waiver of any rights of one Party against the other or others with regard to matters unrelated to this Agreement.

ARTICLE 12

TERMINATION

12.1 Termination for Seller Events of Default

The Buyer may by giving 30 (thirty) days prior written notice to the Seller, terminate this Agreement upon the existence or occurrence and continuation of any of the following events (**each a "Seller Event of Default"**), unless any such Seller Event of Default occurs as a result of a breach by any Buyer of its obligations under this Agreement or a Buyer Event of Default or a Force Majeure Event:

- (a) the dissolution, pursuant to law, of the Seller, except for the purpose of a merger, consolidation or reorganisation that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;
- (b) any misrepresentation made in the representation and warranties made by the Seller;
- (c) except where due to a Buyer's failure to comply with its obligations, the Seller is in material breach of any of its obligations pursuant to this Agreement;
- (d) the Northern Region Load Dispatch Centre/Appropriate Commission rejects the application for short-term open access preferred by the Seller on account of the application having been filed not in accordance with procedure and/or on account of the application suffering from deficiencies and/or on account of the application having been filed without affixing appropriate fees;
- (e) the Seller fails to pay to the Buyer any sum payable by it in relation to or pursuant to this Agreement;
- (f) the Seller fails to commence supply of 80% (Eighty percent) the Instructed Capacity within a week from the Delivery Date;
- (g) the Seller fails/neglects to supply upto 80% (Eighty percent) of the Instructed Capacity at the Delivery Point in accordance with the provisions of this Agreement.
- (h) there is a delay by the Seller in the supply of the Instructed Capacity for a period beyond 15 days;

12.2 Termination for Buyer Events of Default

The Seller may by giving 30 (thirty) days prior written notice to the Buyer, terminate this Agreement upon existence or occurrence and the continuation of any of the following events (**each a "Buyer Event of Default"**), unless any such Buyer Event of Default occurs as a result of a breach by the Seller of its obligations under this Agreement, a Seller Event of Default or a Force Majeure Event:

- (a) 30% (thirty percent) of the undisputed Monthly/fortnightly/weekly Invoice remains outstanding for a period of more than 1 (one) Month;
- (b) except where due to the Seller's failure to comply with its obligations, the Buyer, is in material breach of any of its obligations pursuant to this Agreement;
- (c) any misrepresentation or untrue statement made in the representation and warranties by a Buyer;

12.3 Consequences of Termination

12.3.1 The termination of this Agreement shall not relieve either Party of any obligation or liability accrued prior to termination of the Agreement.

12.3.2 The Parties hereto agree that the provisions of Article [•], Article [•], Article [•] and Article [•] shall survive for a period of 5 (five) years after the expiry or termination of this Agreement.

12.3.3 In the event of termination of this Agreement pursuant to Article 12.1 hereof, the Buyer shall have the unconditional right to invoke the Performance Bank Guarantee.

ARTICLE 13

ASSIGNMENT

- 13.1 The Parties agree that Buyer may assign or transfer this Agreement and its beneficial interests herein to any of its subsidiaries, affiliates, direct or indirect controlling or controlled companies or to any third party regardless of prior and express consent of Seller so long as provided that the assignee and transferee undertakes the rights and obligations established in this Agreement. Provided that Buyer shall give a written notice of such assignment to Seller within a reasonable time prior to an assignment pursuant to this Article.
- 13.2 The Parties agree that Seller shall not have the right to assign or transfer its rights and obligations under this Agreement without the prior written approval of Buyer.

ARTICLE 14

GOVERNING LAW AND DISPUTES

14.1 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of India.

14.2 Arbitration

14.2.1 Save and except for Disputes, which the Appropriate Commission is empowered to adjudicate under Section 86(1) (f) of the Electricity Act, 2003, all other Disputes shall be resolved in accordance with Article 14.2.3 below.

14.2.2 Prior to submitting to the arbitration tribunal or to the Appropriate Commission any Dispute, the Parties shall use their reasonable efforts to reach an amicable solution by means of direct negotiation. If the Parties are unable to reach an agreement within 30 (thirty) days from the date that the interested Party notifies its intention to resolve the Dispute in an amicable manner, the Parties may refer such Dispute to arbitration or may prefer appropriate application(s) with the Appropriate Commission for adjudication of the Dispute.

14.2.3 Subject to Article 14.2.1 hereof, all or any Dispute shall be settled by binding arbitration by a sole arbitrator to be jointly appointed by both the Parties in accordance with the Arbitration and Conciliation Act, 1996. The arbitrator shall have powers to award only such remedy as is contemplated by this Agreement, including appropriate, injunctive relief. In the event both Parties fail to agree to the appointment of the arbitrator, the matter shall be decided in accordance with the Applicable Law.

14.2.4 The place of arbitration shall be New Delhi and the language of arbitration shall be English.

14.2.5 The commencement of arbitration shall not be deemed to be a waiver of any right of termination under this Agreement. The arbitration is not empowered to act or make any award other than based solely on the rights and obligations of the Parties prior to and including such termination.

14.3 Notwithstanding the Disputes or arbitration thereof, the Parties shall continue to discharge their obligations under this Agreement.

14.4 The arbitrator shall not limit, expand or otherwise modify the terms of this Agreement.

ARTICLE 15

CONFIDENTIALITY

- 15.1 During the Term of this Agreement and during 5 (five) years following the expiration or early termination of this Agreement, each Party undertakes to keep secrecy and confidentiality of this Agreement and any information exchanged between the Parties as a result of the negotiations and execution of this Agreement, including any information related to the other Party or its business and operations (**'Confidential Information'**). The Confidential Information shall be kept as secret and owned by the Party who has disclosed it.
- 15.2 Any Confidential Information exchanged between the Parties shall be treated with utmost confidentiality as if said information was owned by it and prevent the disclosure of the Confidential Information. The Parties agree not to disclose any Confidential Information unless (i) when required by Law, (ii) the Confidential Information was already known by the non-disclosing Party before the execution of this Agreement; (iii) the Confidential Information was publicly disclosed, and (iv) when authorised in writing by the Party that owns the Confidential Information.
- 15.3 The non-disclosing Party shall be fully liable for ensuring that the authorised Party complies with terms of Clause 15.1. The release of Confidential Information shall be restricted to those named in the authorisation. The authorised party shall be considered as an employee of the non-disclosing Party and must not make any use of the Confidential Information for any other purpose other than the purposes established herein.

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 Amendments

This Agreement may not be amended except by written agreement between the Parties and no other purported amendment shall be effective.

16.2 Third Parties

This Agreement is intended safely 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.

16.3 No Waiver

16.3.1 No waiver by any Party of any default or defaults by the other Party or Parties in the performance of any of the provisions of this Agreement:

- (a) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
- (b) shall be effective unless in writing duly executed by a duly authorised representative of such Party.

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

16.4 Relationship of the Parties

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 any Party and no 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 or Parties, as the case may be.

16.5 Language

The language of this Agreement shall be English and all documents, notices, waivers and all other written communication or otherwise between the Parties in connection with this Agreement shall be in English.

16.6 Entirety

16.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

16.6.2 All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement shall stand superseded by the provisions of this Agreement.

16.7 Successors and Assigns

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

16.8 Affirmation

The Seller and the Buyer declare an affirmation that neither Party nor its directors, employees, any of its agents has paid nor has it undertaken to pay and that it shall in the future not pay any unlawful commission, bribe, pay-offs, kick-backs and that it has not in any other way or manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad, or in any other manner given or offered to give any gifts and presents in India or abroad to any person or company to procure this Agreement and the Seller and the Buyer undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

16.9 Notices

16.9.1 Save as otherwise expressly provided in this Agreement, all notice or other communications which are required or permitted under this Agreement shall be in writing and sufficient if delivered personally or sent by registered or certified mail, telecopier, email, telex or telegram addressed as follows:

Buyer	Seller

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

16.10 Severability

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.

16.11 Breach of Obligations

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties acknowledge the damages alone shall not be adequate remedy for such breach. Accordingly each Party agrees that in addition to any other rights or remedy which the other Party or Parties, as the case may be, may have at Law or in equity, the non breaching Party or Parties shall be entitled to specific performance and injunctive relief in any court of competent jurisdiction for any breach or threatened breach by the other Party.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

FOR BUYER

FOR SELLER

[Authorized Signatory]

[Authorized Signatory]

WITNESS

WITNESS

Name:[•]

Name: [•]

Address:[•]

Address:[•]

SCHEDULE A

TENDER

SCHEDULE B

LETTER OF INTENT

(As issued by Buyer to Seller)

SCHEDULE C

CONTRACTED POWER

[As per the accepted offer by the Buyer, based on the offer submitted by the Seller]

SCHEDULE D

TARIFF

[As quoted by the Bidder]

SCHEDULE E

LETTER OF CREDIT

(To be given subsequently)

SCHEDULE F

TERM

(As per the accepted offer by the Buyer)

SCHEDULE G

MONTHLY/FORTNIGHTLY/WEEKLY PAYMENT

THE MONTHLY/FORTNIGHTLY/WEEKLY PAYMENT

1.1 General

- 1.1.1 Buyer shall pay the Monthly/fortnightly/weekly Payment for the period from the date on which Electrical Output is first accepted by Buyers at the Delivery Point until this Agreement expires or is terminated.
- 1.1.2 The Monthly/fortnightly/weekly Payment shall consist of the following elements:
- (i) Capacity Charge; plus
 - (ii) Variable Charge; plus
 - (iii) Transmission Charge minus
 - (iv) the Monthly Availability Adjustment, plus/minus
 - (v) any other amounts that may be due under this Agreement.
- 1.1.3 Monthly/fortnightly/weekly Payments are payable in Rupees.
- 1.1.4 Monthly/fortnightly/weekly Payments shall be calculated for periods of a full calendar month, except:
- (i) if Capacity is first accepted by Buyer at the Delivery Point after the fifteenth day of a calendar month, the first month for which a Monthly/fortnightly/weekly Payment shall be calculated shall end on the last day of the next calendar month;
 - (ii) if the term of this Agreement expires or is terminated other than on the last day of a month, the last Monthly/fortnightly/weekly Payment shall be calculated for the period from the first day of that month until the day on which this Agreement expires or is terminated.

1.2 Capacity Charge

- 1.2.1 The Capacity Charge in any month "n" which begins on or after the Delivery Date shall be calculated as follows.

$$CC(n) = ECC(n) + NECC(n)$$

Where,

CC(n) is the Capacity Charge component of the Tariff expressed in Rupees payable for month "n"

ECC(n) is the Escalable Capacity Charge expressed in Rupees calculated for month "n" as per Paragraph 1.2.2 below

NECC(n) is the Non Escalable Capacity Charge expressed in Rupees calculated for month “n” as per Paragraph 1.2.3 below

1.2.2 The Escalable Capacity Charge shall be calculated as follows:

$$ECC(n) = \frac{[IWPI(n) \times IFCC(no)]}{IWPI(o)} \times CO(n)$$

IWPI(o)

Where,

ECC(n) is defined in Paragraph 1.2.1 above

IWPI(n) is the Indian Wholesale Price Index on the last day of month “n” (expressed as a number)

IWPI(o) is the Indian Wholesale Price Index on the Bid submission date (expressed as a number)

IFCC(no) is the Base Escalable Capacity Charge of month (n), expressed in Rupees/MW, as provided in the Financial Bid Form of the Seller which is indicated in Schedule D

CO(n) is Capacity Offered in month (n)

Provided Indian Wholesale Price Index shall mean means the “All India Wholesale Price Index” published monthly in the “Index Numbers of Wholesale Prices and Consumer Prices” by the Centre for Monitoring of the Indian Economy

1.2.3 Non Escalable Capacity Charge

$$NECC(n) = NECC(no) \times CO(n)$$

Where,

NECC(n) is defined in Paragraph 1.2.1 above

CO(n) is defined in Paragraph 1.2.2 above

NECC(no) is the Base Non Escalable Capacity Charge of month (n), expressed in Rupees/MW, as provided in the Financial Bid Form of the Seller which is indicated in Schedule D

1.3 Variable Charge

$$VC(n) = \frac{[IWPI(n) \times VCR(no)]}{IWPI(o)} \times E(n)$$

IWPI(o)

Where,

- VC(n) is defined in Paragraph 1.2.1 above
- IWPI(n) is defined in Paragraph 1.2.2 above (expressed as a number)
- IWPI(o) is defined in Paragraph 1.2.2 above (expressed as a number) (expressed as a number)
- VC(no) is the Base Variable Charge of month (n), expressed in Rupees /kwh, as provided in the Financial Bid Form of the Seller which is annexed as Annexure 1 to this Schedule
- E(n) is the Delivered Energy in month (n) expressed in kwh

1.4 Transmission Charge

1.4.1 The Transmission Charge in any month “n” which begins on or after the Delivery Date shall be calculated as follows.

$$TC(n) = CO(n) \times BTC (no) \times ATC(n)/ATC(no)$$

Where,

TC(n) is the Transmission Charge component of the Tariff expressed in Rupees payable for month “n”

CO (n) is defined in Paragraph 1.2.2 above

BTC(no) is the Base Transmission Charge for month (n) expressed in Rupees/MW as provided in the Financial Bid Form of the Seller which is annexed as Annexure 1 to this Schedule

ATC (n) is the Actual Transmission Charge for month (n) as per RLDC/Appropriate Commission

ATC (no) is the Actual Transmission Charge, for the month in which the Bid Submission Date occurs, as per RLDC/Appropriate Commission

1.5 Unscheduled Interchange Charges

Unscheduled Interchange (UI) Charges shall be applicable for Seller and Buyer as per the applicable Availability Based Regulations and the Grid Code. The Unscheduled Interchange Charges shall be calculated by SLDC/RLDC and shall be communicated to the Buyer and Seller.

1.6 The Monthly Availability Adjustments

The Monthly Availability Adjustment in month “n” shall be calculated as follows:

$$MA_n = \sum_n CC_n \left[\frac{(NA_r - AV_n)}{NA_r} \right] - \sum_n MA_{n-1}$$

Where,

- MA_n is the Monthly Availability Adjustment in month “n” (expressed in Rupees)
- Σ_n is the sum of the relevant values (taking account of whether such values are positive or negative) for each relevant month in Contract Year_n (being the Contract Year in which month “n” falls)
- CC_n is the Capacity Charge in each elapsed month in Contract Year_n (including the month for which the Monthly Availability Adjustment is being calculated)
- NA_r is 100 %
- AV_n is the Availability Factor of the Contracted Power, expressed as a percentage, calculated over all elapsed months in Contract Year_n (including the month for which the Monthly Availability Adjustment is being calculated) or 100%, whichever is lower
- MA_{n-1} is the Monthly Availability Adjustment in each elapsed month in Contract Year_n prior to the month for which the Monthly Availability Adjustment is being calculated

- 1.6.2 If the Monthly Availability Adjustment for month “n” is a positive number it shall be shown in the Monthly/fortnightly/weekly Invoice as a reduction in the amount payable by any of the Buyer to the Seller; if a negative number, it shall be shown as an additional amount payable by Buyer to the Seller.
- 1.6.3 Notwithstanding the above provisions of Paragraph 1.6.1 and 1.6.2 above, in the event the Availability is below 80% calculated over all elapsed months in Contract Year_n (including the month for which the Monthly Availability Adjustment is being calculated), then the Seller shall be required to pay to the Buyer an amount equal to 50% of the Capacity Charge for month “n”, calculated as per the provisions of Paragraphs 1.2 of this Schedule, as multiplied by the shortfall in Availability below 80%, as additional penalty.
- 1.6.4 For supplies in the medium term (>1 year), any incremental supply beyond the normative availability of 80% shall qualify for incentive payment as per the prevailing Terms and Conditions of tariff notified by CERC.