

Model



# Transmission Service Agreement for Cross-Border Electricity Trade

**SOUTH ASIA REGIONAL INITIATIVE  
FOR ENERGY INTEGRATION (SARI/EI)**

Task Force-3 Report



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# Transmission Service Agreement for Cross-Border Electricity Trade

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## Guidance

This model Transmission Service Agreement (TSA) has been developed with following assumptions:

1. The purpose of this TSA is to facilitate power transfer from the seller to the procurer, both located in two different countries (within SAARC region);
2. A Transmission Service Provider (TSP) and the Beneficiary(ies) are entering into an Agreement;
3. Transmission Service Provider is the entity envisaged to develop and operate the Transmission System.
4. The Beneficiary(ies) of the Transmission System can be the procurer(s) (a Distribution Licensee or Trader or a Consumer) or the seller(s) (Generator developing a new hydro power plant).
5. There may be multiple beneficiaries of the Transmission System, and accordingly a Lead Beneficiary shall be appointed and authorized by the Beneficiaries to represent them for discharging their rights and obligations, which are required to be undertaken by them as per this Agreement.
6. TSP shall take License in countries where the proposed Transmission System is spanning across and Connection Agreements shall be signed by the TSP with Transmission Utilities in the countries the proposed Transmission System is spanning across.
7. The Beneficiary(ies) shall pay the TSP, a Transmission Service Charge, linked to availability, as negotiated between them.
8. The Beneficiary(ies) shall reserve the entire Transmission Capacity of the Project on a commercial basis; Beneficiary(ies) may also allow others to access the Transmission Capacity through Open Access.
9. In the entire document, appropriate footnotes have been provided as guidance for making transaction-specific modifications such as names of countries, relevant authorities, values etc.
10. This model TSA provides overall guidance for developing transaction-specific TSA. Transaction-specific TSA should be carefully drafted based on this guidance and other relevant laws/regulations/guidelines. Such transaction-specific TSA should be reviewed and vetted by legal and other relevant experts.

**TRANSMISSION SERVICE AGREEMENT  
FOR  
TRANSMISSION SYSTEM<sup>1</sup>**

**Between**

---

**(“Transmission Service Provider”)**

**and**

---

**(“Beneficiary<sup>2</sup>”)**

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<sup>1</sup> Put the name of the transmission system

<sup>2</sup> Insert name of all the beneficiaries in case of multiple beneficiaries

# Transmission Service Agreement

This Transmission Service Agreement (hereinafter referred to as the “TSA”) is made on this \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, by and between:

\_\_\_\_\_ (hereinafter referred to as “Transmission Service Provider”) a company incorporated under \_\_\_\_\_ Act in \_\_\_\_\_ having its registered office at \_\_\_\_\_ of the ONE PART, which expression, unless repugnant to the context or meaning thereof, shall be deemed to include its successors and permitted assigns);

AND

\_\_\_\_\_, a company incorporated under \_\_\_\_\_ Act, in \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”), and \_\_\_\_\_<sup>3</sup>

(Referred to as the “Beneficiary(ies)” which expression, unless repugnant to the context or meaning thereof, shall be deemed to include their successors and permitted assigns) of the OTHER PART.

(Each of the Beneficiary(ies) and Transmission Service Provider are individually referred to as the “Party” and collectively referred to as the “Parties”)

WHEREAS

- A. The <sup>4</sup> \_\_\_\_\_ is in the process of setting up \_\_\_\_\_ MW Hydropower plant at \_\_\_\_\_ (hereinafter referred to as the “Seller” or “Generator”) and a Power Purchase Agreement has been executed between the Seller and<sup>5</sup> \_\_\_\_\_ (hereinafter referred to as the “Procurer” or the “Beneficiary”<sup>6</sup>).
- B. <sup>7</sup> \_\_\_\_\_ agrees to set up the Project on build, own, operate and maintain basis and sell Project’s entire available transmission capacity to the beneficiary on the terms and conditions contained in this Agreement;
- C. The parties hereby agree to execute this TSA setting out the terms and conditions to facilitate transfer of power from <sup>8</sup> \_\_\_\_\_ to <sup>9</sup> \_\_\_\_\_.
- D. The TSP shall procure Transmission Licenses in <sup>10</sup> \_\_\_\_\_ and enter into Connection Agreements with<sup>11</sup> \_\_\_\_\_ for setting up the Project.
- E. Beneficiary agrees, on the terms and subject to the conditions of this Agreement for arranging to provide assistance to the TSP for obtaining necessary consents and way leaves for the establishment of the Project without any financial liability.

<sup>3</sup> Insert details of other beneficiaries in case of multiple beneficiaries

<sup>4</sup> Insert name of the Seller (as in PPA)

<sup>5</sup> Insert name of the Procurer(s) (as in PPA)

<sup>6</sup> In case the Beneficiary of the proposed Cross-Border Transmission System is a Procurer. However, Seller can also be a beneficiary of the Cross-Border Transmission System and suitably modify these clauses;

<sup>7</sup> Insert name of the TSP

<sup>8</sup> Insert name of the Interconnection Point in upstream Country

<sup>9</sup> Insert name of the Interconnection Point in downstream Country

<sup>10</sup> Insert names of countries the proposed Transmission System is spanning across

<sup>11</sup> TSP may need to sign connection agreement with transmission utilities on both sides of its system to enable connectivity with their transmission system. Insert names of the concerned transmission utilities in countries in which the proposed transmission system is spanning across



- F. Beneficiary agrees to reserve the entire transmission capacity of the Project on a commercial basis for transmitting/wheeling of power across<sup>12</sup> \_\_\_\_\_ with suitable interconnection with the existing transmission network or new transmission network/lines as may be established during or after the implementation of the Project for a transmission service charge as negotiated between the TSP and the Beneficiary, linked to Availability; Provided, however, it is agreed and understood between the parties hereto that other than the use of Transmission Capacity by the Beneficiary as set out in this Agreement, Beneficiary may allow others to access the Transmission Capacity through Open Access<sup>13</sup> \_\_\_\_\_.
- G. Transmission Service Provider has provided to the Beneficiary, Contract Performance Guarantee as per format specified in Schedule 4 of this Agreement.
- H. The terms and conditions stipulated in the Transmission Licenses issued by the <sup>14</sup>\_\_\_\_\_ and the connection agreements entered into with <sup>15</sup>\_\_\_\_\_ shall also apply to this Agreement;

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

---

<sup>12</sup> Insert names of countries in which the proposed Transmission System is spanning across

<sup>13</sup> Insert 'as per prevailing Regulatory Framework' or 'as defined by Beneficiary'

<sup>14</sup> Insert name of the competent authority(ies) in the countries where the proposed Transmission System is spanning across

<sup>15</sup> Insert names of Transmission Utilities in countries where the proposed Transmission System is spanning across

# Article 1

# Definitions and Interpretation



## 1.1 Definitions

The terms used in this Agreement as defined hereunder shall have the same meaning as assigned to them herein.

“Affiliate”	shall mean a company that either directly or indirectly <ul style="list-style-type: none"><li>i. controls or</li><li>ii. is controlled by or</li><li>iii. is under common control with the Transmission Service Provider or Beneficiary and “control” means ownership by one company of<sup>16</sup> _____ of the voting rights of the other company;</li></ul>
“Agreement” or “Transmission Service Agreement” or “TSA”	shall mean this TSA including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
“Allocated Project Capacity” <sup>17</sup>	shall mean, for each Beneficiary, the sum of the generating capacities allocated to such Beneficiary from the seller(s) in determining sharing of transmission charges among the Beneficiaries;
“Beneficiary”	shall mean a person availing or intending to avail access to the Transmission System and can be the procurer (a Distribution Licensee or Trader or a Consumer) or the seller (Generator developing a new hydropower plant) as per the PPA;
“Bill Dispute Notice”	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Business Day”	shall mean a day other than a <sup>18</sup> _____ or a statutory holiday on which banks are open for business;
“Change in Law”	shall have the meaning ascribed thereto in Article 11 of this Agreement;

<sup>16</sup> Definition to be modified as per applicable statutory laws

<sup>17</sup> In case of multiple beneficiaries

<sup>18</sup> Define taking into consideration weekly holiday either in Transmission Service Provider’s or Beneficiary’s Country. To be mutually decided by TSP and Beneficiary

“Commercial Operation Date” or “COD”	in relation to the Project means the date as declared under Article 5.3 of this Agreement that the Project is commissioned and under commercial operation;
“Commissioned”	in relation to the Project means the date as declared under Article 5.3 of this Agreement that the Project is commissioned;
“Commissioning”	means Operation of the Project by the TSP as provided under Article 5.2 of this Agreement;
“Commissioning Tests”	means such tests that are required to ensure successful and safe commissioning of the Project and as defined in the Regional Grid Code/Guidelines, Connection Agreements, License(s), other Regulatory requirements of <sup>19</sup> _____;
“Consent”	shall mean any consent, licence, approval, permit, no-objection certificate, concession, right of way or any other authorization required to be granted by a Governmental Instrumentality for the Project;
“Construction Period”	means the period from (and including) the earliest occurring date upon which TSP is instructed or required to take up work under the Agreement up to (but not including) the Commercial Operation Date of the Project;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Transmission Service Provider Preliminary Default Notice or a Beneficiary Preliminary Default Notice as provided in Article 12 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Performance Guarantee”	shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the TSP to the Beneficiary from a bank mentioned in Schedule 5 of this Agreement in the form attached hereto as Schedule 4, in accordance with the terms of this Agreement;
“Contract Year”	shall mean the period commencing on the Scheduled Commercial Operation Date (as defined hereunder) and ending on the immediately succeeding December 31 and thereafter each period of twelve (12) months commencing on January 1 and ending on December 31;  Provided that the last contract year of this Agreement shall end on the last day of the term of this Agreement;
“Day”	shall mean a calendar day commencing from 00:00 hours (Indian Standard Time) and ending at 24:00 hours (Indian Standard Time);

<sup>19</sup> Insert names of countries the proposed Transmission System is spanning across

<b>“Dispute”</b>	shall mean any dispute or difference of any kind between the TSP and the Beneficiary, in connection with or arising out of this Agreement including, but not limited to, any issue on the interpretation and scope of the terms of this Agreement as provided in Article 15 of this Agreement;
<b>“Due Date”</b>	shall mean the Thirty (30 <sup>th</sup> ) day after a Monthly Bill or a Supplementary Bill is received by the Beneficiary (or, if such day is not a Business Day, the immediately succeeding day) by which date such bill is payable by the Beneficiary;
<b>“Effective Date”</b>	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
<b>“Element”</b>	means each transmission line or each circuit of the transmission lines (where there are more than one circuit) or each bay of sub-station or switching station or HVDC terminal or inverter station including ICTs, Reactors, SVC, FSC etc., forming part of the transmission system (as more fully described in Schedule 2);
<b>“Expiry Date”</b>	shall mean the date which is the _____ <sup>20</sup> anniversary of the Scheduled Commercial Operation Date or such extended period as mutually agreed upon by both Parties;
<b>“Financial Closure”</b>	shall mean the execution of all the Financing Agreements required for the Project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds thereunder;
<b>“Financing Agreements”</b>	shall mean the agreements pursuant to which the TSP has sought financing for the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Beneficiary;
<b>“Force Majeure” or “Force Majeure Event”</b>	shall have the meaning ascribed thereto in Article 10.3 of this Agreement;
<b>“Forced Outage”</b>	means any interruption in transmission of energy through the Project and consequent reduction in availability of the Project which is not the result of a scheduled outage, unscheduled outage or a Force Majeure Event;
<b>“Governmental Instrumentality”</b>	shall mean any legislative, judicial, regulatory, executive or other governmental body (including any agency, department, board, instrumentality, commission, office or authority) of the Government of both countries or any political subdivision thereof;

<sup>20</sup> 35 years or period mutually agreed by the Parties

“Interconnection Facilities”	means the facilities as may be set up for transmission of energy through the use of Project, beyond both Interconnection Points, in accordance with this Agreement and Prudent Utility Practice, which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipment not forming part of the Project;
“Interconnection Point”	shall mean both the points of origin and termination of the transmission system of Project as described under Schedule 2 of this Agreement;
“Invoice” or “Bill”	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
“Law”	shall mean in relation to this Agreement, all laws including electricity laws in force in <sup>21</sup> _____ and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by <sup>22</sup> _____ Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an <sup>23</sup> _____ Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of all authorities in both countries (as applicable);
“Lead Beneficiary”	shall have the meaning as ascribed hereto in Article 18.1.1 of this Agreement;
“Lender(s)”	shall mean the banks, other financial institutions, multilateral agencies, non-banking financial companies, mutual funds and agents or trustees of debenture/bond holders, including their successors and assignees, who have agreed to provide the TSP with debt financing, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:  Provided that, such assignment or transfer shall not relieve the TSP of its obligations to the Beneficiary under this Agreement in any manner and does not lead to an increase in the liability of the Beneficiary at any given point of time;
“Lender’s Representative”	shall mean the person notified by the lenders in writing as being the representative of the lenders and such person may from time to time be replaced by the lenders pursuant to the Financing Agreements by written notice to the TSP;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
“Majority Beneficiary”	shall have the meaning as ascribed hereto in Article 18.1.5 of this Agreement;

<sup>21</sup> Insert names of Countries involved with an “and”

<sup>22</sup> Insert names of Countries involved with an “or”

<sup>23</sup> Insert names of Countries involved with an “or”

<b>“Meters” or “Metering System”</b>	shall mean the meters installed for measurement of the Energy Output and other parameters at the Interconnection and Delivery Point and includes main meters and check meters;
<b>“Month”</b>	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
<b>“Monthly Bill” or “Monthly Invoice”</b>	shall mean a bill raised by the TSP for Transmission Service Charge including incentive and penalty for the energy delivered to the Beneficiary in respect of each completed month;
<b>“National System Operator”</b>	shall mean body or entity to ensure integrated operation of the power system and shall perform function of Scheduling and Dispatch of electricity over the Transmission System in accordance with grid standards specified by <sup>24</sup> _____ or any other entity or body performing the same set of functions;
<b>“Operating Period”</b>	shall mean the period commencing from the scheduled commercial operation date, until the expiry date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
<b>“Operation Year”</b>	shall mean the period beginning on the COD and ending on the following thirty first (31 <sup>st</sup> ) day of December; and each successive twelve (12) month period beginning on the first (1 <sup>st</sup> ) day of January thereafter till the expiry date;
<b>“Party” and “Parties”</b>	shall have the meaning ascribed thereto in the recital to this Agreement;
<b>“Payment Mechanism”</b>	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
<b>“Project”</b>	means the ownership, development, design, financing, procuring, engineering, insuring, construction, commissioning, repair and maintenance of the Project (as mentioned under the terms of Schedule 2);
<b>“Preliminary Default Notice”</b>	shall have the meaning ascribed thereto in Article 12 of this Agreement;
<b>“Prudent Utility Practices”</b>	shall mean exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator, engaged in the same type of undertaking, and adopting the practices, methods and standards that are generally followed by electric utilities in both countries including customary industry practice in regard thereto and any improvements or innovations that may be made to all such practices, methods and standards during the Term of Agreement for ensuring the safe, efficient, and economic operation and maintenance of power generation facilities of a size and type applicable to the Project;

<sup>24</sup> Insert names of competent authority(ies) in each country involved in the entire chain of transaction

“Regional Grid Code/ Guidelines”	shall mean a detailed regulation or legislature on technical specification which defines the parameters a facility connected to a public electric network has to meet to ensure safe, secure and economic proper functioning of the electric system or any other similar regulation or legislature.
“Scheduled Commercial Operation Date”	means the date by which the Project is required to be made ready for commercial operation as defined in Article 4.3 of this Agreement, unless extended in accordance with Article 4.4;
“Scheduled Outage”	shall mean a planned reduction in any period of availability of the Project;
“Security Package”	means the security provided by the beneficiary against payments;
“Site <sup>25</sup> ”	means the land and other places upon which the Project is established and such other land or places as may be required to set up the Project;
“Supplementary Bill”	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;
“Tariff” or “Transmission Service Charge”	shall mean the tariff as determined in accordance with Article 8 and Schedule 3 of this Agreement;
“Tariff Payment/Tariff Payments” or “Tariff Charge Payment/Tariff Charge Payments”	shall mean the payments to be made under Monthly Bills as referred to in Schedule 3 and the relevant Supplementary Bills;
“Technical Specifications”	shall mean the technical specifications of the Project as described under Schedule 6 of this Agreement;
“Termination Notice”	shall mean the notice given by either parties for termination of this Agreement in accordance with Article 3, 4, 5, 11 and 16 of this Agreement;
“Terms of Agreement”	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“Transmission System”	shall mean a line with associated sub-stations or a group of lines inter-connected together along with associated sub-stations and term includes equipment associated with transmission lines and sub-stations (as more fully described in Schedules 2 and 6);
“Transmission Capacity”	shall mean capacity as defined in the Schedule 2 of this Agreement;

<sup>25</sup> Site is defined with an assumption of sub-station being part of the proposed transmission system. If only transmission line is proposed, this definition and all relevant clauses shall be suitably modified in this TSA

**“Unscheduled Outage”** means an interruption or reduction of the Transmission Capacity of the Project that is not a Scheduled Outage and is for the purpose of performing work on specific components, which work could not be postponed till the next Scheduled Outage;

**“Week”** shall mean a calendar week commencing from 00:00 hours (Indian Standard Time) of Monday, and ending at 24:00 hours (Indian Standard Time) of the following Sunday;

**<Names>**<sup>26</sup>

## 1.2 Interpretation

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

- 1.2.1** “Agreement” shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2** An “Article”, a “Recital”, a “Schedule” and a “paragraph/clause” shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3** An “encumbrance” shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.4** “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5** A “person” shall be construed as a reference to any person, firm, company, corporation, society, other bodies corporate, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.6** “Rupee”, “Rupees”, “INR” shall denote Indian Rupees, whereas “Dollar”, “USD” and “\$” shall denote United States Dollar;
- 1.2.7** The “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

<sup>26</sup> Include name(s) of concerned authorities like regulators, power utilities, specific Laws related to electricity in countries along with definitions/description relevant to this Agreement. Insert alphabetically in this Article



- 1.2.8 Words importing the singular shall include the plural and vice versa;
- 1.2.9 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.10 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.11 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.12 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part. If however such inconsistency cannot be reconciled, the Schedules shall supersede the text of the Agreement;
- 1.2.13 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.14 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.15 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.16 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.17 A ‘day’ shall mean a calendar day.

## Article 2

# Term of Agreement



## 2.1 Effective Date and Term of the Agreement

- 2.1.1** This Agreement shall be effective from the date of signing of the Agreement by the Parties but shall be enforceable only if the conditions precedent, pursuant to Article 3, are duly fulfilled. The Agreement has a term until the expiry date, unless earlier terminated as provided in this Agreement. The Agreement can be extended by both the parties on mutually agreed terms and conditions at least one hundred and eighty (180) days prior to the expiry date.

## 2.2 Early Termination

- 2.2.1** This Agreement shall terminate before the expiry date if the TSP or beneficiary exercise a right to terminate pursuant to provisions of this Agreement or any other circumstances wherein both TSP and beneficiary mutually agree to terminate, in writing.

## 2.3 Survival

- 2.3.1** The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the expiry date or termination, and which shall continue and survive any expiry or termination of this Agreement.

## Article 3

# Conditions Precedent



### 3.1 Conditions Precedent

- 3.1.1** The following are the conditions precedent to be fulfilled by the TSP for enforcement of this agreement, unless such conditions precedent are postponed/ waived by the (Majority)<sup>27</sup> Beneficiary:
- i. Transmission License has been issued in favour of the TSP in<sup>28</sup> \_\_\_\_\_ by the Competent Authority(ies) in the(se) countries;
  - ii. Connection Agreements have been signed by the TSP with<sup>29</sup> \_\_\_\_\_;
  - iii. the TSP shall have achieved Financial Closure in relation to the Project;
- 3.1.2** The following are the conditions precedent to be fulfilled by the beneficiaries for enforcement of this agreement, unless such conditions precedent are postponed/ waived by the TSP:
- i. Power Purchase Agreement between the beneficiary and<sup>30</sup> \_\_\_\_\_ has been duly signed and is in force;
  - ii. the beneficiary shall have received all the initial Consents from the necessary Government Instrumentality for the Project as specified in Schedule 1;
  - iii. the Financial Closure of the Generation Project shall have been achieved;
  - iv. <sup>31</sup>
- 3.1.3** Parties shall use their reasonable endeavours to ensure the satisfaction of the condition precedent relating to the effectiveness of their obligations under this part of the Agreement.
- 3.1.4** Each party shall take all reasonable efforts to satisfy the conditions to which its obligations are subject to as soon as practicable and notify the other party, when such condition is satisfied.

<sup>27</sup> In case of multiple beneficiaries

<sup>28</sup> Insert names of countries where the proposed Transmission System is spanning across

<sup>29</sup> Insert names of concerned the Transmission Utilities in countries the proposed Transmission System is spanning across

<sup>30</sup> Insert names of seller or buyer, as the case may be

<sup>31</sup> Insert clause specifying any milestone for the project like major contracts awarded, construction started etc. This is to ensure TSA takes effect only when there is desired progress in corresponding generation project

## 3.2 Right to Terminate

- 3.2.1** If the Conditions Precedent listed in Article 3.1.1 are not duly satisfied within twelve (12) months<sup>32</sup> of the date of execution of this Agreement, or such extended time as may be mutually agreed between the parties in writing, the beneficiary may terminate this Agreement by giving a written notice of termination to the TSP and this Agreement shall stand terminated three (3) months from the date of such notice, unless the Conditions Precedent have been satisfied during such period of three (3) months.
- 3.2.2** If the Conditions Precedent listed in Article 3.1.2 are not duly satisfied six (6) months<sup>33</sup> of the date of execution of this Agreement, or such extended time as may be mutually agreed between the parties in writing, the TSP may terminate this Agreement by giving a written notice of termination to the Beneficiary and this Agreement shall stand terminated three (3) months from the date of such notice, unless the Conditions Precedent have been satisfied during such period of three (3) months.
- 3.2.3** If the Beneficiary elects to terminate this Agreement, it shall be entitled to invoke the Contract Performance Guarantee on the date of termination. In addition, the TSP shall pay to the beneficiary as termination payment, a sum equivalent to INR/ USD<sup>34</sup> \_\_\_\_\_.

## 3.3 Contract Performance Guarantee

- 3.3.1** The Performance Guarantee furnished under this Agreement shall be for guaranteeing compliance with the terms and conditions of this Agreement.
- 3.3.2** The failure on the part of the TSP to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the TSP.
- 3.3.3** Under TSP event of default leading to the termination of this Agreement, the Beneficiary shall have the right to invoke the Contract Performance Guarantee as per the relevant provisions of this Agreement.

<sup>32</sup> Duration may be modified by the Beneficiary

<sup>33</sup> Duration may be modified by the Beneficiary

<sup>34</sup> As per mutual agreement between TSP and Beneficiary. To be capped at amount equivalent to 3 month tariff payment

### **3.4 Renewal of Contract Performance Guarantee**

- 3.4.1 The TSP shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.
- 3.4.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance term of this Agreement.
- 3.4.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the beneficiary shall have the right to invoke the existing Contract Performance Guarantee.

### **3.5 Return of Contract Performance Guarantee**

- 3.5.1 The Beneficiary shall return/release the Contract Performance Guarantee in the event of termination of this Agreement by TSP/any Party pursuant to Article 12.4.5 and Article 10.8 under this Agreement.
- 3.5.2 Subject to the provisions of Article 3.5.1, the Beneficiary shall return/release the Contract Performance Guarantee to the Transmission Service Provider at the end of the term of this Agreement.
- 3.5.3 The return/release of the Contract Performance Guarantee shall be without prejudice to other rights of the TSP under this Agreement.

## Article 4

# Principal Obligations of the Parties



### 4.1 Transmission Service Provider's Obligations

- 4.1.1 The TSP agrees and undertakes to duly perform and complete the following activities at its own cost and risk, unless such completion is affected by any Force Majeure event or due to the Beneficiary's failure to comply with their obligations under Article 4.2 of this Agreement, or if any of the activities is specifically waived in writing by the Beneficiary:
- i. to finance, build, own, commission and operate the Project as set out in this Agreement and in accordance with the Technical Specifications, the Prudent Utility Practices and the Law not later than the Scheduled Commercial Operation date;
  - ii. for procuring and maintaining in full force and effect the Consents, required by it pursuant to this part and in accordance with Law;
  - iii. for owning the Project throughout the term of this Agreement free and clear of encumbrance except those permitted under this Agreement;
  - iv. for appointing contractors as per the provisions of this Agreement;
  - v. for obtaining the necessary approvals of the Project from<sup>35</sup> \_\_\_\_\_ to facilitate commencement of implementation of the Project pursuant to this Agreement and in accordance with the Law;
  - vi. for availing Transmission Licenses in<sup>36</sup> \_\_\_\_\_ and entering into Connection Agreements with Transmission Utilities in<sup>37</sup> \_\_\_\_\_;
  - vii. to comply with the terms and conditions of the Transmission License and Connection Agreements;
  - viii. for ensuring the timely finalization of the Financing Agreements by giving due consideration to the requirements of the prospective lenders.

<sup>35</sup> Insert name of the competent authority(ies) in the countries where the proposed Transmission System is spanning across

<sup>36</sup> Insert names of concerned Agencies in countries where the proposed Transmission System is spanning across

<sup>37</sup> Insert names of country(ies) where the proposed Transmission System is spanning across

## 4.1.2

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible for the following during Construction of the Project:

- i. for constructing and completing the Project to put into beneficial use by the Scheduled Commercial Operation date in accordance with the Consents, Technical Particulars, Prudent Utility Practices and other legal requirements applicable to the Project.
- ii. for establishing the complete Project as per the scope of Project given in Schedule 2 of this Agreement.
- iii. to obtain all permits, clearances, approvals as required under the Law for construction of the Project.
- iv. for final survey and also determining the final route of the Project<sup>38</sup>.
- v. for consents including, civil aviation, road/rail/river/canal/power line crossings and, way leaves and, environmental and forest clearances<sup>39</sup>.

Beneficiary shall, however, assist the TSP in obtaining the above consents/ clearances. Beneficiary shall also make available to the TSP details/ correspondence, pursuant to advance action taken by it.

- vi. for actual access and entries to the Site. It shall also be the responsibility of TSP at its own cost.
- vii. the Project is built and completed in a good workman like manner using sound engineering and construction practices.
- viii. The TSP acknowledges and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site or line route(s) for whatever reason.

## 4.1.3

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible for the following during operation and maintenance of the Project:

- i. for procuring and maintaining in full force and effect the consents, required by it pursuant to this part and in accordance with Law;
- ii. to maintain and repair the Project as set out in this Part and in accordance with the Technical Specifications stipulated in Schedule 6, Prudent Utility Practices and Law;
- iii. for owning the Project throughout the term of this Agreement free and clear of encumbrance except those permitted under this Agreement;
- iv. to make available the total transmission capacity of the Project to the beneficiary as per this part. Provided, however, it is agreed and understood between the parties hereto that other than the use of Transmission Capacity which is governed under this part, beneficiary to allow others to access the transmission capacity through Open Access<sup>40</sup> \_\_\_\_\_;
- v. to appoint an O&M contractor (in case the TSP so decides) at least one month before the applicable Scheduled Commercial Operation Date

<sup>38</sup> To be finalized by Beneficiary as necessary

<sup>39</sup> To be finalized by Beneficiary as necessary

<sup>40</sup> Insert 'as per prevailing Regulatory Framework' or 'as defined by Beneficiary'

## 4.2 Beneficiary's Obligations

- 4.2.1 The Beneficiary agrees and undertakes to duly perform and complete the following activities at the Beneficiary's own cost and risk, unless such completion is affected by any Force Majeure event or due to the Transmission Service Provider's failure to comply with their obligations under Article 4.1 of this Agreement or if any of the activities are specifically waived in writing by the TSP:
- i. for assisting and supporting the TSP in obtaining the necessary Consents and way leaves required for the Project as may be requested by the TSP from time to time without any financial liabilities;
  - ii. for arranging, on or prior to the Scheduled Commercial Operation Date, for the connection of the Project with the Interconnection Facilities and to ensure that the Project remains connected with the Interconnection Facilities. However, the TSP shall be required to coordinate and liaise with the concerned agency in this regard;
  - iii. for providing reasonable support and assistance to the TSP in connection with the finalization of the Financing Agreements by giving due consideration to the requirements of the prospective lenders;
  - iv. for complying with its obligations under this Part.

## 4.3 Time for Commencement and Operation

- 4.3.1 The TSP shall take all necessary steps to commence work on the Project from effective date and shall proceed with the Project in accordance with the time schedule specified in this Agreement.
- 4.3.2 The Commercial Operation of the Project shall occur by the Scheduled Commercial Operation Date in accordance with the provisions of this Agreement, which is<sup>41</sup> \_\_\_\_\_ or within such extended time to which the TSP shall be entitled under Article 4.4 hereto.
- 4.3.3 The Parties shall meet at regular intervals as they may decide to discuss the progress and implementation of the Project and that of Interconnection Facilities/ Generating Project and accordingly may mutually agree in writing on the adjustment of the Scheduled Commercial Operation Date.

<sup>41</sup> The date to be finalized by Beneficiary based on the delivery date as per the PPA between the Seller and Procurer. The date should be aligned in such a manner that Transmission System COD should be completed before Generator Synchronization to Grid



## 4.4 Extension of Time

4.4.1 In case the TSP is prevented from performing its obligations under Article 4.1 by the Scheduled Commercial Operation Date of the Project due to Beneficiary's default (including without limitation, Beneficiary's failure to arrange for the connection of the Project with Interconnection Facilities in accordance with Article 4.2); or subject to Article 4.4.2 and Article 10, the Project cannot be commissioned by its Scheduled Commercial Operation Date, the Scheduled Commercial Operation Date of the Project shall be extended on a day to day basis for the duration of such events.

4.4.2 The Scheduled Commercial Operations Date of the Project may be extended up to one hundred eighty (180)<sup>42</sup> days from its Scheduled Commercial Operation Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events. In case there is a further delay on account of Force Majeure, the Scheduled Commercial Operations Date of the Project may be extended further (beyond 180 days), with the mutual consent of the parties.

In case the parties could not reach an agreement and the Force Majeure Event continues to be present, either Party may terminate the Agreement in accordance with Article 10.8.1.

## 4.5 Information to Beneficiary(ies)

4.5.1 The TSP shall provide to Beneficiary(ies), on a monthly basis, progress reports with regard to the Project and its execution to enable the Beneficiary(ies) to monitor and coordinate the development of the Project with the Interconnection Facilities/Generating Project.

4.5.2 Post COD of the Project, TSP shall provide to the Beneficiary(ies), all reasonable information with regard to operation and maintenance of the Project to ensure optimum availability of the Project and quality of maintenance and repair work.

## 4.6 Changes in the Project

4.6.1 Subject to the provisions under this Agreement, any change, modification, addition or deletion to, in or from the Project (hereinafter called "Change") shall be mutually agreed between the parties, provided that such change falls within the general scope of the Project.

<sup>42</sup> Duration may be modified by the Beneficiary

- 4.6.2 In the event of a change which shall need to be performed in accordance with Prudent Utility Practices, the modalities of execution of such changes, the party to this Agreement responsible for performing such change and its impact on TSC and availability shall be mutually agreed by the parties.
- 4.6.3 Any change in route length arising in spite of there being no change in the interconnection points of the line, shall not constitute a change in the Project.
- 4.6.4 Notwithstanding Articles 4.6.1 above, no change necessitated because of any default of the TSP in the performance of its obligations under this part shall be deemed to be a change, and such change shall not result in any adjustment of the TSC or the availability of the Project favourable to the TSP.

## Article 5

# Commissioning and Connection of the Project



## 5.1 Connection with the Transmission System (or Grid)

- 5.1.1** The TSP shall give Beneficiary at thirty (30) days advance written notice of the date on which it intends to commission the Project, which date shall be not earlier than its Scheduled Commercial Operation Date unless the (Lead) Beneficiary otherwise agrees. In the event that the Beneficiary envisages that the Generating Project along with Interconnection Facilities may be commissioned before the given Scheduled Commercial Operation Date, then (Lead) Beneficiary shall intimate the TSP and revise the Scheduled Commercial Operation Date as per Article 4.3.3. The TSP shall make all reasonable endeavours to achieve such revised Scheduled Commercial Operation Date as far as practicable.
- 5.1.2** Subject to Article 5.1.1., the Project may be connected with the interconnection facilities when:
- i. it has been completed in accordance with this Agreement;
  - ii. it meets all conditions specified in Regional Grid Code/Guidelines, Connection Agreements, License(s), other Regulatory requirements of<sup>43</sup> \_\_\_\_\_; and
  - iii. is capable of being operated safely;
- 5.1.3** The TSP shall promptly notify the (Lead) Beneficiary as soon as the Project has been completed and ready to be connected with the Interconnection Facilities in accordance with this Agreement.
- 5.1.4** The TSP shall be entitled to connect the Project with the Interconnection Facilities and the Beneficiary shall provide the TSP with all reasonable assistance in this regard.

## 5.2 Commissioning

- 5.2.1** The TSP shall be responsible for ensuring commissioning of the Project in accordance with the Regional Grid Code/Guidelines, Connection Agreements, any requirements specified in the License(s) and Prudent Utility Practices at its own cost.

<sup>43</sup> Insert names of countries where the proposed Transmission System is spanning across

- 5.2.2 The TSP shall coordinate with the corresponding NSO or competent authority in<sup>44</sup> \_\_\_\_\_ on all activities pertaining to commissioning of the Project and all other matters connected therewith.
- 5.2.3 The TSP agrees to provide to the (Lead) Beneficiary the results of the tests undertaken by the TSP during Commissioning.

## 5.3 Commercial Operation

- 5.3.1 The Project shall be declared Commissioned and the Commercial Operation Date shall be achieved when the Commissioning Tests have been carried out in accordance and accepted by<sup>45</sup> \_\_\_\_\_.
- 5.3.2 In case, only part of the Project is ready for Commissioning, the Beneficiary in consultation with NSO or competent authority, in the interest of security of that part of the Project may at its sole discretion allow its connection with the Interconnection Facilities or alternatively keep the transmission system element of the Project duly charged.

## 5.4 Right to Transmission Capacity

- 5.4.1 Subject to provisions of this Agreement, the entire Transmission Capacity shall be for the exclusive benefit of the Beneficiary and the Beneficiary shall have the exclusive right to purchase the entire Transmission Capacity from the TSP. Provided that, the Beneficiary may allow others to access the Transmission Capacity through Open Access<sup>46</sup> \_\_\_\_\_.
- 5.4.2 The TSP may propose to expand the capacity of the Project without affecting the existing Transmission Capacity and the Beneficiary shall have the first right of refusal on such capacity subject to Tariff mutually agreed by both Parties. The TSP and Beneficiary shall enter into a separate agreement for such augmented capacity.

<sup>44</sup> Insert names of countries where the proposed Transmission System is spanning across

<sup>45</sup> Insert names of competent authorities e.g. NSOs. To be finalized by Beneficiary as per Regional Grid Code/Guidelines or Grid Code in countries where the proposed Transmission System is spanning across

<sup>46</sup> Insert 'as per prevailing Regulatory Framework' or 'as defined by Beneficiary'

## 5.5 Liquidated Damages for Delay in Achieving COD

**5.5.1** If the TSP is unable to achieve the COD by the Scheduled Commercial Operation Date, as the case may be, provided the Interconnection Facilities and Generating Project are ready, other than for the reasons specified in Article 4.4, the TSP shall pay to Beneficiary (as communicated by the Lead Beneficiary, in the proportion to their allocated project capacity)<sup>47</sup>, liquidated damages as per this Article 5.5.1 for the delay in achieving COD by the Scheduled Delivery Date.

The liquidated damages payable by the TSP to the Beneficiary 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 Contract Performance Guarantee for each day's delay until achieving COD, subject to a maximum of 20% (twenty per cent) of the Contract Performance Guarantee.

**5.5.2** The amount due from the TSP to the Beneficiary pursuant to Article 5.5.1 will be paid within 30 days of the immediately preceding month.

## 5.6 Transmission Losses

**5.6.1** The transmission losses of the transmission system shall not be greater than<sup>48</sup> \_\_\_\_\_ of the electricity transmitted at the normative availability for any month. The TSP shall compute the transmission losses using Meter Data<sup>49</sup> and submit to Beneficiary along with Monthly Bills. In the event transmission losses are higher than percentage as described in Article 5.6.1, TSP to identify reasons along with necessary justification for the same.

<sup>47</sup> In case of multiple beneficiaries

<sup>48</sup> To be filled as per system configuration and load flow studies

<sup>49</sup> To be suitably modified specifying the class of meter and point as per Regional Grid Code/Guidelines

# Article 6

# Operation and Maintenance



## 6.1 Operating Procedures

- 6.1.1 The Operating Procedures shall be consistent with:
- i) the terms and conditions of this Part;
  - ii) Regional Grid Code/Guidelines
  - iii) <sup>50</sup>;
  - iv) the Technical Specifications;
  - v) Prudent Utility Practices;
  - vi) the Laws;

## 6.2 Operation and Maintenance of the Project

- 6.2.1 The TSP shall be responsible at its own cost and expense for ensuring that the Project is fit to be operated and is maintained in accordance with the Regional Grid Code/Guidelines,<sup>51</sup> \_\_\_\_\_, Prudent Utility Practices, legal requirements including the terms of Consents so as not to have an adverse effect on the safety, expected life, operation and maintenance expenses and availability of the entire transmission capacity of the Project.
- 6.2.2 The TSP shall coordinate and abide instructions by NSO or competent authority in<sup>52</sup> \_\_\_\_\_ on all activities pertaining to operation and maintenance of the Project and all other matters connected therewith.
- 6.2.3 In case TSP decides to engage other contractor(s) for maintenance and repair of the Project, TSP shall appoint only recognized agencies/contractors with significant experience in relation to the maintenance and repair of equipment and facilities similar to those forming part of the Project.
- 6.2.4 The TSP shall ensure that for maintenance and repair of the Project, twenty four (24) hours a day, seven (7) days a week throughout the year, competent and qualified personnel are employed.

<sup>50</sup> Insert names of the Grid Codes of the countries involved

<sup>51</sup> Insert names of the Grid Codes of the countries involved

<sup>52</sup> Insert names of countries where the proposed Transmission System is spanning across

## 6.3 Scheduled Outages

- 6.3.1** The TSP shall prepare a plan for Scheduled Outages Transmission System taking into consideration the Planned Outages of Generator, Interconnection Facilities and any other requirements. Unless otherwise requested to do so by the (Lead) Beneficiary, the TSP shall not plan to take any Scheduled Outages during the months of high demand (of electricity) and will use all reasonable endeavours to plan to take Scheduled Outages during the months of low demand.
- 6.3.2** The TSP shall coordinate with NSO/Transmission Utilities/competent authorities and (Lead) Beneficiary as per Regional Grid Code/Guidelines for preparing plan for Scheduled Outages. The Scheduled Outage plan shall be finalized by<sup>53</sup> \_\_\_\_\_ as per Regional Grid Code/Guidelines.
- 6.3.3** In an emergency, Beneficiary may require the TSP to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time.

## 6.4 Unscheduled Outages (including Those Due to Force Majeure Events)

- 6.4.1** Whenever the TSP needs an Unscheduled Outage, it shall advise (lead)<sup>54</sup> Beneficiary and concerned NSOs/<sup>55</sup> \_\_\_\_\_ in accordance with the Regional Grid Code/Guidelines of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the Transmission Service Provider's opinion the work should begin consistent with Prudent Utility Practices.
- 6.4.2** After discussing the matter with the TSP, other beneficiaries<sup>56</sup> and concerned NSOs/<sup>57</sup> \_\_\_\_\_, (Lead) Beneficiary shall advise the TSP, when the requested Unscheduled Outage is scheduled to begin (which shall be not later than the latest time indicated by the TSP). The TSP shall use its reasonable endeavours consistent with Prudent Utilities Practices to carry out the maintenance in accordance with the time schedule set out in its request for the Unscheduled Outage.

<sup>53</sup> Insert names of the Competent Authority(ies) of the countries involved

<sup>54</sup> In case of multiple beneficiaries

<sup>55</sup> Insert names of the Competent Authority(ies) of the countries involved

<sup>56</sup> In case of multiple beneficiaries

<sup>57</sup> Insert names of the Competent Authority(ies) of the countries involved

## 6.5 Forced Outages

- 6.5.1 In case of a Forced Outage, the TSP shall inform the (Lead) beneficiary and concerned NSOs/<sup>58</sup> \_\_\_\_\_ telephonically followed by a message through fax within one hour of the outage, and cause(s) for the Forced Outage shall be given in writing to the beneficiary as soon as possible but not later than 3 days.

## 6.6 Supervision of Work and Operation and Maintenance

- 6.6.1 The TSP shall provide all necessary superintendence for execution as well as Operation and Maintenance of the Project and its supervisory personnel shall be constantly available on the site to provide full-time superintendence. The TSP shall provide and employ only skilled personnel who are experienced in their respective fields.

## 6.7 Maintenance of Operating Records

- 6.7.1 Each party shall maintain complete and accurate records and all data required for proper administration of this Agreement.

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<sup>58</sup> Insert names of the Competent Authority (ies) of the countries involved



# Article 7

# Availability of the System



## 7.1 Availability of the Elements of the Project

7.1.1 Availability shall be calculated by the TSP and certified by the<sup>59</sup> \_\_\_\_\_.

## 7.2 Calculation of Availability of the Project

7.2.1 The Availability of AC and HVDC<sup>60</sup> portion of transmission system shall be calculated as under:

For AC transmission system,

$$\% \text{ Total availability for AC system} = \frac{o \times AV_o + p \times AV_p + q \times AV_q + r \times AV_r}{o + p + q + r} \times 100$$

Where

o = Total number of AC lines.

AV<sub>o</sub> = Availability of o number of AC lines.

p = Total number of bus reactors/switchable line reactors

AV<sub>p</sub> = Availability of p number of bus reactors/switchable line reactors

q = Total number of ICTs.

AV<sub>q</sub> = Availability of q number of ICTs.

r = Total number of SVCs.

AV<sub>r</sub> = Availability of r number of SVCs.

For HVDC transmission system,

$$\% \text{ Total Availability for HVDC system} = \frac{s \times AV_s + t \times AV_t}{s + t} \times 100$$

Where

s = Total number of HVDC poles

AV<sub>s</sub> = Availability of s number of HVDC poles

t = Total number of HVDC back-to-back station blocks

AV<sub>t</sub> = Availability of t number of HVDC back-to-back station blocks

<sup>59</sup> Insert names of the Competent Authority

<sup>60</sup> Insert AC or HVDC formula depending on the transmission system configuration

**7.2.2** The availability (AVo, AVp, AVq, AVr/AVs, AVt) shall be calculated as under:

$$\text{Availability for each Element} = \sum_{i=1}^{o/p/q/r} \frac{T_i - T_{nai}}{T_i}$$

Where

$T_i$  = The total hours of  $i^{\text{th}}$  element of AC line, ICT, SVC, Bus Reactor, HVDC pole, HVDC back-to-back block during the period under consideration (excluding time period for outages not attributable to transmission licensee for reasons given in Article 7.2.4)

$T_{nai}$  = The non-availability hours (excluding the time period for outages, not attributable to transmission licensee taken as deemed availability as per Para 7.2.3 of the procedure) for  $i^{\text{th}}$  element of AC line, ICT, SVC, Bus Reactor, HVDC pole, HVDC back-to-back block

**7.2.3** The transmission elements under outage due to following reasons not attributable to the TSP shall be deemed to be available:

- i. Shut down of transmission elements availed by other agency/agencies for maintenance or construction of their transmission system.
- ii. Manual tripping of line due to over voltage as per the directions of<sup>61</sup> \_\_\_\_\_.

**7.2.4** Outage time of transmission elements for the following contingencies shall be excluded from the total time of the element under period of consideration:

- i. Outage of elements due to Force Majeure Events as per Article 10.
- ii. Outage caused by grid incident/disturbance not attributable to the TSP, e.g. faults in substation or bays owned by other agency causing outage of the Transmission Service Provider's elements, tripping of lines, ICTs, HVDC back-to-back stations etc., due to grid disturbance. However, if the element is not restored on receipt of direction from<sup>62</sup> \_\_\_\_\_ while normalizing the system following grid incident/disturbance within reasonable time, the element will be considered not available for whole period of outage and outage time shall be attributable to the TSP.

**7.2.5** If the outage of any element results in lower off-take of power from the generation project, then the outage period for that element shall be deemed to be twice the actual outage period for the day(s) on which such loss of generation has taken place.

**7.2.6** Notwithstanding the above, the availability shall be computed in accordance with<sup>63</sup> \_\_\_\_\_ guidelines as prevalent from time to time.

## 7.3 Normative Availability

**7.3.1** The normative availability of the Project shall be as per<sup>64</sup> \_\_\_\_\_.

<sup>61</sup> Insert names of the Competent Entity(ies) of the countries involved

<sup>62</sup> Insert names of the Competent Authority(ies) of the countries involved

<sup>63</sup> Insert names of the Competent Authority(ies) of the countries involved

<sup>64</sup> To be finalized by Beneficiary

## Article 8

# Billing and Payment of Transmission Service Charges



### 8.1 General

- 8.1.1 For the transfer of power between both Interconnection Points, from the Scheduled Commercial Operation Date, the Beneficiary shall pay the TSP, Transmission Service Charges subject to availability as provided in Schedule 3 to this Agreement.
- 8.1.2 The actual payment shall be made against the Monthly Bills or Supplementary Bills issued by the TSP. All Tariff Payments by the Beneficiary to the TSP shall be in<sup>65</sup> \_\_\_\_\_.

### 8.2 Delivery of Monthly Bills

- 8.2.1 The TSP shall issue to the Beneficiary on or before the fifth (5<sup>th</sup>) day of each Month (or, if such day is not a Business Day, the immediately succeeding Business Day), a Monthly Bill for the Transmission Service Charge in the immediately preceding Month.
- 8.2.2 On or before the fifth (5<sup>th</sup>) day of each Month, the Transmission Service Provider shall furnish the following data along with the Monthly Bill to the Beneficiary:
- the Transmission Service Provider's computation of availability;
  - the availability Certificate issued by<sup>66</sup> \_\_\_\_\_;
  - the Transmission Service Provider's computation of Monthly Tariff Payment for the relevant Month;
  - the Transmission Service Provider's computation of Tariff Delayed Payment Penalty and Tariff Adjustment Payment in accordance with this Article and Schedule 3; and
  - supporting data, documents and calculations and due date in accordance with this Agreement.

<sup>65</sup> Indian Rupees or United States Dollar as amicably decided by the parties

<sup>66</sup> Insert names of the Competent Authority

- 8.2.3** The TSP shall raise invoice of energy bill by 5<sup>th</sup> of every month through an e-mail and/or fax and confirmation copy will be sent through courier to the Beneficiary. In the event of date of receipt of the invoice being a holiday where the Beneficiary has its registered office, the next working day would be the day of receipt of the invoice.

## **8.3 Payment of Monthly Bills**

- 8.3.1** The due date of the payment shall be 30<sup>th</sup> day from the receipt of the Monthly Bill, either by facsimile, e-mail or otherwise (“Due Date”). The payment of Transmission Service Charge will be made by the Beneficiary through electronic transfer to Designated Account of the TSP in full on or before due date. The Beneficiary will bear any applicable bank charges for transfer of the payment to the Designated Account of the TSP. Payment through draw down of the Letter of Credit shall be deemed to be a payment made in the normal course of business.

- 8.3.2** All payments required to be made under this Agreement shall be made without any deduction or set off except for:

- a. adjustments in Transmission Service Charge required by the terms of this Agreement but not reflected in the Monthly Bill;
- b. any debit note raised by the Beneficiary in relation to payment under this Agreement;
- c. deductions required under the Law; and
- d. any manifest error.

Any disputed amount on the Due Date shall be dealt in accordance with Article 8.5 herein.

- 8.3.3** The TSP shall open a bank account (the “Designated Account”) for all Payments to be made by the Beneficiary to the TSP, and notify the Beneficiary of the details of such account at least thirty (30) days before the dispatch of the first Monthly Bill to the Beneficiary. The Beneficiary shall make all payments under this Agreement to the Designated Account and notify the TSP of such payment on the same day. The Beneficiary shall also open a bank account (the “Beneficiary Designated Account”) for any and all payments to be made by the TSP to the Beneficiary, and notify the TSP of the details of such account at least thirty (30) days before the Scheduled Commercial Operation Date.

- 8.3.4** In the event of delay in payment of a Monthly Bill by the Beneficiary beyond the due date (“Delayed Payment”), a surcharge shall be payable at one point two five percent (1.25%) on the outstanding amount of payment, calculated on per month basis of the delay, and such surcharge shall be added to the amount of the Monthly Bill or Supplementary Bill as the case may be.

**8.3.5** In the event of early payment of a Monthly Bill by the Beneficiary, a rebate shall be allowed. Beneficiary shall be entitled to deduct two (2%) percent of the amount specified in the Monthly Bill if payment is made within five (5) days of receipt of Bill. Beneficiary shall be entitled to deduct one (1%) percent of the amount specified in the Monthly Bill if payment is made after five (5) days but within thirty (30) days including the date of receipt of bill.

## **8.4 Payment Security Mechanism**

**8.4.1** The Beneficiary shall provide to the TSP in respect of payment of Monthly Bills in the form of an irrevocable Letter of Credit with validity of 12 months which would be renewed every year, which may be drawn upon by the TSP in the event of delay in the remittance of the Monthly Bill to the Designated Account.

**8.4.2** Not later than one (1) Month prior to the Scheduled Commercial Operation Date, the Beneficiary shall through a bank in his country, open a monthly, irrevocable Foreign Letter of Credit in favour of the TSP, to be made operative from a date prior to the due date of the first Monthly bill under this agreement. The Letter of Credit shall have a term of twelve (12) months. Letter of Credit amount shall be equivalent to one (1) month of Transmission Service Charges (computed at normative availability).

**8.4.3** The Beneficiary shall cause the scheduled bank issuing the irrevocable Letter of Credit to intimate in writing the TSP regarding establishing of such irrevocable Letter of Credit.

**8.4.4** If the Beneficiary fails to pay a Monthly Bill or part thereof within and including the due date, then, the TSP may draw upon the Letter of Credit for the amount outstanding under such Monthly Bill by presenting to the scheduled bank, issuing the Letter of Credit, the following documents:

- i. a copy of the Monthly Bill which has remained unpaid by the Beneficiary;
- ii. a certificate from the TSP to the effect that the bill at item (i), or specified part thereof, above has remained unpaid beyond the due date; and
- iii. calculations of applicable surcharge in accordance with this Agreement.

**8.4.5** The Beneficiary shall ensure that the Letter of Credit shall be renewed not later than 30 days prior to its expiry. The Beneficiary shall replenish the Letter of Credit within seven (7) days of it being drawn down.

**8.4.6** All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Beneficiary.

**8.4.7** The TSP shall not draw upon the Letter of Credit prior to the due date of the relevant Monthly Bill and not more than one drawal shall be made in a Month.

**8.4.8** <sup>67</sup>

<sup>67</sup> Insert clauses related to sovereign guarantee based on mutual agreement between the Parties

## 8.5 Disputed Bill

**8.5.1** If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within thirty (30) days of receiving it, such bill shall be taken as conclusive.

Provided that in case any evidence from an outside source relating to any discrepancy in such bill comes to notice at a later date, any Party may dispute such bill within a period of thirty (30) days of disclosure of such evidence.

**8.5.2** If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, the Party shall, within thirty (30) days of receiving such bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i. the details of the disputed amount;
- ii. its estimate of what the correct amount should be; and
- iii. all written material in support of its claim.

**8.5.3** If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, the invoicing Party shall revise such bill within fifteen (15) days of receiving such notice and the claim shall be adjusted with the subsequent Monthly Bill in accordance with Article 8.3.

**8.5.4** If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice providing:

- i. reasons for its disagreement;
- ii. its estimate of what the correct amount should be; and
- iii. all written material in support of its counter-claim.

Upon receipt of such notice of disagreement to the Bill Dispute Notice, authorized representatives of each Party shall meet and make best endeavours to amicably resolve the dispute within sixty (60) days of receiving such notice of disagreement to the Bill Dispute Notice. Payment for such settlement shall be in pursuant to Article 8.5.3.

**8.5.5** If the Parties do not amicably resolve the dispute within sixty (60) days of receipt of notice of disagreement to the Bill Dispute Notice pursuant to Article 8.5.4, the matter shall be referred to arbitration in accordance with Article 16.

**8.5.6** Notwithstanding the Bill Dispute Notice issued pursuant to Article 8.5.2, all amounts under a Monthly Bill or a Supplementary Bill shall be paid by the Beneficiary/TSP, and the existence of a dispute relating to a bill shall not relieve any of the Parties of its obligations under this Agreement, provided that such payments, shall be without prejudice to the other rights of the parties under this Agreement.

- 8.5.7** If a dispute regarding a Monthly Bill or a Supplementary Bill is settled by arbitration in favour of the Party that issues the Bill dispute notice, the other party shall refund the amount incorrectly charged from the disputing party or pay as required within ten (10) days of the dispute settlement along with interest. Such interest shall accrue per month basis for the period between the date of filing of the arbitration proceeding till settlement and receipt of refund in Designated Account of the disputing party, at the same rate of interest as applicable to Delayed Payment under Article 8.3.4.

## **8.6 Quarterly and Annual Reconciliation**

- 8.6.1** Both parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to reconciliation at the end of December and March every year to take into account Tariff Adjustments or any other reasonable circumstance provided under this Agreement. The Parties, therefore, agree that as soon as all such data in respect of December and March of a Contract Year as the case may be has been finally verified and adjusted, the Parties shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of reconciliation statement, the TSP or the Beneficiary, as the case may be, shall raise a Supplementary Bill, if any, for the Tariff Adjustments and payment of such Supplementary Bill shall be made/adjusted within thirty (30) days from the date of such bill.

## Article 9

# Safety Rules and Procedures



### 9.1 Site Regulations and Safety

- 9.1.1 The TSP shall establish site regulations as per the Prudent Utility Practices setting out the rules to be observed in the execution of the Agreement at the site and shall comply therewith.
- 9.1.2 Such site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Project, gate control, sanitation, medical care, and fire prevention.

### 9.2 Emergency Work

- 9.2.1 If, by reason of an emergency arising in connection with and during the execution of the Agreement, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Project, the TSP shall immediately carry out such work.

### 9.3 Site Clearance

- 9.3.1 The TSP shall keep the site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the site, and remove any equipment no longer required for execution of the Agreement.

### 9.4 Watching and Lighting

- 9.4.1 The TSP shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Project, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.



# Article 10

# Force Majeure



## 10.1 Definitions

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

### 10.1.1 Affected Party

An Affected Party means the Beneficiary or the TSP, whose performance has been affected by an event of Force Majeure.

### 10.1.2 Force Majeure

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

- a. act of lockout, war, invasion, armed conflict, blockade, revolution, riot, insurrection or civil commotion, terrorism, sabotage, fire, explosion or criminal damage;
- b. act of God, including lightning, cyclone, typhoon, flood, famine, fire, hurricane, droughts, tidal wave, earthquake, landslide, epidemic or similar cataclysmic event and such other extreme weather or environmental situations;
- c. the expropriation or compulsory acquisition by any Government or Governmental agency of the business of the Affected Party;
- d. non-availability of Transmission Capacity on account of grid failures in<sup>68</sup> \_\_\_\_\_;
- e. acts of government, or compliance with such acts, which directly affects such Party's ability to perform its obligations hereunder.
- f. directions of any regulatory authority which affects such Party's ability to perform in whole or in part any of its obligation under this TSA.

<sup>68</sup> Insert names of countries which the proposed Transmission System is spanning across

## 10.1.2.2 Force Majeure Exclusions

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

- a. unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project;
- b. delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 10.2;
- c. non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. strikes or labour disturbance at the facilities of the Affected Party;
- e. insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. non-performance caused by, or connected with, the Affected Party's:
  - i. negligent or intentional acts, errors or omissions;
  - ii. failure to comply with any<sup>69</sup> \_\_\_\_\_ Law; or
  - iii. breach of, or default under this Agreement.

## 10.1.2.3 Notification of Force Majeure Event

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

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

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

<sup>69</sup> Insert names of countries involved in the entire chain of transaction

#### **10.1.2.4 Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 10.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

#### **10.1.2.5 Failure or Delay Caused by Force Majeure**

Neither Party shall be liable for any failure or delay in complying with its obligations pursuant to this Agreement to the extent that such failure or delay has been caused or contributed to by one or more events of Force Majeure or their effects or by any combination thereof. The expiry date of the Agreement as well as the period allowed for the performance by the Affected Party of its obligations hereunder shall be extended by one day for each day.

Provided that such extension may be for such additional duration as may be required to compensate for any delay or failure resulting from the time spent on demobilization and remobilization of personnel and restoration of the Unit or the Project, as the case may be, after cessation of an event or events of Force Majeure, to the pre-delay condition, assuming diligent compliance by such Party.

#### **10.1.2.6 Extended Force Majeure**

The continuance of an event of Force Majeure singularly or any combination thereof for a continuous period of 12 consecutive months shall constitute Extended Force Majeure. In the event of an Extended Force Majeure, either Party may terminate the Agreement by delivering a seven (7) days written notice of termination to the other Party without any further liability to either Party, from the date of such termination. The Agreement shall stand terminated at the end of seven (7) days period after receipt of the notice by the other Party provided that the Force Majeure Event is still operative at such time.

#### **10.1.2.7 Prior Obligations Not Affected**

Upon occurrence of a Force Majeure Event, neither Party shall be relieved of its liabilities that may have accrued till the date of commencement of the Force Majeure Event as per the terms and conditions of this Agreement.

# Article 11

# Change in Law



## 11.1 General

- 11.1.1** This Article 11 shall apply only in the event that if directly due to one or more Changes in Law defined in Article 11.3:
- i. the Transmission Service Provider's costs or revenues directly attributable to the Project are increased or decreased
  - ii. the TSP is required to undertake capital expenditure directly attributable to the Project

## 11.2 Notification of Change in Law

- 11.2.1** In case the TSP is affected by a Change in Law in accordance with Article 11.1 and wishes to claim a Change in Law under this Article 11, it shall give notice to (Lead) Beneficiary of such Change in Law as soon as reasonably practicable after becoming aware of the same.
- 11.2.2** Notwithstanding Article 11.2.1, the TSP shall be obliged to serve a notice to (Lead) Beneficiary under this Article 11.2 if it is beneficially affected by a Change in Law.

## 11.3 Change in Law

- 11.3.1** Change in Law means the occurrence of any of the following after the date of this Agreement
- a. the enactment or issuance of any new \_\_\_\_\_;
  - b. the repeal, modification or re-enactment in whole or in part of any existing \_\_\_\_\_ Law;
  - c. the commencement of any \_\_\_\_\_ Law which has not yet entered into effect;
  - d. a change in the interpretation or application of any \_\_\_\_\_ Law by any \_\_\_\_\_ Governmental Instrumentality having the legal power to interpret or apply such Law;

- e. the imposition (other than for cause) of a requirement for a Consent which did not exist as at the date of this Agreement;
- f. a change (other than for cause) in the terms and conditions attaching to a Consent after it has been given or the attachment of any new terms or conditions to such Consent, or; and
- g. the revocation or cancellation (other than for cause) of any Consent.

**11.3.2** Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change in any Tax on any income stream or on account of Regulatory measures by \_\_\_\_\_.

## **11.4 Amendment to this Agreement**

**11.4.1** Within sixty (60) days of a notice being served pursuant to Article 11.2, the Parties shall meet and endeavour to agree on what amendments to be made to this Agreement to ensure that the TSP is put into the same financial position as it would have been in but for the Change in Law.

**11.4.2** Upon reaching agreement on the amendments required including, but not limited to, Transmission Service Charge to this Agreement pursuant to Article 11.4.1 the Parties shall execute such amending agreement to give effect to that agreement.

**11.4.3** The Parties may refer to Article 15, in case both Parties could not reach to an agreement within ninety (90) days from date notice has been served pursuant to Article 11.2.

## Article 12

# Events of Default and Termination



### 12.1 Transmission Service Provider Event of Default

- 12.1.1** The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Beneficiary of its obligations under this Agreement or a Beneficiary Event of Default, shall constitute a Transmission Service Provider Event of Default:
- i. The failure of the TSP to effect the Financial Close within twelve (12)<sup>70</sup> months from effective date provided all other conditions precedent (excluding achievement of Financial Close) have been satisfied in accordance with Article 3;
  - ii. After having taken up the construction of the Project, the abandonment by the TSP or its contractors of the construction of the Project for a continuous period of two (2) months and such default is not rectified within thirty (30) days from the receipt of notice from the (Lead) Beneficiary in this regard provided that the TSP and its contractors shall not be deemed to have abandoned construction of the Project if and for so long as it is using its diligent efforts to restart such construction;
  - iii. The failure of the Project to be commissioned by the date falling six (6) months after its Scheduled Commercial Operation Date;
  - iv. The failure of TSP to appoint an O&M contractor, if the TSP so decides which decision has been notified to Beneficiaries in writing, within one month of the applicable Commercial Operation Date or such date as mutually agreed;
  - v. The material failure of TSP to maintain the Project in accordance with Prudent Utility Practices;
  - vi. Any breach by the TSP of any of its material obligation under this Agreement;
  - vii. If, without the prior written consent of Beneficiaries, any employee, agent or representative of the TSP or its contractors tampers with the Interconnection Facilities, except to take reasonable precautions to prevent an imminent material danger to persons or an imminent danger of material damage to property;

<sup>70</sup> To be aligned with time specified in 3.2.1

- viii. If
  - a. the TSP assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or
  - b. the TSP transfers or novates any of its rights and/or obligations under this Agreement, in a manner contrary to the provisions of this Agreement; except where such transfer;
    - i. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform its obligations under this Agreement; or
    - ii. is to a transferee who assumes such obligations under this agreement and the agreement remains effective with respect to the transferee; or
- ix. if
  - a. the TSP becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
  - b. any winding up or bankruptcy or insolvency order is passed against the TSP, or
  - c. the TSP goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the TSP will not be a Transmission Service Provider Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and credit worthiness similar to the TSP and expressly assumes all obligations under this Agreement and is in a position to perform them; or
- x. the TSP repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the (Lead) Beneficiary in this regard; or
- xi. Revocation of Transmission License or the Connection Agreement of the TSP
- xii. the TSP is in breach of any of its obligation pursuant to this Agreement, and such material breach are not rectified by the TSP within thirty (30) days of receipt of first notice in this regard given by the Beneficiary to the TSP, provided that such breach is not on account of Beneficiary's failure to comply with its material obligations pursuant to this Agreement; or
- xiii. occurrence of any other event which is specified in this Agreement to be a material breach/default of the TSP;
- xiv. if the availability of the Project is less than<sup>71</sup> \_\_\_\_\_;
- xv. failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or

<sup>71</sup> Value of availability to be filled taking into consideration normative availability value.

## 12.2 Beneficiary Event of Default

### 12.2.1

The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the TSP of its obligations under this Agreement or a Transmission Service Provider Event of Default, shall constitute the Event of Default on the part of Beneficiary:

- i. the Beneficiary fails to pay (with respect to a Monthly Bill or a Supplementary Bill) the most recent Monthly/Supplementary Bill for a period of sixty (60) days after the Due Date and the TSP is unable to recover the amount outstanding to the Beneficiary through Letter of Credit; or
- ii. the Beneficiary repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the TSP in this regard; or
- iii. the failure of the Project to be Commissioned by the date falling six months after its Scheduled Commercial Operation Date due to the fault of the Beneficiary;
- iv. the failure of Beneficiary to operate the interconnection facilities in accordance with Prudent Utility Practices or in accordance with Connection Agreement, if any; and
- v. if
  - a. the Beneficiary transfers or novates any of its rights and/or obligations under this Agreement, in a manner contrary to the provisions of this Agreement; except where such transfer;
    - i. is in pursuance of a Law and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform its obligations under this Agreement; or
    - ii. is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee; or
- vi. if
  - a. the Beneficiary becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days; or
  - b. any winding up or bankruptcy or insolvency order is passed against the Beneficiary; or
  - c. the Beneficiary goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Beneficiary Event of Default, where such dissolution or liquidation of Beneficiary is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has credit worthiness similar to Beneficiary and expressly assumes all obligations of Beneficiary under this Agreement and is in a position to them; or

- viii. occurrence of any other event which is specified in this Agreement to be a material breach or default of the Beneficiary.



## 12.3 Procedure for Cases of Transmission Service Provider Event of Default

- 12.3.1** Upon the occurrence and continuation of any Transmission Service Provider Event of Default under Article 12.1, the Majority<sup>72</sup> Beneficiary, through the (Lead) beneficiary, shall have the right to deliver to the TSP a notice of its intention to terminate this Agreement (Beneficiary Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 12.3.2** Following the issue of Beneficiary Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.3.3** During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 12.3.4** After a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Transmission Service Provider Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Beneficiary may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the TSP and<sup>73</sup> \_\_\_\_\_.
- 12.3.5** Where this Agreement is terminated by the Beneficiary pursuant to Article 12.3.4 for a Transmission Service Provider Event of Default, the TSP shall pay a sum of INR/USD<sup>74</sup> \_\_\_\_\_ as termination payment within thirty (30) days of the termination of the Agreement. The TSP would also reimburse penalties paid by the Beneficiary on account of any other associated charges at actual. Any amount remaining unpaid on the part of the TSP shall be considered as a material breach and the Beneficiary shall have the right to enforce such claim as per the provisions of the Law.
- 12.3.6** It is agreed by the Parties that the sum so named as termination payment is for the purpose of securing performance of the contract and not for the purpose of giving Parties an option of paying money in default and rescind this Agreement.

<sup>72</sup> In case of multiple beneficiaries

<sup>73</sup> Insert the names of entity(ies) to which the Final Termination Notice shall be sent to.

<sup>74</sup> To be mutually decided by TSP and Beneficiary

## 12.4 Procedure for Cases of Beneficiary Event of Default

- 12.4.1 Upon the occurrence of any Beneficiary Event of Default specified in Article 12.2 the TSP shall have the right to deliver to the Beneficiary, a Transmission Service Provider Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 12.4.2 Following the issue of a Transmission Service Provider Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 12.4.4 After a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Beneficiary Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the TSP may terminate this Agreement by giving written notice (“Transmission Service Provider Final Termination Notice”) to the (Lead) Beneficiary with a copy to Lender’s representative and to<sup>75</sup> \_\_\_\_\_ whereupon subject to the terms and conditions of this Agreement and the Financing Agreement, this Agreement shall terminate on the date of such Termination Notice;

## 12.5 Termination Due to Force Majeure

- 12.5.1 Termination due to Force Majeure shall be as per Articles 10.8 and 10.9 of this Agreement.

<sup>75</sup> Insert the names of entity(ies) to which the Final Termination Notice shall be sent to.

## Article 13

# Liability and Indemnification



### 13.1 Indemnity

- 13.1.1 The TSP shall indemnify, defend and hold the Beneficiary harmless against:
- a. any and all third party claims, actions, suits or proceedings against the Beneficiary for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the TSP of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Beneficiary, its contractors, servants or agents; and
  - b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Beneficiary from third party claims arising by reason of:
    - i. breach by the TSP of any of its obligations under this Agreement, except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Beneficiary, its contractors, servants or agents, or
    - ii. any of the representations or warranties of the TSP under this Agreement being found to be inaccurate or untrue.

Provided that this Article 13 shall not apply to such breaches by the TSP, for which specific remedies have been provided for under this Agreement.

- 13.1.2 Beneficiary shall indemnify, defend and hold the TSP harmless against:
- a. any and all third party claims, actions, suits or proceedings against the TSP, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Beneficiary of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the TSP, its contractors, servants or agents; and

- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest (“Indemnifiable Losses”) actually suffered or incurred by the TSP from third party claims arising by reason of
  - i. a breach by Beneficiary of any of its obligations under this agreement, except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the TSP, its contractors, servants or agents, or
  - ii. any of the representations or warranties of the Beneficiary under this Agreement being found to be inaccurate or untrue.

Provided that this Article 13 shall not apply to such breaches by the Beneficiary, for which specific remedies have been provided for under this Agreement.

## 13.2 Monetary Limitation of Liability

**13.2.1** A Party (“Indemnifying Party”) shall be liable to indemnify the other Party (“Indemnified Party”) under this Article for any indemnity claims and Indemnifiable Losses made in any financial year only up to an amount corresponding to 0.5% of average annual Tariff Payment.

**13.2.2** Procedure for claiming Indemnity

**13.2.3** Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 13.1.1a or 13.1.2a, the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 13.1.1a or 13.1.2a in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
  - i. the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 13.2.3 (b) below; and
  - ii. the claim amount is not required to be paid/deposited to such third party pending the resolution of the Dispute,
 

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.
- b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 13.1.1a or 13.1.2a and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

## **13.3 Indemnifiable Losses**

- 13.3.1** Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 13.1.1b or 13.1.2b, the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 13.3, such event shall constitute a payment default under Article 12.

## **13.4 Limitation on Liability**

- 13.4.1** Except as expressly provided in this Agreement, neither the TSP nor Beneficiary nor their respective officers, directors, agents, employees or Affiliates, shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the TSP or the Beneficiary or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 13.4.2** Beneficiary shall have no recourse against any officer, director or shareholder of the TSP or any of its Affiliates or officers, directors or shareholders for such claims excluded under this Article. The TSP shall have no recourse against any officer, director or shareholder of Beneficiary, or any Affiliate of Beneficiary or any of its officers, directors or shareholders for such claims excluded under this Article.

## **13.5 Duty to Mitigate**

- 13.5.1** The Parties shall endeavour to take all reasonable steps so as to mitigate any loss or, damage which has occurred under this Article.

# Article 14

# Assignments and Charges



## 14.1 Assignments

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

Provided that, such consent shall not be withheld if the TSP/Beneficiary seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- a. such transferee is a successor entity of the TSP/Beneficiary; and
- b. this Agreement shall continue to remain valid and binding on such successor.

## 14.2 Permitted Charges

**14.2.1** Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

**14.2.2** However, the TSP may assign or create any encumbrance over all or part of the Security Package or other assets of the Project in favour of the Lenders or the Lender's representative as security for:

- a. amounts payable under the Financing Agreements; and
- b. any other amounts agreed by the Parties

Provided that the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements.

**14.2.3** The TSP would need to operate and maintain the Project under the provisions of the Transmission License granted by the \_\_\_\_\_ and the provisions of this Agreement and cannot assign the Transmission License or transfer the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the \_\_\_\_\_.

## Article 15

# Governing Law and Dispute Resolution



### 15.1 Governing Law

15.1.1 This Agreement shall be governed by the Laws of the<sup>76</sup> \_\_\_\_\_.

### 15.2 Amicable Settlement and Dispute Resolution

15.2.1 Either Party is entitled to raise any matter, claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement including its existence or validity (collectively “Dispute”) by giving a written notice to the other Party, which shall contain:

- i. a description of the Dispute;
- ii. the grounds for such Dispute; and
- iii. all written material in support of its claim.

15.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 15.2.1, furnish:

- i. its counter-claim and defences if any regarding the Dispute; and
- ii. all written material in support of its defences and counter-claim.

15.2.3 Within sixty (60) days of issue of notice by other Party pursuant to Article 15.2.1, both the Parties shall meet to settle such dispute amicably, failing which the dispute shall be referred to Arbitration in accordance with Article 15.3.

### 15.3 Arbitration

15.3.1 Any dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in<sup>77</sup> Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference to this Article.

<sup>76</sup> Insert the name of the Country

<sup>77</sup> Singapore International Arbitration Centre or SAARC Arbitration Council, to be mutually decided by Procurer and Seller. In case Procurer and Seller decide to opt for SAARC Arbitration Council then 15.3 and 15.4 to be suitably modified.

The Tribunal shall consist of Three Arbitrators, each party shall nominate one Arbitrator and the two Arbitrators so nominated shall nominate the third Arbitrator, who shall act as the Presiding Arbitrator. If a Party fails to make a nomination within 14 (fourteen) days after receipt of other party's nomination of Arbitrator, the Arbitrator shall be appointed as per SIAC Rules.

Similarly, if the two Arbitrators nominated by the parties fail to appoint the third Arbitrator within 14 (fourteen) days of their nomination, the third arbitrator shall be appointed as per SIAC Rules.

Seat of Arbitration shall be Singapore and the language of Arbitration shall be English.

- 15.3.2** The award of the Arbitrators shall be final and binding on both the Parties and shall be effective from the date such award is made or the date, if any, specified in the award as the effective date for such award. The Parties hereby agree that the right(s) to appeal against such award shall be only as provided in SIAC Rules/ Laws of Singapore.
- 15.3.3** The cost and fee payable on such arbitrations shall be as per directions given by the arbitrators or, can be shared equally if there are no directions from the arbitrators.

## **15.4 Parties to Perform Obligations**

- 15.4.1** Notwithstanding the existence of any dispute and difference referred for arbitration and save as the arbitration tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



## Article 16

# Representations and Warranties



### 16.1.1

The Beneficiary hereby represents and warrants to and agrees with TSP as follows and acknowledges and confirms that TSP is relying on such representations and warranties in connection with the transactions described in this Agreement:

- i. It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
- ii. This Agreement is enforceable against it in accordance with its terms;
- iii. The consummation of the transactions contemplated by this Agreement on the part of Beneficiary will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which Beneficiary is a party or to which Beneficiary is bound, which violation, default or power has not been waived;
- iv. Beneficiary is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against Beneficiary;
- v. There are no actions, suits, claims, proceedings or investigation pending or, to the best of Beneficiary's knowledge, threatened in writing against Beneficiary at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement;

### 16.1.2

The Beneficiary makes all the representations and warranties above to be valid as on the date of this Agreement.

## 16.2 Representations and Warranties of the Transmission Service Provider

- 16.2.1 The TSP hereby represents and warrants to and agrees with Beneficiary as follows and acknowledges and confirms that Beneficiary is relying on such representations and warranties in connection with the transactions described in this Agreement:
- i. It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
  - ii. This Agreement is enforceable against it in accordance with its terms;
  - iii. The consummation of the transactions contemplated by this Agreement on the part of the TSP will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the TSP is a party or to which the TSP is bound which violation, default or power has not been waived;
  - iv. The TSP is not insolvent and no insolvency proceeding have been instituted, not threatened or pending by or against the TSP;
  - v. There are no actions, suits, claims, proceedings or investigation spending or, to the best of Transmission Service Provider's knowledge, threatened in writing against the Transmission Service Provider at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.
- 16.2.2 The TSP makes all the representations and warranties above to be valid as on the date of this Agreement.

# Article 17 Insurances



## 17.1 Insurance

**17.1.1** The TSP shall effect and maintain or cause to be effected and maintained during the Construction Period and the Operating Period, Insurances against such risks, with such deductibles and endorsements and co-beneficiary/insured, as may be necessary under:

- i. Any of the financing agreement;
- ii. The Laws; and
- iii. In accordance with the Prudent Utility Practices

The Insurances shall be taken effective from a date prior to the date of the Financial Closure till the expiry date under this Agreement.

## 17.2 Evidence of Insurance Cover

**17.2.1** The TSP shall furnish to the (Lead) Beneficiary copies of certificates and policies of the Insurances as soon as they are effected and renewed by or on behalf of the TSP from time to time in terms of Article 17.1.

## 17.3 Application of Insurance Proceeds

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

**17.3.2** If a Force Majeure event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the portion of the proceeds of such Insurance available to the TSP (after making admissible payments to the Lenders as per the Financing Agreements) shall be allocated to the TSP and the Beneficiary shall have no claim on such proceeds of the Insurance.

**17.3.3** Subject to the requirements of the Lenders under the Financing Agreements, any dispute or difference between the Parties as to whether the Project is no longer economically and technically viable due to a Force Majeure Event or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Article 15.

**17.3.4** In the interest of the TSP, risk coverage on competitive basis is desirable for which national as well as international insurance companies may participate.

## **17.4 Effect on Liability of Beneficiaries**

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**17.4.1** The Beneficiary shall have no financial obligations or liability whatsoever towards the Company in respect of this Article 17.

## **17.5 Excuse in Failing to Insure**

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**17.5.1** The TSP shall not be in breach of its obligations to procure an insurance under Article 17.1 to the extent and only for the period that:

- i. The particular insurance is not available to it in the insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the TSP or its contractors;
- ii. The TSP effects and maintains for the period referred to in Article 17.5.1 (i) complementary insurance cover having regard to the capacity of the insurance markets.

## Article 18

# Miscellaneous Provisions



### 18.1 Lead Beneficiary<sup>78</sup>

**18.1.1** The Beneficiaries hereby appoint and authorize “\_\_\_\_\_” [here in after referred to as the “Lead Beneficiary”] to represent all the Beneficiaries for discharging the rights and obligations of the Beneficiaries, which are required to be undertaken by all the Beneficiaries. All the Beneficiaries shall follow and be bound by the decisions of the Lead Beneficiary on all matters specified in this TSA. Accordingly, each Beneficiary agrees that any decision, communication, notice, action or inaction of the Lead Beneficiary on such matters shall be deemed to have been on its/his behalf and shall be binding on each of the Beneficiary. The TSP shall be entitled to rely upon any such action, decision or communication or notice from the Lead Beneficiary. It is clarified that provisions under this Article 18.1 are not intended to and shall not render the Lead Beneficiary liable to discharge Transmission Service Charges payments due to TSP from the other Beneficiaries.

**18.1.2** The Beneficiaries hereby also appoint and authorize “\_\_\_\_\_” [hereinafter referred to as the “Alternate Lead Beneficiary”], to act as Lead Beneficiary as per the provisions of this Article 18.1.2, on the occurrence of any Event of Default specified in Article 12 by the Lead Beneficiary. In such an event, the TSP may, at its option, within a period of fifteen (15) days from the date of issue of the TSP’s Preliminary Termination Notice referred to in Article 12 and if the said default by the Lead Beneficiary subsists, specify in writing to all the Beneficiaries that the Alternate Lead Beneficiary shall thereafter act as the Lead Beneficiary. In such a case, if the TSP so notifies, the Alternate Lead Beneficiary shall, thereafter, act as Lead Beneficiary for the purposes of this Agreement, and the Lead Beneficiary earlier appointed under Article 18.1.1 shall automatically cease to be the Lead Beneficiary. It is clarified that all decisions taken by the “\_\_\_\_\_” appointed under Article 18.1.1., in its capacity as Lead Beneficiary before such change, shall continue to be valid, in accordance with this Agreement.

**18.1.3.** In the event of “\_\_\_\_\_” becoming the Lead Beneficiary as per Article 18.1.2, all the Beneficiaries shall also appoint any of Beneficiaries, other than “\_\_\_\_\_”, appointed under Article 18.1.1, as an Alternate Lead Beneficiary and thereafter the provisions of Article 18.1.2 shall be applicable.

<sup>78</sup> In case of multiple beneficiaries

**18.1.4** Notwithstanding anything contained above, any decision which is required to be taken by the Beneficiaries jointly under the provisions of Article 12, shall be taken by all the Beneficiaries and in case of difference amongst the Beneficiaries, the said decision shall be taken by the Majority Beneficiaries, as defined in Article 18.1.5 below.

**18.1.5** Any decision taken by the Beneficiaries, who taken together constitute sixty five percent (65%) of the Allocated Project Capacity and constitute in number at least fifty percent (50%) of the total number of Beneficiaries (hereinafter referred to as “Majority Beneficiaries”), shall be binding on the Lead Beneficiary and all other Beneficiaries. Majority Beneficiaries shall also have the right to replace the Lead Beneficiary by any other Beneficiary of their choice. All decisions taken by the Majority Beneficiaries in this Agreement shall be conveyed by the Lead Beneficiary.

## **18.2 Amendment**

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

## **18.3 Third Party Beneficiaries**

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

## **18.4 Waiver**

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

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

## 18.5 Entirety

- 18.5.1 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.
- 18.5.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement under this Agreement between the Parties shall stand superseded and abrogated.

## 18.6 Confidentiality

- 18.6.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
- a. to their professional advisors;
  - b. to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities;
  - c. disclosures required under Law.
  - d. without the prior written consent of the other Parties.

## 18.7 Affirmation

- 18.7.1 The Parties affirm that:
- a. neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
  - b. it has not in any other manner paid any sums to the other Party to procure this Agreement, and the Parties hereby undertake not to engage in any similar acts during the Term of Agreement.

## 18.8 Severability

- 18.8.1 The provisions of this Agreement are severable, and if any portion of this Agreement is deemed legally invalid or unenforceable, the remainder of this Agreement shall survive and remain in full force and effect; provided that, if a provision is held to be invalid or unenforceable, the Parties shall negotiate in good faith to adopt a replacement provision to carry out, in effect, the Parties original intention to the extent permitted by applicable Laws.

## **18.9 Relationship of the Parties**

- 18.9.1** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship 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.

## **18.10 Counterparts**

- 18.10.1** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

## **18.11 Notices**

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

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

Address:

Attention:

Fax. No.:

Telephone No.:

Email:

- 18.11.3** If to the Beneficiary(ies), all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below<sup>79</sup> :

Address:

Attention:

Fax. No.:

Telephone No.:

Email:



- 18.11.4** All notices shall be effective: (i) if sent by facsimile, when sent (on receipt of confirmation of the correct number or address); (ii) if sent by registered or certified mail, within five (5) days of dispatch; (iii) if delivered personally, on receipt by intended recipient; (iv) if notified by an e-mail, within twenty four (24) hours of sending the e-mail. Provided that all notices given by e-mail/facsimile shall be confirmed by registered or certified mail. Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

## **18.12 Language**

- 18.12.1** All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 18.12.2** If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

## **18.13 Commercial Acts**

- 18.13.1** The Parties unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement to which it is a Party constitute private and commercial acts rather than public or governmental acts.

## **18.14 Taxes and Duties**

- 18.14.1** Except as otherwise specifically provided in the Agreement, the Transmission Service Provider shall bear and pay all statutory taxes, duties, levies and charges applicable on the TSP, its contractors or their employees by all<sup>80</sup> \_\_\_\_\_ in connection with the Project.

## **18.15 No Consequential or Indirect Losses**

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

<sup>79</sup> Insert details of all the beneficiaries in case of multiple beneficiaries

<sup>80</sup> Insert names of the Competent Authority(ies) of the countries involved

## 18.16 Order of Priority in Application

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

## 18.17 Fraudulent and Corrupt Practices

- 18.17.1 The Parties and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, either Party may terminate the Agreement without being liable in any manner whatsoever to the other Party, if it determines that the other Party has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, collusive practices, coercive practice, or obstructive practice during the Term of this Agreement.

- 18.17.2 For the purposes of this Article 18.16, the following terms shall have the meaning hereinafter respectively assigned to them:
- i. "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii. "Fraudulent practice" is any intentional act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - iii. "Collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv. "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v. "Obstructive practice" is
    - deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - acts intended materially to impede the exercise of the inspection and audit rights of the Parties.

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

For and on behalf of TSP

For and on behalf of Beneficiary(ies)

\_\_\_\_\_ Limited

\_\_\_\_\_ Limited

## Schedule 1

# Initial Consents<sup>81</sup>



1. Sovereign (Government) approvals from involved countries to build the proposed transmission system;
2. Consents related to land and associated infrastructure/resources needed for construction of sub-station(s) (where applicable);
3. Consents to grant rights to TSP to construct high voltage transmission system (where applicable);
4. Consents to grant rights to TSP to use/acquire necessary land or corridor for building the transmission system;
5. <add any specific consents needed in any involved countries>

<sup>81</sup> Insert list of initial consents to be secured by Beneficiary as conditions precedent like approvals for Land for sub-stations, R&R, environment clearance etc., from Governmental Instrumentality. Also, any other regulatory/statutory approvals which are critical for Project development. The Transmission Service Provider shall be responsible for procuring Line ROW and maintaining the same.

## Schedule 2

# Scope of the Project



### 2.1 The Project

The project shall comprise of the following Transmission System to facilitate transfer of power from <sup>82</sup> \_\_\_\_\_ to <sup>83</sup> \_\_\_\_\_, with a Transmission Capacity of \_\_\_\_\_

Transmission Lines:

Transmission Line	
(i)..... transmission line	..... km
(ii)..... transmission line	..... km
Sub-stations	
(i)	_____ MVA
(ii)	

### 2.2 Scope of the Project

The Transmission Service Provider's scope of work for the Project shall comprise:

Transmission Line	
Sub-station	

<sup>82</sup> Insert name of the Interconnection Point in upstream Country

<sup>83</sup> Insert name of the Interconnection Point in downstream Country

- 2.2.1 Establishment and maintenance of the Project on build, own, maintain & operate basis.
- 2.2.2 Financing for the Project including import duties, other Taxes and duties, Levies and Cess, Insurances etc., by way of mobilizing necessary equity capital and total debt.
- 2.2.3 The TSP shall finalize the award and appoint the contractors in line with the provisions of this Agreement.
- 2.2.4 The work also includes all the activities associated with establishment and maintenance of the Project other than those specifically covered in the scope of Beneficiary.
- The TSP shall ensure timely completion of entire scope of Projects in all respects and its operation to ensure highest level of reliability, availability and maintainability as per Prudent Utility Practices.
- 2.2.5 The TSP shall agree to and sign the Transmission Service Agreement (TSA) with the Beneficiary for receiving payments of Transmission Charge, linked to availability of the system.

## Schedule 3

# Tariff



### 3.1 General

- i. The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii. For the purpose of payments, the net Tariff to be paid to the TSP, shall be as per the table provided below for the applicable Contract Year.

Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Tariff In figures (INR/USD <sup>84</sup> )
1	Scheduled Commercial Operation Date	31st December	
2	1 <sup>st</sup> January	31 <sup>st</sup> December	
3	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
.	1 <sup>st</sup> January	31 <sup>st</sup> December	
nth	1 <sup>st</sup> January	Completion of nth anniversary of the Scheduled Commercial Operation Date <sup>85</sup>	

<sup>84</sup> To be mutually decided by the Parties

<sup>85</sup> Refer Expiry Date definition

### 3.1.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i. Monthly Tariff Charge Payment in accordance with Clause 3.1.2 of this Schedule;

### 3.1.2 Monthly Tariff Charge Payment

- 3.1.2.1** The Monthly Tariff Charge Payment for any Month (m) in a Contract Year (n) shall be calculated as below:

$$TC_{mn} = T_{mn} \times (TA_{mn}/NA)$$

where:

$TC_{mn}$  is the Tariff Charge Payment for the Month (m) for Contract Year (n) in INR/USD;

$TA_{mn}$  is the Total Availability for a Month (m) for Contract Year (n) as per Article 7.2;

NA is Normative Availability as defined in Article 7.3

$T_{mn}$  is the Tariff for Month (m), Contract Year (n) as specified in Clause 3.1 (ii) of this Schedule, in INR or USD.

## Schedule 4

# Format for Contract Performance Guarantee



**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution)**

In consideration of the \_\_\_\_\_ [Insert name of the Beneficiary with address] agreeing to undertake the obligations under the TSA and \_\_\_\_\_ [Insert name of Transmission Service Provider] (herein after referred to as Transmission Service Provider), agreeing to execute the TSA to facilitate transfer of power from<sup>86</sup> \_\_\_\_\_ to<sup>87</sup> \_\_\_\_\_, the \_\_\_\_\_ [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Beneficiary at \_\_\_\_\_ [Insert address of Beneficiary] forthwith on demand in writing from the Beneficiary or any Officer authorized by it in this behalf, any amount up to and not exceeding INR/USD<sup>88</sup> \_\_\_\_\_ million only [Insert the amount of the bank guarantee [Insert: “the Beneficiary as per the terms of TSA] on behalf of M/s. \_\_\_\_\_ [Insert name of the Transmission Service Provider].

This guarantee shall be valid and binding on the Guarantor Bank up to and including \_\_\_\_\_ [Insert date of validity of CPG]<sup>89</sup> and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the TSA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rupees/USD \_\_\_\_\_ million only. Our Guarantee shall remain in force until \_\_\_\_\_ [Insert the date of validity of the Guarantee]. The Beneficiary shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Beneficiary, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Beneficiary.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, \_\_\_\_\_ [Insert name of the Transmission Service Provider] and/or any other person. The Guarantor Bank shall not require the Beneficiary to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Beneficiary in respect of any payment made hereunder.

<sup>86</sup> Insert name of the Interconnection Point in upstream Country

<sup>87</sup> Insert name of the Interconnection Point in downstream Country

<sup>88</sup> To be computed at 2-3% of Project Cost as per mutual agreement between Transmission Service Provider and Beneficiary

<sup>89</sup> Validity date to be fixed to at least cover construction duration



The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Beneficiary shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Transmission Service Provider, to make any claim against or any demand on the Transmission Service Provider or to give any notice to the Transmission Service Provider or to enforce any security held by the Beneficiary or to exercise, levy or enforce any distress, diligence or other process against the Transmission Service Provider.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Beneficiary and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Beneficiary to any entity to whom the (Lead) Beneficiary is entitled to assign its rights and obligations under the TSA.

The Guarantor Bank hereby agrees and acknowledges that the Beneficiary shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained here in above, our liability under this Guarantee is restricted to Rupees/USD \_\_\_\_\_million only and it shall remain in force until \_\_\_\_\_ [Date to be inserted on the basis of Article \_\_\_\_of TSA], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by \_\_\_\_\_ [Insert name of the Beneficiary]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Beneficiary serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

Witness: 1. Name and Address 2. Name and Address	Signature Name: Designation with Bank Stamp
--	---

For:  
 \_\_\_\_\_ [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

Notes: The Stamp Paper should be in the name of the Executing Bank.

## Schedule 5

# List of Banks<sup>90</sup>



<sup>90</sup> Names of banks to be included as mutually agreed by the Transmission Service Provider and Beneficiary

## Schedule 6

# Technical Specifications<sup>91</sup>



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<sup>91</sup> Insert single line diagrams, substation layouts, technical specifications for various elements of transmission line, substation and associated equipment and interconnection points, loading limits, SIL etc.

# Schedule 7

# Supplementary Agreement<sup>92</sup>



BETWEEN

..... [Insert name of the TSP]

AND

..... [Insert name of new Beneficiary 1]

..... [Insert name of new Beneficiary 2]

-  
-  
-  
..... [Insert name of new Beneficiary n]

THIS SUPPLEMENTARY AGREEMENT entered into on \_\_\_\_\_<sup>93</sup> by and between, \_\_\_\_\_<sup>94</sup> (here in after referred to as Transmission Service Provider or “TSP”, which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as Party of the first part,

AND

\_\_\_\_\_<sup>95</sup>, a company incorporated under \_\_\_\_\_ Act, in \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”), and having an Allocated Project Capacity as specified in the Table 3 of this Supplementary Agreement (which expression shall unless repugnant to the context or meaning thereof include its successors, and permitted assigns) as Party of the second part,

\_\_\_\_\_<sup>96</sup>

<sup>92</sup> In case of multiple beneficiaries  
<sup>93</sup> Insert date  
<sup>94</sup> Insert name of TSP  
<sup>95</sup> Insert name of new beneficiary 1  
<sup>96</sup> Insert details of other new beneficiaries

## WHEREAS

- A. The TSP has executed the TSA with the existing Beneficiaries as listed in Table 3 of this TSA.
- B. The TSP has agreed to provide the Transmission Service to the existing Beneficiaries as per the terms and conditions of this TSA.
- C. The Allocated Project Capacity of the existing Beneficiaries as on this date \_\_\_\_\_<sup>97</sup> is as detailed below:

Name of Existing Beneficiary	Allocated Project Capacity

Table 3

- D. The existing Beneficiaries have agreed, on the terms and subject to the conditions of the TSA, to use the available transmission capacity of the Project and pay TSP the Transmission Service Charges as determined in accordance with the terms of the TSA.

NOW THEREFORE THIS AGREEMENT WITNESSETH as under:

- A. The new Beneficiaries and their Allocated Project Capacity as on this date \_\_\_\_\_<sup>98</sup> are as detailed below:

Name of New Beneficiary	Allocated Project Capacity

Table 4

- B. The new Beneficiary(ies) agree to the terms and conditions laid down in the TSA, to use the Project and pay the TSP the Transmission Service Charges as determined in accordance with the terms of the TSA and the provisions of this Supplementary Agreement.
- C. The TSP agrees to provide the Transmission Service to the new Beneficiary(ies) as per the terms and conditions of the TSA.
- D. All terms and conditions of the TSA between the TSP and the existing Beneficiary (as listed out in Table 3 of this Supplementary Agreement) shall apply, mutatis mutandis without any change, to the new Beneficiary(ies) (as listed out in Table 4 of this Supplementary Agreement)

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

For and on behalf of TSP

For and on behalf of new Beneficiary

\_\_\_\_\_ Limited

\_\_\_\_\_ Limited

<sup>97</sup> Insert date

<sup>98</sup> Insert date

# Acknowledgement



The Preparation of this “Model Transmission Service Agreement for Cross- Border Electricity Trade” would not have been possible without the sparing valuable time, and support provided by various organizations.

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## **ABOUT SARI/EI**

Over the past decade, USAID's South Asia Regional Initiative/Energy (SARI/E) has been advocating energy cooperation in South Asia via regional energy integration and cross border electricity trade in eight South Asian countries (Afghanistan, Bangladesh, Bhutan, India, Pakistan, Nepal, Sri Lanka and the Maldives). This fourth and the final phase, titled South Asia Regional Initiative for Energy Integration (SARI/EI), was launched in 2012 and is implemented in partnership with Integrated Research and Action for Development (IRADe) through a cooperative agreement with USAID. SARI/EI addresses policy, legal and regulatory issues related to cross border electricity trade in the region, promote transmission interconnections and works toward establishing a regional market exchange for electricity.

## **ABOUT USAID**

The United States Agency for International Development (USAID) is an independent government agency that provides economic, development, and humanitarian assistance around the world in support of the foreign policy goals of the United States. USAID's mission is to advance broad-based economic growth, democracy, and human progress in developing countries and emerging economies. To do so, it is partnering with governments and other actors, making innovative use of science, technology, and human capital to bring the most profound results to a greatest number of people.

## **ABOUT IRADe**

IRADe is a fully autonomous advanced research institute, which aims to conduct research and policy analysis and connect various stakeholders including government, non-governmental organizations (NGOs), corporations, and academic and financial institutions. Its research covers many areas such as energy and power systems, urban development, climate change and environment, poverty alleviation and gender, food security and agriculture, as well as the policies that affect these areas.

For more information on the South Asia Regional Initiative for Energy Integration (SARI/EI) program, please visit the project website:

[www.sari-energy.org](http://www.sari-energy.org)

