



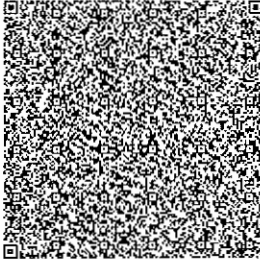
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# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

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Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: TEHKHAND WASTE TO ELECTRICTY PROJECT LTD
Second Party	: Not Applicable
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



-----Please write or type below this line-----

**Power Purchase Agreement (PPA)**  
for  
**Procurement of Power on Long Term Basis**  
Between  
**Tehkhand Waste to Electricity Project Limited (or Seller)**  
And  
**BSES Yamuna Power Limited (BYPL) (or Procurer)**  
**27<sup>th</sup> November, 2013**

**Statutory Alert:**

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**THIS AGREEMENT** is made on this 27<sup>th</sup> day of November '18 (hereinafter called the Effective Date) by and between **TEHKHAND WASTE TO ELECTRICITY PROJECT LIMITED** registered under the Companies Act 2013 and having its registered office at A-1, UPSIDC Industrial Area, Kosi Kalan, Mathura, UP 281403, hereinafter called the "Seller", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the first part;

And

**BSES Yamuna Power Limited (BYPL)**, Company registered under the Company's Act 1956, having its Registered- Office at Shakti Kiran Building, Karkardooma Delhi 110032, hereinafter called "Procurer", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the second part;

The Procurer and The Seller shall be individually referred to as "Party" and collectively referred to as "Parties".

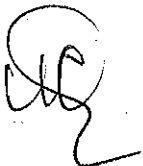
Whereas:

- (A) South Delhi Municipal Corporation (hereinafter referred to as "SDMC") is desirous of augmenting its waste management capability and expanding its waste processing, management and disposal capabilities and has decided to set up a Municipal Solid Waste (hereinafter referred to as "MSW") to Energy Processing Facility at Tehkhand, Okhla, New Delhi as per Solid Waste Management Rules, 2016 for 2000 TPD of MSW (hereinafter referred to as "Project");
- (B) SDMC had initiated a single stage, three envelope tariff based International Competitive Bidding process for selecting the entity for undertaking the Project through the Seller acting as the Concessionaire and supplying power there from to the Procurers.
- (C) Pursuant to the said bidding process and the evaluation of the bids received, the SDMC have accepted the bid of JITF Urban Infrastructure Limited ("Successful Bidder") and issued it the Letter of Award (hereinafter referred to as "LOA")



No. D/EE (Engg Store)/2017-18/370 dated 01.03.2018 and Corrigendum in Letter of Award (Ref. No. D/EE (Engg Store)/2017-18/380) dated 08.03.2018.

- (D) JITF Urban Infrastructure Limited [**Successful Bidder**] has taken over the Company incorporated by SDMC for the Project which shall undertake and perform the obligations and exercise the rights of the Successful Bidder under the LOA, and has signed the Concession Agreement with SDMC dated 10<sup>th</sup> May 2018.
- (E) The Seller has undertaken to implement the Project by installing Plant and Equipment having installed capacity of 25MW situated at Tehkhand, Okhla based on Municipal Solid Waste (hereinafter referred to as the Plant) and has signed the Concession Agreement with SDMC for implementation and operation of the Project.
- (F) Procurer which is a distribution licensee operating in the State of Delhi, and has license to supply power in the specified municipal area of Delhi agree to purchase power up to contracted capacity (as defined in clause 3.4.2) for its consumption from the Plant at Tariff discovered through the transparent process of Competitive Bidding undertaken by SDMC, under the terms and conditions set forth herein as approved by DERC.
- (G) Accordingly, the Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by the Seller to the Procurer:



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:

## ARTICLE 1: DEFINITIONS

### 1.1 Definitions

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

<b>“Act” or “Electricity Act,2003”</b>	Shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
<b>“Agreement” or “Power Purchase Agreement” or “PPA”</b>	Shall mean this Power Purchase Agreement including its recitals and schedules, as amended or modified from time to time in accordance with the terms hereof;  In case of contradiction between Power Purchase Agreement (PPA) and Concessionaire Agreement (CA), the terms of PPA shall prevail.
<b>“Appropriate Commission”</b>	Shall mean the Delhi Electricity Regulatory Commission constituted by Government of NCT of Delhi vide Notification No. F. 11(28)/98-EB/341 dated 03.03.1999 under section 17 of the Electricity Regulatory Commission Act, 1998;
<b>“Bill Dispute</b>	Shall mean the notice issued by a Party raising a



<b>"Notice"</b>	Dispute regarding a Monthly bill or a Supplementary Bill issued by the other Party;
<b>"Business Day"</b>	Shall mean with respect to the Seller and the Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the states in which the Seller's or the Procurer's registered offices are located;
<b>"Capacity Utilisation Factor" or "CUF" or "PLF"(Plant load factor)</b>	Shall be equal to the normative CUF as provided in DERC Order dated 27.07.2016 as amended by DERC from time to time;
<b>"CERC"</b>	Shall mean the Central Electricity Regulatory Commission of India, constituted under Sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;
<b>"Change in Law"</b>	Shall have the meaning ascribed thereto in Article 11 of this Agreement;
<b>"Commercial Operation Date" or "COD"</b>	Shall mean the date of Commissioning of the Power Project as certified by Delhi SLDC subject to Article 4.1.2;
<b>"Competent Court of Law"</b>	Shall mean any court or tribunal or any similar Judicial or quasi-judicial body in Delhi that has jurisdiction to adjudicate upon issues relating to this Agreement;
<b>"Consents, Clearances and Permits"</b>	Shall mean any or all authorizations, licenses, approval, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained for the Power Project




<b>"Consultation Period"</b>	Shall mean the period of sixty (60) Days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 12 of this Agreement, for consultation between the Parties to resolve the issues giving rise to the Preliminary Default Notice or mitigate the consequence of the relevant event having regard to all the circumstances;
<b>"Contract Year"</b>	<p>i) Shall mean the period beginning from the Commercial Operation Date and ending on the immediately succeeding 31<sup>st</sup> March and thereafter each period of twelve (12) Months beginning on April 1<sup>st</sup> and ending on 31<sup>st</sup> March provided that:</p> <p>ii) Provided that the last Contract Year shall end on the last Day of the Term of this Agreement;</p>
<b>"Contracted Capacity"</b>	Shall mean the installed capacity in the ratio given in clause 3.4.2 or any other ratio allocated by DERC from time to time for supply by the Seller to the Procurer at the Delivery Point which has been generated from the Waste to Energy Project;
<b>"Day"</b>	Shall mean a Day, if it is not a Business Day, the immediately succeeding Business Day;
<b>"DERC"</b>	Shall mean the Delhi Electricity Regulatory Commission.
<b>"Delivery Point" /</b>	Shall mean 66kV side of 440/220/66 kV




<b>“Interconnection Point”</b>	Tughlakabad Sub-station of DTL wherein the Seller shall inject power. The metering for sale of power shall be done at this point. All charges and losses up to the Delivery Point shall be borne by the Seller and after the Delivery Point by the Procurer;
<b>“Delivery Facilities”</b>	<p>The cost for the building and maintenance of the Delivery Facilities on the Seller side of the Delivery Point, will lie with Seller.</p> <p>The Delivery Facilities on the Seller side of the Delivery Point in accordance with this Agreement and which shall include, without limitation, any transmission lines to this point and associated equipment, transformers, relay and switching equipment and energy generation protective devices, and the metering system required for supply of power as per the terms of this Agreement.</p> <p>The cost for any construction and maintenance on the Procurer’s side of the Delivery Point will lie with the Procurer.</p>
<b>“Discoms”</b>	Shall mean the distribution licensee/utility or the distribution licensees/utilities who have signed the PPA(s) with Seller in accordance with the directions of DERC;
<b>“Dispute”</b>	Shall mean any and all dispute or difference of any kind between Procurer and Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;






<b>“Due Date”</b>	Shall mean the sixtieth (60 <sup>th</sup> ) Day after a Monthly Bill or a Supplementary Bill is received by the Procurer, if such Day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the Procurer;
<b>“Effective Date”</b>	Shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
<b>“Electricity Laws”</b>	Shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
<b>“Event of Default”</b>	Shall mean the events as defined in Article 12 of this Agreement;
<b>“Expiry Date”</b>	Shall mean the date occurring twenty five (25) years from the Commercial Operation Date of the Project unless otherwise specified herein extended by the Parties in accordance with the terms of this Agreement;
<b>“Financing Agreements”</b>	Shall mean the agreements pursuant to which the Seller has obtained financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in any way increasing the liabilities of




	Procurer;
<b>"Force Majeure" or "Force Majeure Event"</b>	Shall have the meaning ascribed thereto in Article 10 of this Agreement;
<b>"Grid Code"/ "IEGC" Or "State Grid Code"</b>	Shall mean the Grid Code specified by the CERC under Clause(h) of Sub-section (1) of Section 79 of the Electricity Act 2003, as amended from time to time, and/or the State Grid Code Regulations, 2008 as specified by the Delhi Electricity Regulatory Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as amended from time to time, as applicable;
<b>"Indian Governmental Instrumentality"</b>	Shall mean the Government of India, Governments of the National Capital Territory of Delhi, where the Power Project, Procurer and the Seller are located and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or the State Government or both, any political sub- division of any of them;
<b>"Insurances"</b>	Shall mean the insurance cover to be obtained and maintained by the Seller in accordance with Article 7 of this Agreement;
<b>"Invoice" or "Bill"</b>	Shall mean either a Monthly Bill/Supplementary Bill or a Monthly Invoice/Supplementary Invoice raised by any of the Parties based on energy account issued by SLDC;
<b>"Late Payment Surcharge"</b>	Shall have the meaning ascribed thereto in Article 9.8.1 of this Agreement;




<b>"Law"</b>	Shall mean in relation to this Agreement, all Indian laws including Electricity Laws in force in India and any statute, ordinance, circular, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality of any authority and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
<b>"Letter of Credit" or "L/C"</b>	Shall have the meaning ascribed thereto in Article 9.4 of this Agreement;
<b>"Metering point"</b>	Metering is to be conducted at the Delivery Point where the power, provided by the Seller for purchase by the Procurer;
<b>"Month"</b>	Shall mean a calendar month;
<b>"Procurer"</b>	Shall have the meaning ascribed thereto in the recital to this Agreement;
<b>"Party" and "Parties"</b>	Shall have the meaning ascribed thereto in the recital to this Agreement;
<b>"Payment Security Mechanism"</b>	Shall have the meaning ascribed thereto in Article 9.4 of this Agreement;
<b>"Power Project" or "Project" or "Generating Facility"</b>	Shall mean the Waste to Energy power generation facility of installed capacity of minimum 25 MW, located at Tehkhand, Okhla in New Delhi.  This includes all equipment of the Waste-to-Energy facility along with auxiliaries such as water supply,




	treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
<b>“Power Purchase Agreement” or “PPA”</b>	This Agreement executed between the Seller and the Procurer for the purchase of the power generated by the Project and purchased from the Seller by the Procurer as approved by DERC.
<b>“Preliminary Default Notice”</b>	Shall have the meaning ascribed thereto in Article 12.3.1 and 12.4.1 of this Agreement;
<b>“Prudent Utility Practices”</b>	Shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;




<b>Scheduled COD</b>	Shall be the date which shall be no later than twenty seven months from the date on which SDMC provide the Certificate of Change of Land usage to the seller i.e. 19 <sup>th</sup> June 2018
<b>"Seller"</b>	Shall have the meaning ascribed thereto in the recital to this Agreement;
<b>"Rupees", "Rs.", "₹"</b>	Shall mean Indian rupees, the lawful currency of India;
<b>"State Transmission Utility" or "STU"</b>	Shall mean the Delhi Transco Limited (DTL) which has been accorded the status of State Transmission Utility or STU under Sub-section (2) of Section 39 of the Act;
<b>"Tariff"</b>	Shall have the same meaning as provided for in Article 8 of this Agreement and applicable for the entire Term of the Agreement;
<b>"Tariff Payment"</b>	Shall mean the payments to be made under Monthly Bills as referred to in Article 9 and the relevant Supplementary Bills;
<b>"Termination Notice"</b>	Shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 12 of this Agreement;
<b>"Term of Agreement"</b>	Shall have the meaning ascribed thereto in Article 2 of this Agreement;
<b>"Waste to Energy Facility" or "Waste to Energy Power Project"</b>	Means the processing facility constructed at the project site and operated by <b>TEHKHAND WASTE TO ELECTRICITY PROJECT LIMITED</b> , for the purpose of generating electricity from Municipal Solid Waste.
<b>"Week"</b>	shall mean a calendar week commencing from

	00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
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## 1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to: "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;

1.2.1 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;

1.2.2 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);

1.2.3 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other charge 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, 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", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;

1.2.7 Words importing the singular shall include the plural and vice versa;

1.2.8 This Agreement itself and/or any other related 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;

1.2.9 A Law shall be construed as a reference to such Law including its amendments or re- enactments from time to time;

1.2.10 A time of Day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

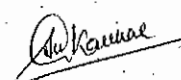
1.2.11 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.12 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;

1.2.13 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) Days;

1.2.14 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.15 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;





## **ARTICLE 2: TERM OF AGREEMENT**

### **2.1 Effective Date**

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

### **2.2 Term of Agreement**

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) Days prior to the Expiry Date, subject to approval by the Appropriate Commission.

### **2.3 Early Termination**

2.3.1 This Agreement shall not terminate before the Expiry Date unless Procurer or Seller terminates the Agreement, pursuant to Article 12 of this Agreement.

### **2.4 Survival**

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the expiry date or termination including those under Article 12 (Events of Default and Termination), Article 13 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

For avoidance of doubt it is clarified that notwithstanding the termination or expiry of this Agreement in a proceeding initiated after expiry either Party shall be entitled to all defenses/remedies available under the PPA on the date of alleged default.



## ARTICLE 3: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 3.1 Seller's Obligations

- (a) Seller undertakes to be solely responsible to build, own and operate Waste to Energy Project in accordance with Prudent Utility Practices, obtaining all Consents, Clearances and Permits and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement including the adoption of the Tariff and the approval of the PPA by the DERC;
- (b) Financing, designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices;
- (c) The commencement of supply of power up to the Contracted Capacity to Procurer and continuance of the supply of power throughout the term of the Agreement;
- (d) Connecting the Power Project at the Delivery Point and constructing and commissioning the Delivery Point Facilities required on the Seller side of the Delivery Point.
- (e) Fulfilling all obligations undertaken by the Seller under this Agreement or required in terms of applicable law.
- (f) Schedule and dispatch of electric energy in accordance with the Article 5.1.1.
- (g) The responsibility of getting connectivity and open access with the transmission system owned by the STU or any other transmission utility, as may be required, will lie with the Seller.

### **3.2 Information regarding Interconnection Facilities**

3.2.1 The Seller shall be required to obtain all information with regard to the required Delivery Facilities as is reasonably necessary to enable it to design, install and operate all plant and apparatus on the Seller's side of the Delivery Point.

### **3.3 Obligation of Procurer**

3.3.1 The Procurer is obligated to off-take the entire power generated by the Seller, in proportion to its share of power, as per this Agreement at the Tariff given at Schedule 3.

3.3.2 The Procurer shall be necessarily obligated to pay the Seller Tariff for the quantum of power supplied in terms of the present Agreement.

3.3.3 All charges, taxes, duties, cess in relation to distribution of electricity and losses applicable beyond the delivery point shall be borne by the Procurer.

### **3.4 Purchase and sale of Contracted Capacity**

3.4.1 Subject to the terms and conditions of this Agreement, Seller undertakes to sell to Procurer and Procurer undertakes to pay Seller Tariff as approved by DERC for the energy supplied at the Delivery Point corresponding to the Contracted Capacity. The energy supplied shall be as per the Energy Account to be issued by Delhi SLDC.

3.4.2 The Procurer acknowledges that it is bound to procure 100% power produced from seller and seller acknowledges that it is bound to sell 100% power produced in the ratio as determined by DERC from time to time at the tariff decided by Hon'ble DERC vide order dated 02.11.2018 in petition no 56/2017. The present allocation from the plant to the procurers is as under:-



**Procurement Ratio from Waste to Energy Plant**

**(As approved by DERC vide order dated 02.11.2018 in petition no 56/2017)**

<b>DISCOMs</b>	<b>Percentage of Contracted Capacity</b>
BRPL	41.72%
BYPL	23.33%
TPDDL	30.09%
NDMC	4.86%
<b>Total</b>	<b>100.00%</b>

## **ARTICLE 4: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

### **4.1 Synchronization, Commissioning and Commercial Operation**

The seller shall give Procurer(s) at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice of the date on which it intends to synchronize the power project to the grid system

4.1.1 Seller shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected and all other concerned authorities including procurer and SLDC in accordance with applicable Grid Code.

4.1.2 **Commercial Operation:** Date of commercial operation shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial operation for a continuous period of Twenty four (24) hours at or above 90% of Contracted Capacity after advance notice of 7 days to the Procurer and Delhi SLDC, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:



## **ARTICLE 5: SCHEDULING and DISPATCH**

### **5.1 Scheduling and Dispatch**

**5.1.1** The Power Project shall comply with all the applicable Laws including but not limited to the Grid Code.

Further, Hon'ble Commission vide order dated 02/11/18 in petition no 56/2017, in the matter of: "Petition under Section 86 (1)(b) and other provisions of the Electricity Act, 2003 for approval of bidding process, adoption of tariff of Municipal Waste based plant and approval of draft PPA", directed as under:-

"For a period of maximum 2(two) year from the date of the commissioning of the project, there shall be no commercial/financial implication in the case of deviation from the scheduled power and the actual generation shall be treated as scheduled generation."



## ARTICLE 6: METERING

### 6.1 Meters

- 6.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental there to Seller and Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT, as amended and revised from time to time.
- 6.1.2 A meter shall be installed on the Seller's side of the Delivery Point that shall be used as the main meter for the purpose of invoicing between the Parties. Meter reading shall be the responsibility of Delhi STU.
- 6.1.3 Seller shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of the main meter.
- 6.1.4 Energy Accounts issued by SLDC/competent authority shall be binding on both the Parties for billing and payment purposes.
- 6.1.5 In addition, the Seller shall also allow and facilitate STU/Distribution Licensee in installation of one special energy meters (check meter) for accurate recording of energy supplied by Seller. For this meter, the Seller shall provide the required connection from current transformers/ bushing CTs/ voltage transformers/ CVTs on HV side of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2 class or better.
- 6.1.6 In the event of mismatch between main and check meter  $> \pm 0.4\%$ , the same shall be verified by DTL for making the Energy Account. Payment will be made by the Procurer according to the energy account issued after verification.



## **6.2 Reporting of Metered Data and Parameters**

6.2.1 Seller will install necessary equipment for regular monitoring of the electric power generated from the Waste to Energy Plant.

6.2.2 Monthly reports on the above parameters shall be submitted by the Seller to the Procurer during the entire period of PPA.

6.2.3 Whilst not mandatory, should Seller wish to use an online reporting mechanism, any costs in developing or maintaining this infrastructure would be at the cost of the Seller.

## **6.3 RLDC / SLDC Charges**

6.3.1 All scheduling and RLDC / SLDC charges applicable beyond Interconnection Point shall be borne by the Procurer in ratio of its contracted capacity.





## **ARTICLE 7: INSURANCES**

### **7.1 Insurance**

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

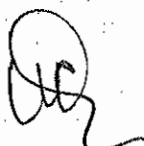
### **7.2 Application of Insurance Proceeds**

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

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

### **7.3 Effect on liability of Procurer**

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



## **ARTICLE 8: APPLICABLE TARIFF**

### **8.1. Tariff**

8.1.1 Upon the Power Station being Commissioned, the Seller shall be entitled to demand and collect the Tariff in Rs/kWh for the supply of electricity to the Procurer in accordance with this Article 8 read with Schedule 2 as approved by DERC ("**Tariff**").

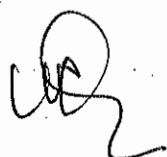
### **8.2 Monthly Charges Payment**

8.2.1 Monthly Charges shall be payable to the Seller for the Scheduled Energy at the Grid-Substation (Tughlakabad sub-station) as certified in the monthly Energy Account by the SLDC in each month of the Contract Year in accordance with the provisions of Schedule 2.

### **8.3 Taxes and Duties**

8.3.1 The Tariff and the Incentives (if any) payable by the Procurer in terms of this Agreement shall be inclusive of all Taxes save and including the Service Tax, Value Added Tax or General Sales Tax, or any replacement thereof (such as Goods and Service Tax), and any such Tax, if applicable, which shall be paid by the Seller and reimbursed by the Procurer, upon submission of necessary particulars by the Seller if applicable, only after DERC approval.

8.3.2 Any payments, reimbursements to be made by the Procurer shall be subject to any tax deduction at source, if required to be made by the Procurer as per Applicable Laws.



## **ARTICLE 9: BILLING AND PAYMENT**

### **General**

9.1.1 From the commencement of supply of power, Procurer shall pay to the Seller the monthly tariff payments, in accordance with Article 8 and Article 9. All Tariff payments by Procurer shall be in Indian Rupees.

9.1.2 The Seller shall draw startup power from Grid/ STU at Tughlakabad Substation of DTL for startup of the power plant from time to time during the tenure of this Agreement. Settlement of account of such power shall be governed as per DERC Regulations/ Delhi Grid Code/ any other relevant Regulations in force.

### **9.2 Delivery and Content of Monthly Bills/Supplementary Bills**

9.2.1 Seller shall issue to Procurer a signed Monthly Bill/Supplementary Bill for the immediate preceding Month. The Monthly Bill amount shall be the product of the energy as per the Energy Account issued by SLDC/competent authority and the applicable Tariff of the PPA.

### **9.3 Payment of Monthly Bills**

9.3.1 The Procurer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the due date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 9.3.3 below.

9.3.2 All payments made by Procurer shall be appropriated by the Seller in the following order of priority:

- (i) Towards the earlier unpaid Monthly Bills, if any; and
- (ii) Towards the then current Monthly Bill
- (iii) Towards Late Payment Surcharge, if any.



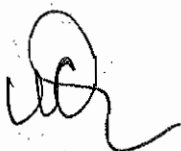
9.3.3 Seller shall open a bank account ("Seller's Designated Account") for all Tariff payments (including Supplementary Bills) to be made by Procurer to the Seller, and notify Procurer of the details of such account at least ninety (90) days before the dispatch of the first Monthly Bill. The Procurer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

Provided however that no Late Payment Surcharge shall be payable for any disputed bills or bills which are not raised as per the provisions of this Agreement.

#### **9.4 Payment Security Mechanism - Letter of Credit (L/C)**

9.4.1 Procurer shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a Monthly unconditional, revolving and irrevocable Letter of Credit, opened and maintained which may be drawn upon by the Seller in accordance with this Article.

9.4.2 The Procurer, shall through a scheduled bank at Delhi open Letter of Credit in favor of the Seller, to be made operative from a date which is 7 days prior to the due date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:



- (i) For the first Contract Year, equal to 1.05 times the estimated average monthly billing;
- (ii) For each subsequent Contract Year, equal to 1.05 times the average of the monthly billing of the previous Contract Year.

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

9.4.3 Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

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

9.4.5 All costs relating to opening and maintenance of the Letter of Credit shall be equally borne by the Procurer and Seller.

9.4.6 If a Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, Seller may draw upon the Letter of Credit with a written notice to Procurer, and accordingly the bank shall pay without any reference or instructions from Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with this Agreement, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- (i) A copy of the Monthly Bill or Supplementary Bill which has remained unpaid to the Seller;
- (ii) Copy of Default notice served to the procurer; and

- (iii) A certificate from the Seller to the effect that the bill at item above, or specified part thereof, is in accordance with the Agreement, has not been disputed by the Procurer and has remained unpaid beyond the Due Date.

## **9.5 Disputed Bill**


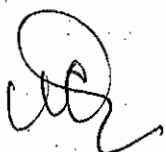
9.5.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

9.5.2 If the Procurer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 90% of the disputed bill and it shall prior to the Due Date of 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.

9.5.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, the Seller shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount, if any shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

9.5.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, it shall, within fifteen (15) Days of receiving the Bill Dispute Notice, furnish a notice (Bill Dispute Disagreement Notice) to the Procurer 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.

9.5.5 Upon receipt of the Bill Dispute Disagreement Notice by the Procurer under Article 9.5.4, authorized representative(s) or a director of the board of directors/member of board of the Procurer and the Seller shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the bill dispute disagreement Notice or such longer period that the parties may mutually agree.

9.5.6 If the Parties fail to amicably resolve the Dispute within fifteen (15) Days of receipt of Bill Dispute Disagreement Notice or such longer period that the parties may mutually agree pursuant to Article 9.5.4, the matter shall be referred to Dispute resolution in accordance with Article 14.

9.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment of 90% of the Disputed Amount in the Monthly Bill.

## **9.6 Quarterly and Annual Reconciliation**

9.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within thirty (30) Days of the end of the quarter at the beginning of the following quarter of each contract year and annual reconciliation at the end of each contract year within thirty (30) Days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.



9.6.2 The Parties, therefore, agree that as soon as data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) Days of signing of a reconciliation statement, the Seller shall make appropriate adjustments in the next Monthly Bill. Any Dispute with regard to the above reconciliation shall be dealt in accordance with the provisions of Article 14.

### **9.7 Payment of Supplementary Bill**

9.7.1 Seller may raise a "Supplementary Bill" for payment on account of:

- (i) Adjustments required in the Energy Accounts (if applicable); or
- (ii) Change in Law as provided in Article 11, subject to the approval of DERC.

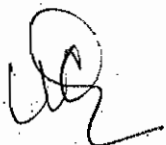
Provided any such amount due to the Procurer/ from the Procurer in terms of any adjustment or Change in Law shall be adjusted in the next Monthly Bill or raised by way of a Supplementary Bill

9.7.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date.

9.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms as applicable to the Monthly Bill in Article 9.8.

### **9.8 Late Payment Surcharge**

9.8.1 In the event of delay in payment of a Monthly Bill to the Seller beyond its Due Date, a Late Payment Surcharge shall be payable to the Seller by the





Procurer at the rate of 12.5% per year (Simple Interest) on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.

## **9.9 Rebate**

9.9.1 For payment of any Bill before Due Date, the following Rebate shall be allowed by the Seller to the Procurer in the following manner.

(i) For payment of bills within a period of 2 days of presentation of bills by the Seller, a rebate of 2% shall be allowed.

(ii) Where payments are made on any day after 2 days and within a period of 30 days of presentation of bills by Seller, a rebate of 1% shall be allowed.

(iii) Any other rebate as mutually decided between the parties'

9.9.2 The above Rebate will be allowed to the Procurer for any payment pertaining to monthly bill credited to the account of Seller apart from the payments made as per clause 9.9.3.

9.9.3 No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess, open access charges, SLDC/RLDC charges and Long Term transmission charges;

## **9.10 Renewable purchase obligation**

9.10.1 It is acknowledged by the Seller that the Procurer may identify the energy procured under this Agreement to meet its renewable purchase obligations (as mandated by the Appropriate Commission). The Seller shall provide such certificate (as mandated by the Appropriate Authority) identifying the quantum of energy supplied by the Seller for each Contract Year within thirty (30) days after the end of such Contract Year.



## **9.11 CDM Benefits**

9.11.1 The proceeds of Seller's share of carbon credit from the Project (Contracted Capacity) shall be shared between the Seller and the Procurers in the following manner:

- (a) 100% of the gross proceeds on account of Seller's share of CDM benefit to be retained by the Seller in the first year after the acceptance of respective part commissioning of the project/ station as a whole;
- (b) From the subsequent year, out of the Seller's share of CDM benefit, the share of the Procurers shall be 10%, which shall be progressively increased by 10% every year till it reaches 50%, where after the proceeds shall be shared in equal proportion, by the Seller and the Procurers. The CDM benefit shall be shared amongst the Procurers in the ratio of the Contracted Capacity as per clause 3.4.2.

## **ARTICLE 10: FORCE MAJEURE**

### **10.1 Definitions**

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

### **10.2 Affected Party**

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

### **10.3 Force Majeure**

10.3.1A 'Force Majeure' means any event or circumstance or combination of events, including but not limited to those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- (i) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado;
- (ii) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- (iii) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought



into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

- (iv) Grid failure or non-availability, not attributable to the Procurer.

#### **10.4 Force Majeure Exclusions**

##### **10.4.1 Force Majeure shall not include**

- (i) Any event or circumstance which is within the reasonable control of the Parties; and
- (ii) The following conditions, except to the extent that they are consequences of an event of Force Majeure:
  - (a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
  - (b) Delay in the performance of any contractor, sub- contractor or their agents;
  - (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
  - (d) Strikes at the facilities of the Affected Party;
  - (e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
  - (f) Non-performance caused by, or, connected with the Affected Party's:
    - Negligent or intentional acts, errors or omissions;

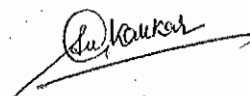
- Failure to comply with an Indian Law; or
- Breach of, or default under this Agreement.

## **10.5 Notification of Force Majeure Event**

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

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

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



## **10.6 Duty to Perform and Duty to Mitigate**

10.6.1 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.

## **10.7 Available Relief for a Force Majeure Event**

10.7.1 Subject to this Article 10:

- (i) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (ii) Each Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 10.3;
- (iii) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party;
- (iv) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events.



## ARTICLE 11: CHANGE IN LAW

### 11.1 Definitions

In this Article 11, the following terms shall have the following meanings:

11.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the Seller for the purposes of supply of power or any income to the Seller:

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



- Any change on account of regulatory measures by the Appropriate Commission.

## **11.2 Relief for Change in Law**

11.2.1 The aggrieved Party shall be required to approach DERC for seeking approval of Change in Law.

11.2.2 The decision of the DERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

11.2.3 The Supplementary bill shall be raised only after approval of DERC to Change in Law events and consequent allowance of debit/credit to Procurer as the case may be.



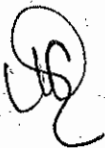


## ARTICLE 12: EVENTS OF DEFAULT AND TERMINATION

### 12.1 Seller's Event of Default

12.1.1 The failure to commence supply of power to the Procurer in terms of this Agreement, or if;

- (a) Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
- (b) Seller 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
- (c) Any winding up or bankruptcy or insolvency order is passed against the Seller; or
- (d) The Seller 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 Seller will not be a Seller's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or
- (e) The Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) Days from a notice from Procurer in this regard; or



- (f) Sale of power to third party without prior written consent from the Procurer.
- (g) The Seller fails to make any payment (a) of an amount exceeding Rupees One (1) crore in aggregate required to be made to the Procurer under this Agreement, within three (3) Months after the due date of undisputed invoice(s)/demand raised by the Procurer on the Seller, or (b) of an amount up to Rupees One (1) crore required to be made to the Procurer under this Agreement within six (6) Months after the due date of an undisputed invoice(s)/ demand; or
- (h) Any of the representations and warranties made by the Seller in Schedule I of this Agreement; being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days; or
- (i) Failure to extend Concession Agreement for a period of 25 years corresponding to project life; or
- (j) Any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- (k) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

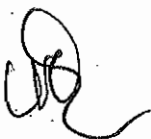
## **12.2 Procurer Event of Default**

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 Seller of its obligations under this Agreement, shall



constitute the Event of Default on the part of Procurer:

- (i) A Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of sixty (60) Days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Letter of Credit,
- (ii) A Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) Days from a notice from Seller in this regard; or
- (iii) Except where due to any Seller's failure to comply with its obligations, a Procurer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by the Procurer within thirty (30) Days of receipt of notice in this regard from the Seller to Procurer; or if:
  - Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) Days; or
  - Any winding up or bankruptcy or insolvency order is passed against a Procurer; or
  - Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of the Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and



has creditworthiness similar to the Procurer and expressly assumes all obligations of the Procurer and is in a position to perform them.

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

### **12.3 Procedure for cases of Seller's Event of Default**

12.3.1 Upon the occurrence and continuation of any Seller's Event of Default under Article 12.1, Procurer shall have the right to deliver to the Seller a notice stating its intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

12.3.2 Within a period of thirty (30) Days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or Seller's Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) Days to the Seller.

12.3.3 Subject to the terms of this Agreement, upon occurrence of a Seller's Event of Default under this Agreement, the lenders of the Seller in consultation with Procurer may exercise their rights, if any, under Financing Agreements, to seek substitution of the Seller.

### **12.4 Procedure for cases of Procurer Event of Default**

12.4.1 Upon the occurrence and continuation of any Procurer Event of Default specified in Article 12.2 the Seller shall have the right to deliver to such Procurer, a Seller's 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 Seller's Preliminary Default Notice, the Consultation Period of sixty (60) Days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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 thirty (30) Days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Seller shall be free to sell the Contracted Capacity to any third party of Seller's choice after giving notice to the Procurer with copy to DERC of at least 10 days in advance.

12.4.5 Provided further that at the end of three (3) Months period from the period mentioned in this Article 12.4.4, this Agreement may be terminated by the Seller.

## **12.5 Termination due to Force Majeure**

12.5.1 If the Force Majeure Event or its effects continue to be present beyond a period of 9 (nine) months, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of receipt of such Termination Notice.



## ARTICLE 13: LIABILITY AND INDEMNIFICATION

### 13.1 Indemnity

13.1.1 The Seller shall indemnify, defend and hold Procurer harmless against:

- (a) Any and all third-party claims against the Procurer, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Seller of any of its obligations under this Agreement; and
- (b) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of a breach by the Seller of any of its obligations under this Agreement, (provided that this Article 13 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement)

13.1.2 Procurer shall indemnify, defend and hold the Seller harmless against:

- (c) Any and all third-party claims against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement; and
- (d) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Seller from third party claims arising by reason of a breach by Procurer of any of its obligations under this Agreement, (provided that this Article 13 shall not apply to such breaches by the Procurer, for which specific remedies have been provided for under this Agreement)

## **13.2 Procedure for claiming Indemnity**

### **13.2.1 Third party claims**

- (a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 13.1.1 the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 13.1.1 in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) Days of receipt of the above notice. Provided however that, if:
- (i) The parties choose to refer the dispute before the DERC in accordance with Article 14.3.1; 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 favor of the Indemnified Party.
- (b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 13.1.1 and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.



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

### **13.3 Indemnifiable Losses**

13.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 13.1.1 or 13.1.2, 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, such event shall constitute a payment default under Article 12. In no event the Indemnifiable Losses shall exceed an amount of Rs 2 crores.

### **13.4 Limitation on Liability**

13.4.1 Procurer shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholders of Procurer, or any affiliate of Procurer 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 endeavor to take all reasonable steps so as to mitigate any loss or damage which has occurred under this Article 13.



## **ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION**

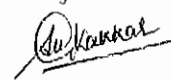
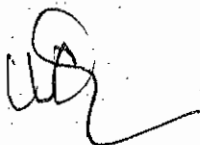
### **14.1 Governing Law**

14.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

### **14.2 Amicable Settlement and Dispute Resolution**

#### **14.2.1 Amicable Settlement**

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (i) A description of the Dispute;
  - (ii) The grounds for such Dispute; and
  - (iii) All written material in support of its claim.
- (b) Within thirty (30) Days of issue of Dispute Notice by any Party or such longer terms as may be agreed subsequently pursuant to Article 14.2.1(a) both Parties shall endeavor and make all efforts to amicably settle the Dispute.
- (c) If the Parties fail to resolve the Dispute amicably within thirty (30) Days from the later of the dates mentioned in this Article 14.2.1 (b) or such longer terms as may be agreed subsequently the Dispute shall be referred for dispute resolution in accordance with Article 14.3.



### **14.3 Dispute Resolution**

#### **14.3.1 Dispute Resolution by the Appropriate Commission**

Where any Dispute arises out of or in relation to this Agreement the same shall be adjudicated by DERC itself or referred to arbitration by DERC in terms of Section 86(1) (f) of the Act.

### **14.4 Parties to Perform Obligations**

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission as provided in Article 14.3 and save as the State Commission (DERC) 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 15: MISCELLANEOUS PROVISIONS**

### **15.1 Amendment**

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

### **15.2 Third Party Beneficiaries**

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



### **15.3 Waiver**

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

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

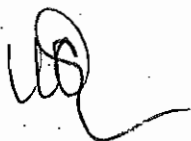
### **15.4 Confidentiality**

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

- (a) To its professional advisors for the proper performance of their activities;
- (b) To their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (c) Disclosures required under Law without the prior written consent of the other Party.

### **15.5 Severability**

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



## 15.6 Notices

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

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

**Address :** Attention : Chief Executive Officer – JUIL, Jindal ITF Centre, 28, Shivaji Marg, Moti Nagar, New Delhi - 110015

Email : [info@jindalecopolis.com](mailto:info@jindalecopolis.com)

Fax. No.: 011-66463982

Telephone No.: 011-66463983

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

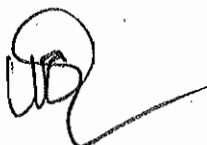
**Address:** Attention: HOD Power Management Group. BSES Yamuna Power Ltd, Shakti Kiran Building, Karkardooma Delhi 110032

Email: [Sunil.Kakkar@relianceada.com](mailto:Sunil.Kakkar@relianceada.com)

Fax. No. : 011-39992076

Telephone No. : 011-39992002, 9312147042

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



can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

### **15.7 Language**

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

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

### **15.8 Restriction of Shareholders/Owners' Liability**

15.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement.

15.8.2 The Seller acknowledges that it shall at all times comply with the minimum shareholding requirements under the Concession Agreement.

15.8.3 The Seller shall ensure that it shall not, except with the prior written approval of the SDMC, either directly or indirectly transfer their Equity



or issue further Equity that causes the Equity holding of the Successful Bidder in the total Equity of the Concessionaire to decline, below 51% (fifty one per cent) till the 5 (five) years from the COD and that of other Members whose credentials was evaluated to decline below 10% till the 5 (five) years from the COD}.

### **15.9 Taxes and Duties**

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

15.9.2 Procurers shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer in relation to the matters set out in Article 15.9.1. The Seller authorizes the Procurer to adjust any such liability against the Tariff Payments due to the Seller. Procurer shall provide documentary evidence of any such payment being made.

15.9.3 Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by Procurer on behalf of the Seller.

### **15.10 Independent Entity**

15.10.1 The Seller is an independent entity performing its obligations pursuant to the Agreement.

15.10.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of



the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and under no circumstance shall be treated to be employees, representatives, contractors of Procurer and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and Procurer.

#### **15.11 Compliance with Law**

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

#### **15.12 Penalty**

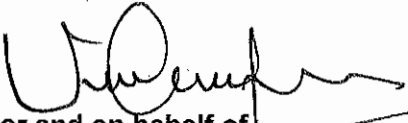
Notwithstanding with any clause in the PPA, if a Procurer is penalized financially by DERC by way of an Order, which Order specifically records that such default is attributable to the Seller, the same would be recovered from the monthly payment to be made to the Seller.

#### **15.13 Successors and Assigns**

In case the functions/role of the Seller or the Procurer are restructured/reorganized for any reason whatsoever and/or this PPA is assigned to any other organization/entity partly or wholly, then in that event this Agreement shall remain alive, valid and binding mutatis

mutandis upon the successor organization(s)/entities and shall continue to remain alive, valid and binding with respect to the obligations of the successor organization(s)/entities.

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

  
For and on behalf of  
Tehkhand Waste to Electricity Project Ltd.


(Umresh Chopra)  


Witness

1.



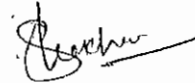
(JASPAL SINGH)  
(AGM-JUIL)

  
For and on behalf of  
BSES Yamuna Power Ltd.

Witness

1.

Sunil Kumar Kakkar  
Additional Vice President  
Power Management  
BSES Yamuna Power Ltd  
2nd Floor, Shakti Kiran Bldg.  
Karkardooma, New Delhi-110092



शेखर सकलानी  
वरिष्ठ प्रबंधक (ऊर्जा प्रबंधन समूह)  
बी.एस.ई.एस. यमुना पावर लिमिटेड  
बी-ब्लॉक, शक्ति किरण बिल्डिंग  
कarkardooma, नई दिल्ली-110092



**SCHEDULE I**  
**REPRESENTATION AND WARRANTIES**

1. Representations and Warranties by the Procurer

Each Procurer hereby represent and warrant to and agree with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

- 1.1. The Procurer has all requisite powers authorizing and has been duly authorized to execute and consummate this Agreement;
- 1.2. This Agreement is enforceable against the Procurer in accordance with its terms;
- 1.3. The consummation of the transactions contemplated by this Agreement on the part of the Procurer 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 said Procurer is a party or to which said Procurer is bound, which violation, default or power has not been waived;
- 1.4. The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the said Procurer;

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

2. Representation and Warranties of the Seller

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

- 2.1 The Seller has all requisite power authorizing and has been duly



authorized to execute and consummate this Agreement;

- 2.2 This Agreement is enforceable against the Seller in accordance with its terms;
- 2.3 The consummation of the transactions contemplated by this Agreement on the part of the Seller 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 Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- 2.4 The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;



## SCHEDULE 2

### Tariff

#### 1.1 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 read with Article 8
- ii. For the purpose of payment, (a) the Tariff will be the Quoted Tariff for the applicable Contract Year

#### 1.2 Monthly Tariff Payment

##### 1.2.1 Monthly Tariff Payment

The monthly Tariff payment for supply during any month 'm' in a Contract Year 'n' shall be calculated as below:

$$FC_m = FC_{yn} * SE_m$$

where:

$FC_m$  is the Tariff payment for the month m (in Rupees)

$FC_{yn}$  is the Quoted Tariff as per Schedule 3 in the Contract Year 'n' (in Rs per kWh) in which the month 'm' occurs.

In case the COD takes place later than 30th September, then the quoted Tariff for the first year shall be applicable Tariff for payment till the end of the 2nd financial year. Further, in case the COD takes place earlier than 30th September then the applicable Tariff for payment in the last year of the concession shall be the quoted tariff for the 25th year.

$SE_m$  is the Scheduled Energy during the Month m (in kWh)

### SCHEDULE 3 Quoted Tariff

S. No.	Contract Year from CoD of the Power Station	Quoted Tariff (Rs./ kwh)
1.	COD of the Power Station Year 1	4.30
2.	Year 2	4.75
3.	Year 3	5.25
4.	Year 4	5.25
5.	Year 5	5.50
6.	Year 6	5.50
7.	Year 7	5.82
8.	Year 8	6.00
9.	Year 9	6.00
10.	Year 10	6.00
11.	Year 11	6.00
12.	Year 12	5.10
13.	Year 13	5.00
14.	Year 14	4.50
15.	Year 15	4.50
16.	Year 16	4.50
17.	Year 17	4.50
18.	Year 18	4.50
19.	Year 19	4.50
20.	Year 20	4.50
21.	Year 21	4.50
22.	Year 22	4.50
23.	Year 23	4.50
24.	Year 24	4.50
25.	Year 25	4.50

