

Proposed Modifications in Standard Bidding Documents “Case-2” for Tariff Based Bidding Process

SL. No	Clause/Annexure of SBDs	Present Provision	Revised Provision
1 a	Definition in the RFQ	SPV shall mean a company established under the Indian laws to carry out the bid process in accordance with the Bidding Guidelines. [Insert the name of SPV] shall act as the Authorised Representative till acquisition of its 100% equity shareholding by the Selected Bidder.	<p>SPV shall mean [insert name of Authorised Representative] a company established under the Indian laws, being a wholly owned subsidiary of [insert applicable name of entity] to carry out the bid process in accordance with the Bidding Guidelines. till acquisition of its 100% equity shareholding by the Successful Bidder in terms of the Share Purchase Agreement.</p> <p>OR</p> <p>“SPV” shall mean [insert name of entity] a company established under the Indian laws, being a wholly owned subsidiary of [insert applicable name of entity], 100% shareholding of which shall be acquired by the Successful Bidder in terms of the Share Purchase Agreement.</p>
1 b	Footnote 15 to the definition of the term “SPV”	Formation of SPV would be a preferable way of purchase of power on long term. However, creation of SPV would be at the discretion of the Distribution Licensees	Deleted
1 c	Clause 1.3 of the RFQ	The objective of this bidding process is to identify the Successful Bidder for supply of minimum A MW and maximum B MW of power for a period of z years. This range has been arrived at taking the gross capacity of the power station as [] MW. As per the Bidding	The objective of this bidding process is to identify the Successful Bidder to acquire the SPV and supply a minimum A MW and maximum B MW of power for a period of z years. This range has been arrived at by taking the gross capacity of the Power Station as [] MW. As per the Bidding Guidelines, the Seller shall enter into the Power Purchase Agreement

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		Guidelines, the Successful Bidder shall enter into a Power Purchase Agreement (PPA) as detailed out in the Model PPA forming part of this document	(PPA) as detailed out in the Model PPA forming part of this RfQ.
1d	Definition of the term "Seller" in the RfP	<p>"Seller" shall mean the Selected Bidder for the purposes of development, finance, ownership, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project in accordance with the RfP;</p> <p>[Note: The following definition is to be inserted in case Procurer(s) have formed a SPV]</p> <p>"Seller" shall mean [Insert the name of the SPV], a company incorporated under the Companies Act, 1956 and having its registered office at [_____] for the purposes of development, finance, ownership, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project in accordance with the RfP; [Insert the name of SPV] shall act as the Authorised Representative till acquisition of its 100% equity shareholding by the Selected Bidder.</p>	<p>"Seller" shall mean [Insert the name of the SPV], a company incorporated under the Companies Act, 1956 and having its registered office at [_____] for the purposes of development, finance, ownership, design, engineering, procurement, construction, commissioning, operation and maintenance of the Project in accordance with the RfP Project Documents; [and who shall act as the Authorised Representative till acquisition of its 100% equity shareholding by the Successful Bidder] (insert portion in brackets if applicable).</p>
1e	Clause 1.3 of the RfP	The objective of the bidding process is to select a Successful Bidder for development of the Project as per the terms of the RfP.....	The objective of the bidding process is to select a Successful Bidder who shall purchase the entire shareholding of the [Insert the name of the SPV] from [Insert the name of the seller of the shares of the SPV] in accordance with the Share Purchase Agreement for development of the Project as per

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			the terms of the RfP
2.	Clause 2.1.4 of the RfQ	Developing project means successful commissioning of a project in which the Bidder/Parent/Affiliate, as the case may be, held equity stake of not less than 26% from the time of financial closure till the time of commissioning of such project	Projects so identified in the preceding paragraph, must only include commissioned/completed projects in which the Bidding Company/Lead Member /Parent/Affiliate of the Bidding Company/Lead Member, as the case may be, has held equity stake of not less than 26% from the time of financial closure till the time of commissioning/completion of such project. For the avoidance of any doubt, it is hereby clarified, that all such entities which have commissioned/completed such project(s) on their own balance sheet, from the time of financial closure till the time of commissioning/ completion of the respective projects shall be construed to have developed the project(s) in terms of this Clause 2.1.4
3(i)	Clause 2.8.2 of the RfQ	<p>Bidders should note that</p> <ul style="list-style-type: none"> i) All the information should be submitted in English language only. ii) -----. iii) -----. iv) -----. v) -----. vi) Bidders delaying in submission of additional information or clarifications sought will be liable for rejection. 	<p>Bidders should note that</p> <ul style="list-style-type: none"> i. All the information in the Response to RfQ should be submitted in English language only. ii. ----- iii. -----. iv. v.

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			<p>vi. The delay in submission of additional information or clarifications sought may result in the rejection of the Response to RfQ by the Procurer(s)/ Authorised Representative</p> <p>vii. All documents, to be submitted by the Bidders in terms of this RfQ in their respective Response to RfQ shall be duly notarized by a notary public who shall authenticate by its signature and official seal the due execution of the said document.</p>
3(ii)	Clause 2.14 of the RfP	Nil.	<p>2.14.5 All documents to be submitted by the Bidders in terms of this RfP, in their respective Bids, shall be duly notarized by a notary public who shall authenticate by its signature and official seal the due execution of the said document. Bidders to ensure that, all documents being submitted by entities not incorporated in India, are, in addition to being notarized in terms of this Clause 2.14.5, also duly legalized by the Indian embassy or consulate, located in the country of the respective entity submitting such document in order to authenticate the country of origin of the said document; or in the event such entity responsible for submitting the document, is located in a country which is a signatory to the Hague Convention 1961, the Bidder to ensure that all such documents submitted by the said entity in lieu of being legalized, are duly apostilled by the designated authority situated in their respective country in this regard.</p>
4	Clause 1.12 of the RfQ	(ii) Bidder has to arrange necessary fuel and	(ii) Bidder has to arrange necessary fuel and shall submit a

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		shall submit a comfort letter from a fuel supplier for fuel linkage for the entire term of the PPA at the time of submission of proposal in response to the RfP. (applicable for fuel other than imported coal)	comfort letter in the format as attached hereto as Annexure 12 from a fuel supplier for fuel linkage for the entire term of the PPA at the time of submission of the Bid. (applicable for fuel other than imported coal)
5(i)	Definition of the term 'Change in Ownership' in the RfQ & RfP	"Change in Ownership" shall mean change of ownership of the Bidder/Member in a Bidding Consortium by way of merger/ acquisition/ amalgamation/ reorganisation/ consolidation/ demerger.	Change in Ownership shall mean change of ownership by way of merger/ acquisition/ amalgamation/ reorganisation/ consolidation/ demerger, of the Bidder/Member and/or change in ownership by way of merger/ acquisition/ amalgamation/ reorganisation/ consolidation/ demerger of the Affiliate/Parent of the Bidder/Member (including Lead Member) whose technical and/or financial qualifications have been relied upon by the Bidder, in terms hereof, in its Response to RfQ.
5(ii)	Clause 2.5.1.4 of the RfQ	The Lead Member of the Consortium is not allowed to be changed. If the Bidding Company intends to form a Consortium after submission of the RfQ, then the Bidding Company shall be the Lead Member of such Consortium and shall fulfill all the requirements of RfQ, including technical requirements. No change in composition of a Consortium or a change from Bidding Company to Consortium or a Change in Ownership shall be permitted in the period between thirty days prior to Bid Deadline and issuance of Letter of Intent. Accordingly, no request for a proposed change in composition of a Consortium or request for approval of the	The Lead Member of the Consortium shall under no circumstances be changed. Subject to the provisions as set forth in this Clause and Clause 2.5.1.5, in the event, the Bidding Company intends to form a Consortium after submission of the RfQ, then the Bidding Company shall be the Lead Member of such Consortium and shall fulfill all the requirements of RfQ, including technical requirements. No change in composition of a Consortium or a change from Bidding Company to Consortium shall be permitted in the period between thirty days prior to the Bid Deadline and issuance of the Letter of Intent. Further, no Bidder shall be permitted to continue in the bid process if a Change in Ownership has occurred in the period between thirty days prior to Bid Deadline and issuance of Letter of Intent.

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		<p>Change in Ownership shall be entertained during this period.</p> <p>Subject to the above and to the provisions of clause 2.5.1.6 any request for change in the membership of the Consortium or, change from Bidding Company to Bidding Consortium may be considered only upon the Bidder making a prior written application to the Procurer/Authorised Representative seeking its approval for such change. In case of a Change in Ownership, the Bidding Company or Lead Member in case of a Consortium shall make a request for approval of such change within seven (7) days of such Change in Ownership.</p> <p>Any such change may be permitted, provided that the Bidder after such change is qualified as required by the provisions of the RfQ, including technical and financial requirements and also meets the provisions of clause 2.5.1.5 and clause 2.5.1.6 .</p> <p>The Procurer/ Authorised Representative reserves the right to seek additional information from the Bidder, if considered necessary. The Procurer/ Authorised Representative shall convey its decision on the request within fifteen(15) days from the date of receipt of complete information from the Bidder making the request, as required by the Procurer/ Authorised Representative.</p>	<p>Accordingly, no request for a proposed change in composition of a Consortium shall be entertained during this period and/or no intimation of the Change in Ownership shall be evaluated by the Procurer(s)/Authorised Representative during this period.</p> <p>“Subject to the above and to the provisions of clause 2.5.1.6 any request for change in the membership of the Consortium or, change from Bidding Company to Bidding Consortium may be considered only upon (i) the Bidder being qualified under this RfQ and (ii) the Bidder making prior written application to the Procurer/Authorised Representative seeking its approval for such change. Till the Effective Date of the PPA, in the event of a Change in Ownership, the Bidding Company or Lead Member in case of a Consortium shall, notwithstanding anything contained in this Clause 2.5.1.4, intimate the Procurer(s)/Authorised Representative of such Change Ownership, within 7 (seven) days of such Change in Ownership, so as to seek the approval of the Procurer(s)/Authorised Representative to carry on in the bidding process notwithstanding the Change in Ownership</p> <p>The Procurer(s)/ Authorised Representative reserve the right to not permit the Bidder to carry on in the bidding process and reject the Response to RfQ/Bid of such Bidder in the event of any (i) change in composition of a Consortium or (ii) change from Bidding Company to Bidding Consortium which has not been permitted by the Procurer(s)/Authorised Representative in accordance with this Clause 2.5.1.4 of the</p>

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			<p>RfQ or (iii) Change in Ownership which has not been intimated to the Procurer(s)/Authorised Representative or (iv) Change in Ownership which upon intimation has been evaluated by the Procurer(s)/Authorised Representative as not being qualified to continue in the bidding process in accordance with this Clause 2.5.1.4.</p> <p>Any (i) change in the composition of the Consortium or, (ii) change from Bidding Company to Bidding Consortium or (iii) Bidder being permitted to carry on in the Bidding Process pursuant to a Change in Ownership may be permitted, provided, the Procurer(s)/Authorised Representative is satisfied that the Bidder, after such change, is qualified, and satisfies all conditions and provisions of the RfQ, including technical and financial requirements and also meets the provisions of Clause 2.5.1.5 and Clause 2.5.1.6. If deemed necessary, the Procurer(s)/ Authorised Representative reserves the right to seek additional information from the Bidder , The Procurer/Authorised Representative shall convey its decision in relation to any request/intimation, as the case may be, received under this Clause 2.5.1.4, within fifteen (15) days from the date of receipt of complete information from the Bidder. In the event the decision of the Procurer(s)/ Authorized Representative is not conveyed within the time frame specified in the preceding sentence, it shall be deemed to constitute acceptance by the Procurer(s)/ Authorised Representative of the request/intimation, as the case may be, received under this Clause 2.5.1.4.</p>

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5(iii)	Clause 2.12.4 of the RfP	The Bid Bond of the Successful Bidder shall be returned on submission of Performance Guarantee as per Clause 2.13 and the provisions of the PPA	The Bid Bond of the Successful Bidder shall be returned on the Effective Date.”
6(i)	Clause 1.8 of the RfQ[The same site along with all the assets built as part of the Project will be transferred back to the Procurer at the end of the term of the PPA. The Bidder as part of the Bid should submit the terminal value for transferring the assets back to the Procurer at the end of the term of the PPA]	...[The Site along with all the assets built as part of the Project will be transferred back to the Procurer in whose state the Project is located at the end of the Term of the PPA. The Bidder as part of the Bid should submit the Terminal Price for transferring the Site along with the assets built as part of the Project back to the said Procurer at the end of the Term of the PPA]
6(ii)	Clause 1.6 of the RfP	... [The same site along with all the assets builds as part of the project will be transferred back to the Procurer, at the end of the term of PPA. The Bidder as part of the Bid should submit the terminal value for transferring the assets back to the Procurer at the end of the term of PPA].	... [The Site along with all the assets build as part of the Project shall be transferred back to the Procurer, in whose state the Project is located, at the end of the Term of PPA. The Bidder as part of the Bid shall submit the Terminal Value for transferring the assets back to such Procurer at the end of the Term of PPA].
7	Clause 2.5.1 of the PPA (3 rd Para)	In the event of Procurer YY becoming the Lead Procurer as per this Article, all the Procurers shall also appoint any of the Procurers, other than Procurer XX, as an Alternate Lead Procurer and thereafter the provisions of this Article 2.5.1 shall be applicable	In the event of “Procurer No. YY” becoming the Lead Procurer as per this Article, all the Procurers shall also appoint one of the Procurers, other than “Procurer No. XX”, as an Alternate Lead Procurer and thereafter the provisions of this Article 2.5.1 shall be applicable. Provided that upon “Procurer No. XX” curing its default in terms of Article 14.4.5(i), the then existing Lead Procurer shall cease to be the Lead Procurer and “Procurer No. XX” shall be reinstated immediately as the Lead Procurer. Provided further that at any given period of 10 continuous years, the Procurer No.XX

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			should not have defaulted more than 3 (three) times.
8	Clause 3.3.3A of the PPA	[insert if applicable] In case of inability of the Procurers to perform the activities specified in Article 3.1.2A within the time period specified therein, If the Seller elects to terminate this Agreement, the Procurers shall, within a period of thirty days, purchase the entire shareholding in the Seller for the following amount	In case of inability of the Procurer(s) to perform the activities specified in Article 3.1.2A within the time period specified therein, If the Seller elects to terminate this Agreement, the Procurer(s) shall, within a period of 30 (thirty) days, purchase the entire shareholding of the Seller for the following amount, which amount is subject to the Regulations issued under the Foreign Exchange Management Act, 1999, if applicable.
9	Article 14.3.4 of the PPA	Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, the Lenders may exercise or the Procurers may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurers would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 17. Alternatively, in case the Lenders do not exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by 20% for the period of Seller Event of Default.	Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have been remedied, the Lenders may exercise or the Procurer(s) may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurer(s) would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 17. Provided, that in the event the Seller has repaid the entire loan facility availed by it, in terms of the Financing Agreements the Procurer(s) may exercise substitution rights in consonance with the provisions of Schedule 17 A . Alternatively, in case the Lender(s) and the Procurer(s) do not exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by 20% for the period of Seller Event of Default
10	Definition of the term “Financing Agreements” in the PPA	means all the loan agreements, notes, indentures, security agreements, letters of credit and other documents relating to the financing of the Project on or before the COD of	shall mean all the loan agreements, notes, indentures, security agreements, letters of credit and other documents relating to the financing of the Project,, as may be amended,

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		the Power Station, as may be amended, modified, refinanced or replaced from time to time, but without in anyway increasing the liabilities of the Procurers therein;	modified, refinanced or replaced from time to time;
11	3.3.2 of PPA	<p>3.3.2 Subject to Article 3.3.3 and 3.3.3A, if:</p> <p>(i). fulfilment of any of the conditions specified in Article 3.1.2 is delayed beyond the period of three (3) Months and the Seller fails to furnish any additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof; or</p> <p>(ii). the Seller furnishes additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.1.2 for a period of eight (8) months beyond the period specified therein,</p> <p>all the Procurers (jointly) or Seller shall have the right to terminate this Agreement by giving a Termination Notice to the Seller / Procurer in writing of at least seven (7) days.</p> <p>If the Procurers or the Seller elect to terminate this Agreement in the event specified in the preceding paragraph of this Article 3.3.2, the Seller shall be liable to pay to the Procurers an amount of Rupees [Insert amount not less than</p>	<p>3.3.2 Subject to Article 3.3.3 and 3.3.3A, if the Seller fulfils its obligations in terms of Article 3.1.2(iii)(c) and</p> <p>i) fails to fulfill one or more of the other conditions specified in Article 3.1.2 beyond the period of three (3) Months and the Seller fails to furnish any additional weekly Performance Guarantee to the Procurer(s) in accordance <i>with Article 3.3.1 hereof; or</i></p> <p>ii) furnishes the additional weekly Performance Guarantee to the Procurer(s) in accordance with Article 3.3.1 hereof but fails to fulfill one or more of the other conditions specified in Article 3.1.2 for a period of eight (8) Months beyond the period specified therein,</p> <p>then the Seller shall be liable to pay to the Procurer(s) an amount calculated as 133 ¹/₃ % of the Performance Guarantee as per Article 3.1.1 within 10 (ten) days of the expiry of eight (8) Months/ three (3) Months period from the due date of completion of conditions subsequent in terms of this Articles 3.3.2 (i) and (ii) as liquidated damages. The Procurer(s) shall be entitled to recover this amount of damages by invoking the Performance Guarantee, if the Seller fails to pay the amount of liquidated damages within the said period of ten (10) days, calculated at 133 ¹/₃ % of the Performance Guarantee as per Article 3.1.1, and shall then return the balance Performance Guarantee, if any, to the Seller. If the Procurer(s) are unable</p>

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		<p>that derived on the basis of Rs. 10.00 lakhs per MW of the maximum capacity proposed to be procured] only as liquidated damages. The Procurers shall be entitled to recover this amount of damages by invoking the Performance Guarantee to the extent of Rupees [Insert amount not less than that derived on the basis of Rs. 10.00 lakhs per MW of the maximum capacity proposed to be procured] and shall then return the balance Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover said the amount of Rupees [Insert amount not less than that derived on the basis of Rs. 10.00 lakhs per MW of the maximum capacity proposed to be procured] or any part thereof from the Performance Guarantee the amount not recovered from the Performance Guarantee, if any, shall be payable by the Seller to the Procurers within ten (10) days from the end of eight (8) Months period from the due date of completion of conditions subsequent.</p>	<p>to recover the said amount or any part thereof from the Performance Guarantee the amount not recovered from the Performance Guarantee, if any shall be payable by the Seller to the Procurer(s) immediately. It is hereby clarified that upon the expiry of eight (8) Months/ three (3) Months period from the due date of completion of conditions subsequent in terms of this Articles 3.3.2 (i) and (ii), the same shall be construed as a Seller Event of Default under Article 14.1(xi) and the consequences as laid down in Article 14.3 shall follow.</p> <p>3.3.2 (I) Subject to Article 3.3.3 and 3.3.3A, if</p> <p>(i)The Seller fails to fulfil its obligation to attain Financial Closure in terms of Article 3.1.2(iii)(c), beyond the period of three (3) Months and the Seller fails to furnish any additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof; or</p> <p>(ii) the Seller furnishes additional Performance Guarantee to the Procurers in accordance with Article 3.3.1 hereof but fails to fulfil its obligation to attain Financial Closure in terms of Article 3.1.2(iii)(c) for a period of eight (8) months beyond the period specified therein,</p> <p>all the Procurers (jointly) or the Seller shall have the right to terminate this Agreement by giving a Termination Notice to the Seller / Procurer in writing of at least seven (7) days. If the Procurers or the Seller elect to terminate this</p>

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			<p>Agreement in the event specified in the preceding paragraph of this Article 3.3.2(l), the Seller shall be liable to pay to the Procurers an amount calculated as $133\frac{1}{3}\%$ of the Performance Guarantee as per Article 3.1.1 only as Liquidated Damages within 10 (ten) days of the expiry of eight (8) Months/ three (3) Months period from the due date of completion of conditions subsequent in terms of this Article 3.3.2(l) (i) and (ii). The Procurers shall be entitled to recover this amount of damages by invoking the Performance Guarantee to the extent of an amount calculated as $133\frac{1}{3}\%$ of the Performance Guarantee as per Article 3.1.1 and shall then return the balance Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover the said amount calculated as $133\frac{1}{3}\%$ of the Performance Guarantee as per Article 3.1.1 or any part thereof from the Performance Guarantee. The amount not recovered from the Performance Guarantee, if any, shall be payable by the Seller to the Procurers within ten (10) days from the end of three (3)/eight (8) Months period from the due date of completion of conditions subsequent.</p> <p>Further, in the event the Agreement is terminated in accordance with this Article 3.3.2(l), the Procurer(s) shall within a period of thirty days, from Termination Notice, in their sole discretion either (1) purchase the entire shareholding in the Seller in consideration for the amount as set forth below or (2) purchase the Site along with all assets thereon and all approvals in relation to the Project from the Seller in consideration for the amount as set forth below , The</p>

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			<p>consideration payable in both the cases shall be subject to the Regulations issued under the Foreign Exchange Management Act, 1999 or any other relevant Law prevalent at that time . Provided that the decision to opt for either (1) or (2) shall be taken by the Procurers jointly. Further the consideration payable by the Procurer(s) under this Article 3.3.2(I) in the event of the exercise of the option provided under (1) shall be paid by the Procurer(s) to the shareholders of the Seller, on the date of the transfer of all of the shares of the Seller in favour of the Procurer(s) or in the event of the exercise of the option provided under (2) shall be paid by the Procurer(s) to the Seller, on the date of the transfer of the Site along with all assets thereon and all approvals in relation to the Project in favour of the Procurer(s).</p>
12	Article 11.4.2.1 of the PPA	<p>“As further support for each Procurer’s obligations, on or prior to the Effective Date, each Procurer and the Seller shall execute separate Default Escrow Agreement (referred as “Default Escrow Agreement”) for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement. Each of the Procurers and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby each Procurer shall</p>	<p>As further support for the Procurer(s)’ obligations, on or prior to the Effective Date, the Procurer/each Procurer and the Seller shall execute separate Default Escrow Agreement (referred as “Default Escrow Agreement”) for the establishment and operation of a Default Escrow Account in favour of the Seller, through which the revenues of the Procurer/ relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement,. The Procurer/each of the Procurers and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Procurer/each Procurer shall agree to provide first charge by way of hypothecation, to the Seller, effective from forty five (45) days prior to the Scheduled COD or Revised Scheduled</p>

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		<p>agree to hypothecate, to the Seller, effective from forty five (45) days prior to the Scheduled COD or Revised Scheduled COD of the first Unit (as applicable), the amounts to the extent as required for the Letter of Credit as per Article 11.4.1.1 routed through the Default Escrow Account and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the “Collateral Arrangement”. The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 11.4.1.1.</p> <p>Provided that the Procurers shall ensure that the Seller has first ranking charge on the revenues routed through the Default Escrow Account and the ‘Receivables’ in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreement”</p>	<p>COD of the first Unit (as applicable), of the amount equivalent to the amount required for the Letter of Credit as per Article 11.4.1.1 routed through the Default Escrow Account and the revenues of the Procurer(s) as mentioned below in the proviso to this Article 11.4.2.1 . The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the “Collateral Arrangement”. The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 11.4.1.1.</p> <p>Provided that the Procurer(s) shall ensure that in accordance with the terms of the Agreement to Hypothecate cum Deed of Hypothecation the Seller has first ranking charge on the revenues of the Procurer(s) routed through the Default Escrow Account and the ‘revenues’ of the Procurer(s) which shall be limited to an amount being an amount of the revenue due to the Seller from sale of power from this Project at the Delivery Point. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreement and the Agreement to Hypothecate cum Deed of Hypothecation.</p> <p>Note: It is noted that in the event the Procurer is a Indian Governmental Instrumentality, except a board, it shall not be required to furnish the Collateral Arrangement.</p>

SL. No	Clause/Annexure of SBDs	Present Provision	Revised Provision
13	Clause 2.7.1.3 of the RfP	<p>The Bidder should note that</p> <p>a.</p> <p>b. If for any reason the Bid of the Bidder with lowest evaluated Levellised Tariff is rejected or Letter of Intent issued to such Bidder is cancelled, the Procurer/ Authorised Representative may:-</p> <p style="padding-left: 40px;">i) invite best reduced financial bids from those Bidders whose Bids are responsive and valid on that date; or</p> <p style="padding-left: 40px;">ii) annul the bid process ; or</p> <p style="padding-left: 40px;">iii) take any such measure as may be deemed fit in the sole discretion of the Procurer/Authorised Representative.</p> <p>If such event is discovered after the Effective Date, consequences specified in PPA shall apply.</p>	<p>The Bidder should note that</p> <p>a.</p> <p>b. If for any reason the Bid of the Bidder with lowest evaluated Levellised Tariff is rejected or Letter of Intent issued to such Bidder is cancelled, the Procurer/ Authorised Representative may:-</p> <p style="padding-left: 40px;">i) invite best reduced financial bids from those Bidders whose Bids are responsive and valid on that date; or</p> <p style="padding-left: 40px;">ii) annul the bid process ; or</p> <p style="padding-left: 40px;">iii) take any such measure as may be deemed fit in the sole discretion of the Procurer/Authorised Representative, subject to the Bidding Guidelines</p> <p>or</p> <p>If the event specified in Clause 2.7.1.3. (a) is discovered after the Effective Date, consequences specified in PPA shall apply.</p>
14	<u>17.3 A</u>	None	<p>¹Dispute Resolution</p> <p>All Disputes between the Parties shall be resolved in accordance with the provisions of the Electricity Act, 2003</p>

¹ To be inserted in lieu of Article 17.3 where the state Commission is the Appropriate Commission.

17 A. **SCHEDULE 17 A: SUBSTITUTION RIGHTS OF THE PROCURER(S)**

1. Substitution of the Seller

- a) Subject to the terms of Article 14.3.4 of the PPA, the Procurer(s) shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes performing the obligations of the Seller, in accordance with the provisions of this Schedule.
- b) The Procurer(s) may seek to exercise their right of substitution by an amendment or novation of the PPA and other Project Documents executed between Procurer(s) and the Seller in favour of the Selectee and the Seller shall cooperate with the Procurer(s) to carry out such substitution.

2. Procurers Notice of Default

The relevant Procurer (i.e. the Procurer who serves the Preliminary Default Notice on the Seller as per this Agreement) shall, simultaneously also issue a copy of the same to all the Procurer(s).

3. Substitution Notice

In the event of failure of the Seller to rectify the Seller Event Of Default giving rise to Preliminary Default Notice in terms of Article 14.3.4 of the PPA, the Procurer(s) shall intimate the Seller of their intention to substitute the Seller by the Selectee for the residual period of the PPA (the "Substitution Notice").

4. Omitted

5. Interim operation of Project

- a) On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 17 of this Agreement.
- b) On issue of a Substitution Notice, the Procurer(s) shall have the right to enter upon and takeover the Project for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Project, including levy, collection and appropriation of payments thereunder and the Seller shall completely cooperate in any such takeover of the Project by the Procurer(s). If the Procurer(s), at their sole and exclusive discretion agree to enter upon and takeover the Project, till substitution of the Selectee in accordance with this Agreement, such Procurer(s) shall be compensated by the Seller for rendering such services in accordance with clause 11.1 of this Schedule 17 A.
- c) If the Procurer(s) refuse to takeover the Project in accordance with clause 5(b) above, the Seller shall have the duty and obligation to continue to operate the Project in accordance with the PPA till such time as the Selectee is finally substituted under clause 8.8 hereof.
- d) The Procurer(s) shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

6. Process of Substitution of Seller

The Procurer(s) may, on delivery of a Substitution Notice notify the Seller about the Procurer(s) decision to invite and negotiate, at the cost of the Procurer(s), offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the Lead Procurer referred to in clause 8.5, such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other Project Documents executed between the Seller and the Procurers and other parties thereto, in accordance with these terms of substitution.

The Seller shall ensure that, upon the Lead Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Project to such Selectee simultaneously with the amendment or novation of the PPA and other Project Documents executed between the Seller and the Procurers and other parties thereto, in favour of the Selectee as mentioned in clause 1 (b).

7. Modality for Substitution

7.1 Criteria for selection of the Selectee.

The Procurer(s) shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) if the Seller is proposed to be substituted during the Construction Period, the Selectee shall possess the technical and financial capability used to pre-qualify bidders in the RFQ stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer(s) under and in accordance with the PPA;
- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or between the Selectee and any of the Procurer(s), involving sums greater than Rupees twenty (20) crores at any time in the last two (2) years as on the date of the substitution of the Seller.
- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained

8. Modalities

The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

- 8.1 The Lead Procurer shall propose to the other Procurer(s) (the "Proposal") pursuant to sub-clause 8.2 below, the name of the Selectee for acceptance, seeking:
- (a) grant of all the rights and obligations under the PPA and the other Project Documents executed between the Procurers and the Seller and other parties thereto, to the Selectee (as substitute for the Seller);
 - (b) amendment of the PPA and the other Project Documents executed between the Procurers and the Seller and other parties thereto, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other Project Documents executed between the Procurers and the Seller and other parties thereto; and
 - (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.
- 8.2 The Proposal shall contain the particulars and information in respect of the Selectee the data and information as any of the Procurer(s) may reasonably require. The Procurer(s) may intimate to the Lead Procurer any additional requirement within thirty (30) days of the date of receipt of the Proposal.
- 8.3 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer(s) of the Proposal:
- (a) observe, comply, perform and fulfil the terms, conditions and covenants of the PPA and all Project Documents executed between Seller and the Procurer(s) and other parties thereto, or a new power purchase agreement or respective Project Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective Project Document.
- 8.4 The decision of the Majority Procurers as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.
- 8.5 All Procurers shall convey their approval or disapproval of such Proposal, to the Lead Procurer. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

- (a) the date of receipt of the Proposal by the Procurers; or
- (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under clause 8.2 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer(s) or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 7.1.

- 8.6 Upon approval of the Proposal and the Selectee by the Procurer(s), the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 8.7 Following the rejection of a Proposal, the Lead Procurer shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this clause shall apply mutatis mutandis to such fresh Proposal.
- 8.8 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurers so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Procurers and upon transfer of ownership and complete possession of the Project by the Procurers or the Seller, as the case may be, to the Selectee. The Procurers shall novate all the Project Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Project and assumption of all the rights and obligations of the Seller under the PPA and the Project Documents as mentioned in this Agreement shall be entirely between the Selectee and the Procurer(s).
- 8.9 Upon the substitution becoming effective pursuant to sub-clause 8.8 above, all the rights of the Seller under the PPA shall cease to exist:
Provided that, nothing contained in this sub-clause shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurers against the erstwhile Seller or the Selectee.
- 8.10 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) days to rectify any breach and / or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and / or default of the Seller.
- 8.11 The decision of the Procurers in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the

Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

- 8.12 All actions of the Lead Procurer hereunder shall be deemed to be on behalf of the Procurer(s) and shall be binding upon them. The Lead Procurer shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal .

9. Seller's Waiver

- 9.1 The Seller irrevocably agrees and consents (to the extent to which applicable Law may require such consent) to any actions of the Lead Procurer and the Procurer(s) or exercise of their rights under and in accordance with these terms.
- 9.2 The Seller irrevocably agrees and consents (to the extent to which applicable Law may require such consents) that from the date specified in clause 8.9, it shall cease to have any rights under the PPA other than those expressly stated therein.
- 9.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Project, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Procurer(s). The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Project and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

10. Substitution Consideration

- 10.1 The Procurers shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of the Procurer's respective dues, to the exclusion of the Seller.
- 10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lead Procurer as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

11. Change in the Procurers

The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Procurer(s) may cease to be a Party to this Agreement by reason of termination of PPA vis-à-vis such Procurer . In the event of any Procurer ceasing to be a Party to the PPA the terms and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer.